

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO,
CALIFORNIA, AMENDING SECTIONS OF CHAPTER 3,
ARTICLE 1 OF THE FRESNO MUNICIPAL CODE,
RELATING TO PERSONNEL

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 3-101 of the Fresno Municipal Code is amended to read:

SECTION 3-101. – SCOPE OF ARTICLE. DEFINITIONS.

(a) Except as may be otherwise specifically provided herein, the provisions of this article shall apply and refer to employees in both the classified and the unclassified service.

(b) Unless a different meaning is clearly required by the context, the words and phrases defined in Article 2 of this chapter shall have the same meanings when used in the article.

(c) The terms “fireman [firefighting personnel]” and “~~member of the fire department~~ [firefighting employee],” whenever used herein, shall hereafter be synonymous with the term “firefighter” and shall only include those employees of the fire department whose minimum salaries are governed by the salaries paid in other cities named in the first paragraph of Section 809 of the Charter. The term “member of the fire fighting forces” shall mean any employee of the city whose classification involves the

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Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: 

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performance of firefighting duties, and shall include, but is not limited to, any firefighter.

(d) The terms "~~policemen~~ [police personnel]," and "~~member of the police department~~ [policing employee]," whenever used herein, shall mean those employees of the police department whose ~~minimum salaries are governed by the salaries paid in other cities named in the first paragraph of Section 809 of the Charter~~ [classification involves the performance of peace officer duties, and shall include, but is not limited to, any police officer].

(e) The ~~term~~ "~~member of the immediate family,~~" wherever used herein, shall mean a parent, spouse or registered domestic partner, natural or legally adopted child, brother or sister.

(f)~~(e)~~ Whenever in this article or in Article 2 of this chapter employees are designated by group or unit, such as, for example, "Management and Confidential Group," "Nonsupervisory Blue Collar Unit," etc., such designation shall mean and refer to employees in such groups or units as set forth in the current salary resolution or other action of the Council fixing the compensation of city employees.

SECTION 2. Section 3-102 of the Fresno Municipal Code is amended to read:

**SECTION 3-102. – FULL-TIME EMPLOYMENT DEFINED.
EMPLOYMENT OUTSIDE CITY SERVICE.**

(a) Forty hours of actual attendance on duty, less time off on authorized leaves of absence as provided for in this article, shall constitute

a minimum work week for all full-time employees of the city, except that the following [fire fighting personnel who work a twenty-four hour shift] shall be deemed full-time employees though their regular work week is more or less than forty hours:

(1) — ~~Members of the fire fighting forces who work a twenty-four hour shift;~~

(2) — ~~Employees holding permanent positions whose compensation is fixed pursuant to the second paragraph of Section 809 of the Charter and whose rate of pay is established by a collective bargaining agreement which provides for a regular work week of less than forty hours and when the Council has established such lesser work week as the regular work week for such employees in the salary resolution or other action of the Council fixing the rate of pay of such employees; provided, that nothing herein contained shall be construed to guarantee to any employee any number of hours of work in any week if work is not available or cannot for any reason be performed. Except for full-time employees whose regular work week is established at less than forty hours, and except as may be otherwise established at less than forty hours, and except as may be otherwise established by departmental rules governing personnel assignment or an approved memorandum of understanding, the regular minimum work day for full-time employees shall be eight hours, commencing~~

~~at eight o'clock a.m. and ending at five o'clock p.m. with a lunch period of one hour during the day.~~

(b) Employees holding full-time permanent positions shall devote their whole time and attention to city service except as hereinafter provided. No such employee shall engage in or work at any other remunerative occupation[, including self-employment,] without having first obtained an outside work permit.

(1) **Application.** Every applicant for an outside work permit shall file an application with his/her [their] ~~Department Head~~ ~~or~~ Appointing Authority ([City Manager, Department Head, Councilmember, City Attorney~~],~~ ~~or~~ City Clerk, or Retirement Administrator]) on a standardized form. The ~~Department Head or~~ Appointment Authority shall make a determination whether the proposed outside work is compatible with the applicant's city position and with the terms of this Section, or will adversely affect the efficiency of the employee.

(i) For those employees who report to a Councilmember, City Attorney or City Clerk, the Appointing Authority shall approve or deny the permit. The Council shall be notified of all work permits issued by the City Attorney or City Clerk.

(ii) For those employees of a Department or Division that reports to the City Manager, the Department

Head shall forward the application and ~~his or her~~ [their] recommendation to Personnel Services, which shall recommend issuance or disapproval of the permit, and the City Manager [or designee] shall either approve or deny the permit. In the event either the Department Head or Personnel Services recommends disapproval, the applicant shall be notified of such recommendation prior to submission of the work permit application to the City Manager.

(2) **Issuance.** The Appointing Authority ~~or City Manager~~ shall issue an outside work permit unless there is cause for denial. Such cause may include but shall not be limited to one or more of the following reasons:

(i) The work request might be in violation of the California Government Code Section 1126, which currently states, “a local agency officer or employee shall not engage in any employment, activity or enterprise for compensation which is inconsistent, incompatible, in conflict with or inimical to his or her duties as a local agency officer or employee”; or

(ii) The number or arrangement of the hours of employment in the proposed outside work is such that the efficiency of the applicant in ~~his/her~~ [their] city position will be impaired to any degree; or

(iii) The applicant's city position is one which requires occasional or regular standby duty for emergency call and the proposed outside work would seriously restrict the availability for such emergency call; or

(iv) A ~~physical~~ medical disability or infirmity of the applicant (as indicated by sick leave record, injury records, or ~~physical~~ medical examination) may be aggravated by the proposed outside work or the ~~physical~~ medical condition and/or nature of the work for the city is such that the applicant's efficiency in their city position may be impaired by ~~the physical or mental stress of the outside work~~; or

(v) If not self-employed, failure of the applicant to indicate proof of workers' compensation insurance in the outside employment; or

(vi) The applicant has willfully mis-stated on the application any fact concerning the nature of the outside work.

(3) **Restrictions.** All approved work permits shall be issued subject to the restrictions as specified herein including, but not limited to the restrictions stated and implied in the California Government Code~~[,]~~ §~~[s]~~ection 1126.

(4) **Time Limit. Hours.** An outside work permit shall be granted for such periods of time as the Appointing Authority ~~or City~~

~~Manager~~ prescribe but not to exceed a period of one year, and shall be renewable in the same manner as issuance of the original work permit. Each work permit shall show thereon the date of its expiration, and it shall be the duty of the employee holding such permit and desiring its renewal to file an application for renewal sufficiently in advance of the expiration date to avoid lapse. ~~Notwithstanding~~ [However], the Appointing Authority ~~or City Manager~~, in ~~his or her~~ [their] discretion, may retroactively issue a work permit. The maximum number of hours for which a work permit may be approved shall be sixteen hours per week for eight and ten hour shift employees and twenty-four hours per week for twenty-four hour shift employees. Any exception to these time limits will be determined on an individual basis and will be governed by the nature of the work to be performed, the nature of the applicant's city duties, and other pertinent factors that have bearing on the individual's ability to devote ~~his/her~~ [their] full time and attention to city employment.

(5) **Revocation.** The Appointing Authority ~~or City Manager~~ shall revoke any outside work permit [they] issued ~~by him or her~~, for any reason which would have required the denial of such permit under Subsection (2) hereof, or for any other good cause. Work permits may be revoked where any act or behavior of the employee in performing ~~his or her~~ [their] outside work reflects

unfavorably upon ~~his or her~~ [their] Department or the city. Written notice of the revocation stating the effective date thereof shall be given to the employee who shall surrender the revoked permit to the Appointing Authority ~~or City Manager~~ on or before the effective date of the revocation. An employee whose work permit has been revoked shall cease outside employment immediately upon receipt of such notice. Work permits automatically shall become invalid and remain invalid, without notice, for the duration of the time that an employee is:

(i) On sick [any] leave [used for sickness or physical incapacity, such as Sick Leave or Annual Leave] ~~or special leave charged to sick leave~~; or

(ii) Receiving injury [workers' compensation injury] pay [(including California Labor Code Section 4850 pay and temporary disability pay)]. Exception: Employees with an approved work permit may continue to perform such outside work provided it is consistent with the work restrictions/limitations imposed by their treating physician and no light duty is available within the city. In cases of dispute regarding an employee's medical status, the opinion of the most recent specialist shall prevail~~[.]~~; ~~or~~

~~(iii) Receiving temporary disability payments under workers' compensation insurance.~~

(6) **Review.**

(i) Denial or revocation of a work permit by a Councilmember, City Attorney, or City Clerk shall be appealable by submitting a written request for review to the Council President within seven business days of the decision. The Council President shall establish an Ad Hoc Review Committee consisting of three Councilmembers (excluding the affected employee's Appointing Authority).

(ii) The City Manager's decision to deny or revoke a work permit shall be appealable by submitting a written request for review to the Director of Personnel Services within seven business days of the [City Manager's] decision. The request shall be reviewed by a Work Permit Review Committee, consisting of one management group member to be assigned by the City Manager, an employee representative selected by the affected employee, and a third member shall be a city employee in a permanent position jointly selected by the management group member and the employee's representative. No member of the committee shall be a member of the affected employee's Department.

(iii) The request for review shall include any evidence which bears upon the issuance, denial, renewal, or

revocation of the work permit. The applicable review committee shall review the request and render a decision within forty-five days to issue, modify, deny, or revoke the work permit, using the criteria outlined in this Section.

SECTION 3. Section 3-103 of the Fresno Municipal Code is amended to read:

SECTION 3-103. – PERMISSIBLE POLITICAL ACTIVITIES.

The limitations on political activities imposed by Section 813 of the Charter shall not be deemed to prevent any person who holds a position in the administrative service, or whose name is on any register for appointment to a position in the administrative service, from

- (1) Attending a political meeting;
- (2) Enjoying entire freedom from all interference in casting his [a] vote;
- (3) Seeking signatures to any initiative or referendum petition affecting his [their] rates of pay, hours of work, retirement, civil service, or other working conditions provided such activity is not carried on during hours of work.

SECTION 4. Section 3-104 of the Fresno Municipal Code is amended to read:

SECTION 3-104. – LEAVE OF ABSENCE WITHOUT PAY.

~~The Chief Administrative Officer~~ [City Manager, City Attorney, City Clerk, or Retirement Administrator, as appropriate for their respective areas of authority], ~~after considering the recommendation of the appointing authority,~~ may grant a leave of absence from duty without pay

to an employee for a period not exceeding one hundred and twenty [calendar] days; provided, however, that if it shall appear that it is for the good of the service and the benefit of the city, [they] ~~the Chief Administrative Officer~~ may extend such leave. Application for such leave shall be made ~~upon a printed form provided by the Personnel Department~~ and shall show the following:

- (a) That the position from which the leave is sought is a permanent position;
- (b) The beginning and ending date of the leave requested;
- (c) The reason for the applicant desiring such leave.

SECTION 5. Section 3-105 of the Fresno Municipal Code is amended to read:

SECTION 3-105. – REVOCATION OF LEAVE OF ABSENCE.

An employee may, at any time during leave of absence granted, be called back to duty by the Appointing Authority, subject to the approval of the ~~Chief Administrative Officer~~ [City Manager, City Attorney, City Clerk, or Retirement Administrator, as appropriate for their respective areas of authority]. The employee shall be served personally or by certified mail with written notice of such order to return to duty. If the employee fails to report for duty at the specified time, and if the excuse for failure to so report is not satisfactory to the ~~Chief Administrative Officer~~ [City Manager, City Attorney, City Clerk, or Retirement Administrator, as appropriate for their respective areas of authority], the employee shall be subject to suspension or dismissal for inexcusable absence without leave.

SECTION 6. Section 3-106 of the Fresno Municipal Code is amended to read:

SECTION 3-106. – RETURN TO POSITION AFTER LEAVE.

Upon the expiration of leave of absence duly granted in accordance with the provisions of this article, an employee shall be returned to the same [or equivalent] class ~~of position~~ as he occupied when [the] leave of absence was granted, subject to the right of the Appointing officer [Authority] to require a ~~physical~~ [medical] examination, as provided in this article, before allowing the employee to return to duty.

SECTION 7. Section 3-107 of the Fresno Municipal Code is amended to read:

SECTION 3-107. – SICK LEAVE ~~AND SPECIAL LEAVE.~~

(a) Employees of the city whose salaries are fixed on a monthly or yearly basis, including those in the unclassified service, and part-time employees, shall accumulate Sick Leave with full pay according to the following schedule:

(1) Sick Leave shall be accumulated at the rate of eight hours for each completed calendar month of employment. Employees exempt from the payment of overtime may use accumulated Sick Leave after one completed calendar month of employment. For all other employees, Sick Leave may not be used until the employee has completed ninety days of employment. ~~Members of the City's f~~[F]irefighting forces [personnel] working a twenty-four-hour shift shall accumulate Sick

Leave at the rate of one-half shift for each completed calendar month of employment.

(2) Part-time employees shall accumulate Sick Leave at the rate of eight hours of Sick Leave for every one hundred sixty hours worked, but not to exceed ninety-six hours of Sick Leave in any fiscal year. An employee holding a position to which more than one rate of pay applies, depending on the nature of the work performed, shall be compensated while on Sick Leave at the rate applicable to the work performed on the last day before going on Sick Leave.

(3) New employees holding full-time permanent positions who commence work on or before the fifteenth day of the month shall be entitled to full Sick Leave credit for that month. [Such employees who commence work after the fifteenth day of the month shall not be entitled to Sick Leave credit for that month.]

(4) Employees in positions compensated by a fixed monthly or yearly salary who are on leave or suspension without pay for more than eighty hours in any calendar month, and ~~members of the City's firefighting forces~~ [fire-fighting personnel] working a twenty-four-hour shift who are on leave or suspension without pay for more than five working shifts in any calendar month, shall not accumulate Sick Leave for that month.

(b) The Council, in a salary resolution, [city] approved [labor] memorandum of understanding, or other action establishing rates of pay for city employees, may designate positions, classes of positions, or employee groups for which the calculation, accumulation, or allowance of Sick Leave is different from that provided in this section.

(c) Sick Leave may be taken for absences from duty made necessary by:

(1) Illness or ~~physical incapacity~~ [sickness] of the employee, the employee's child, parent, spouse, registered domestic partner, parent-in-law, grandparent, grandchild, or sibling, caused by factors over which the employee has no reasonable immediate control;

(2) Injury not incurred in line of duty except where traceable to employment by an employer other than the City of Fresno;

(3) Medical, dental or eye examination or treatment for the employee, or the employee's child, parent, spouse, registered domestic partner, parent-in-law, grandparent, grandchild, or sibling, which appointment cannot be made outside of working hours.

~~(d) Special Leave with pay may be taken and charged against Sick Leave credits, subject to the limitations provided in this section, for;~~

~~(1) Death in the immediate family; or~~

~~(2) — Hospitalization of a member of the immediate family, or any member of an employee's household for whom the employee is entitled to claim an exemption under the federal tax laws.~~

~~(3) — Care of a member of the immediate family who is critically ill or injured, though not hospitalized, where such leave is approved by the head of the department.~~

~~(e)[(d)] An employee who absents himself [themselves] from duty on s[S]ick or Special Leave shall notify the head of the department [or office], or such other person as departmental rules may provide, promptly on the first day of absence [and any other day of absence if such absence is unscheduled and unanticipated], of the reason for requiring such leave, and failure to do so may be grounds for denial of such leave with pay for the period of absence.~~

~~(f) — Time off for physician, dentist or ocular medical appointments shall be limited to not more than four hours a day of Sick Leave for each appointment. Written verification of such appointments by the attending physician may be requested by an appointing authority or designee in cases of suspected abuse or misuse of the leave. Such verification shall be maintained in the employee's confidential medical file in the employee's department. Such absences shall be accumulated and itemized on the Sick Leave report. Employees shall be requested to secure such appointments on off-duty time, but where this is not~~

~~possible, appointments should be made in advance to reduce to a minimum the time away from the job.~~

~~(g)~~(e) Sick Leave while on vacation is authorized only if the employee is confined to a hospital. Verification shall be submitted from the attending physician or the hospital.

~~(h)~~(f) Upon the death of a member of an employee's [child, parent, spouse, registered domestic partner, parent-in-law, grandparent, grandchild, or sibling,] immediate family, he ~~[the employee]~~ shall be allowed such [to use] Special [Sick] Leave as is actually necessary to take care of funeral arrangements or attend the funeral, but not to exceed four working days; provided, however, that members of the fire fighting forces ~~[personnel]~~ working a twenty-four hour shift shall be allowed such [to use] Special [Sick] Leave for [] not to exceed two regular shifts. Special [Sick] Leave to attend the funeral of a person other than to attend the funeral of a person other than [the employee's child, parent, grandchild, or sibling] a member of the immediate family may be granted an employee by his [the] department head [Appointing Authority]. The department head [Appointing Authority] shall notify the Personnel Services Director when any employee is granted such [the use of] Special [Sick] Leave [for bereavement.] Any other provision in this article to the contrary notwithstanding, "immediate family," as used in this subsection, shall include a mother-in-law and a father-in-law.

~~(i)[(g)] Special [Sick]Leave during the hospitalization of a member of the immediate family shall be limited to the time necessary to permit an employee to be at the hospital on the day of an operation, [may be used] on the day of the birth of his [an employee's]child, or during a critical illness of the member of the immediate family. Absences for these purposes may be authorized on Special Leave only if a physician provides a written statement that the employee's presence at the hospital is required.~~

~~(j)[(h)] Holidays and regular days off occurring while an employee is on Sick Leave or Special Leave shall not be charged against such employee's Sick Leave credits, except that holidays shall be so charged if such employee is a member [part] of the fire fighting forces [personnel] working a twenty-four-hour shift.~~

~~(k)[(i)] Sick Leave shall not be allowed where the cause of the injury or illness is directly traceable to city employment or to any compensated employment or remunerative occupation of any kind[, including self employment,] unless the employee has exhausted temporary disability benefits under Section 3-118 and any other disability insurance payments. If such temporary disability benefits and other disability insurance payments are exhausted, the employee may use Sick Leave for such injury or illness.~~

~~(l)[(j)] Sick Leave shall automatically terminate on the date of retirement[separation of city service,] of the employee or on the date on~~

which an ordinary disability allowance under the retirement system becomes effective.

(m)[(k)] Inability to work because of intemperance is not an authorized reason for Sick Leave.

(n)[(l)] Ordinary tiredness, restlessness, and muscular fatigue are not valid reasons for Sick Leave.

(o)[(m)] Notwithstanding any other provisions of this section, whenever employees are paid on an hourly basis and the compensation of such employees, including Sick Leave or ~~Special Leave~~ with pay, is budgeted and funded under a program sponsored by another governmental entity, then such employee shall accumulate Sick Leave in accordance with subsection (a)(2) of this section to the extent of such funding.

(p)[(n)] As used in this section, "child" means a biological, foster, or adopted child, a stepchild, a legal ward, a child of a domestic partner, or a child of a person standing in loco parentis [of the employee]; "parent" means a biological, foster, or adoptive parent, a stepparent, or a legal guardian of the employee.

SECTION 8. Section 3-108 of the Fresno Municipal Code is amended to read:

SECTION 3-108. – LEAVE FOR VACATION.

(a) All employees who are employed in permanent positions at ~~fixed monthly or yearly salaries, except members of the fire fighting forces who work a twenty-four hour shift,~~ shall accumulate ~~v~~[V]acation ~~l~~[L]ease

with pay [in accordance with the salary resolution or applicable city approved labor memorandum of understanding,]for each completed calendar month of employment, at the following rates:

~~(1) — For such employees who have been continuously employed by the city for less than ten years, the rate shall be eight hours; except, however:~~

~~(i) — For such employees in the Management and Confidential Group, the rate shall be ten hours;~~

~~(ii) — For such employees in the Nonsupervisory Blue Collar Unit with five years or more, but less than ten years of such employment, the rate shall be eight and two-thirds hours.~~

~~(2) — For such employees who have been continuously employed by the city for ten years or more, but less than twenty years, ten hours; except, however, for such employees in the Management and Confidential Group with ten years or more of such employment, the rate shall be thirteen and one-third hours.~~

~~(3) — For such employees who have been continuously employed by the city for twenty years or more, the rate shall be thirteen and one-third hours.~~

When any such employment commences work on or before the fifteenth day of a calendar month, ~~he~~ [they] shall be credited with ~~one~~ working day of [the] ~~v~~[V]acation ~~l~~[L]ease [accrual] for that month.

Entitlement to ~~v~~[V]acation ~~l~~[L]eave accumulation at the rates specified in this subsection shall commence on the first day of the month following the date on which the employee shall have been continuously employed for the prescribed period.

~~(b) — Employees engaged in permanent regular continuous part-time service and paid on an hourly basis excluding those employees in the groups and crafts whose compensation is fixed on an hourly basis in accordance with the second paragraph of Section 809 of the Charter, shall be granted as vacation leave eight hours' working time for every one hundred sixty hours worked, but not more than ninety-six hours' working time in any fiscal year.~~

~~(c) — Members of the fire fighting forces who work a twenty four hour shift shall accumulate vacation leave with pay, for each completed calendar month of employment, at the following rates:~~

~~(1) — One half of a working shift for members who have been continuously employed for less than ten years.~~

~~(2) — Five eighths of a working shift for memebtrs who have been continuously employed for ten years or more but less than twenty years.~~

~~(3) — Beginning July 1, 1963, five sixths of a working shift for members who have been continuously employed by the city for twenty years or more.~~

~~A member who commences work on or before the 15th day of a calendar month shall be credited with one-half of a working shift of vacation leave for that month. Entitlement to vacation leave accumulation at the rate specified in subparagraphs (2) and (3) of this subsection shall commence on the first day of the month following the date on which the member shall have been continuously employed for the prescribed period.~~

~~(d) — Whenever an employee in a position which is compensated by a fixed monthly salary is temporarily assigned to a position the compensation for which is determined by the provisions of the second paragraph of Section 809 of the Charter, the number of hours worked by such employee during each fiscal year on such temporary assignment shall be totaled at the end of such year, and for each unit of one hundred seventy four hours or major fraction thereof so worked, the vacation leave otherwise allowable to such employee for that year in his regular position under subsection (a) hereof shall be reduced by one month's allowance. During the fiscal year following such temporary assignment such employee shall be required to take time off without pay for the number of days of vacation leave which were lost to him in the preceding fiscal year because of such temporary assignment and shall, at the time of taking such time off, be paid any accumulated cash vacation allowance which may have accrued to him by reason of the pay provisions applicable to the position to which he was temporarily assigned.~~

~~(e) — Employees in the groups and crafts whose compensation is fixed on an hourly basis in accordance with the second paragraph of Section 809 of the Charter shall be required to take vacation leave without pay in an amount equal to one working day for each calendar month, or major portion thereof, but not to exceed a total of ten working days, of employment in such position during the preceding fiscal year. The hourly vacation allowance which is part of the hourly rate of pay specified in the applicable salary resolution for the class of position held by such employee shall be deducted from the employee's net hourly rate in calculating compensation payable each pay period, and shall thereupon be paid to a financial institution designated by such employee's recognized employee organization, which designation shall be subject to approval by the city controller. Any fees charged by such financial institution for such service shall be paid by an equal assessment against the funds in each employee's account. When an employee takes vacation leave, or upon termination of or retirement from city employment, or at such other times as the employee's Department Head may approve in writing upon request of an employee, the employee may withdraw the funds in his vacation account.~~

~~(f) — No employee shall be entitled to any vacation leave, nor receive any credit therefor as severance pay until he has completed six months of employment.~~

~~(g)~~~~[(b)]~~ The time at which an employee shall take ~~v~~~~[V]~~acation ~~l~~~~[L]~~leave shall be determined by the ~~a~~~~[A]~~ppointing ~~a~~~~[A]~~uthority with due regard for the wishes of the employee and particular regard for the needs of the service.

~~(h)~~~~[(c)]~~ No employee shall be entitled to any ~~v~~~~[V]~~acation ~~l~~~~[L]~~leave credit [that will exceed the accumulation limit as listed in the salary resolution or applicable city approved labor memorandum of understanding; however,]. ~~Otherwise earned by or creditable to him under any provision of this Code if the crediting thereof, at the time provided for the allowance of such credit, will cause his their total accumulation of unused vacation leave credit to exceed the accumulation limit applicable to his position and length of continuous service. accumulations of unused vacation leave credit shall not exceed,~~

~~(1) — For employees employed in full-time positions at fixed monthly or yearly salaries, two hundred and forty (240) hours, or, for such employees who have been continuously employed for twenty years or more and employees occupying positions in classes which are included in the Management and Confidential Group who have been continuously employed for ten years or more, three hundred and twenty (320) hours;~~

~~(2) — For firemen who work a twenty-four hour shift, fifteen working shifts, or for such firemen who have been continuously employed for twenty years or more, twenty working shifts; and~~

~~(3) — For part-time employees, one hundred and twenty (120) hours;~~

~~Provided that the Chief Administrative Officer, [the City Manager, City Attorney, City Clerk, or Retirement Administrator, as appropriate for their respective areas of authority,] may allow an additional accumulation of not to exceed twenty per-cent of such limits if he [they] shall find that an employee was prevented from reducing his [their v[V]acation l[L]eave accumulation below the limit applicable to him [them] by (i) absence from duty on account of injury compensable under Section 3-118; or, (ii) an unexpected emergency affecting the public peace, health or safety which precluded his [their]absence from duty; or (iii) a refusal of the employee's department head of a written request for v[V]acation l[L]eave submitted by the employee at least one month, and not more than six months, prior to the month in which the employee's maximum accumulation of unused v[V]acation l[L]eave credit exceeds the limit applicable to his [their]position and length of continuous service; but provided further, that any excess accumulation so allowed shall be automatically cancelled to the extent of any excess over the applicable limit remaining to the credit of such employee (a) ninety days after the date of his [their]return to duty from absence as provided in provision (i) hereinabove; or (b) ninety days after the expiration of the period of emergency, as provided in provision (ii) hereinabove; or (c) ninety days after the date on which the employee's maximum accumulation of unsaved v[V]acation [or]l[L]eave exceeded the~~

limit applicable to his[their] position and length of continuous service, pursuant to provision (iii) hereinabove, unless extended one or more such ninety-day periods by refusal of written request or requests for ~~v~~[V]acation [Leave] submitted during the original or subsequent ninety-day periods.

~~(i)~~[(d)] Vacation ~~l~~[L]eave credit which was earned by service in any calendar month, or, in the case of part-time employees, which was earned because of the completion of a unit of one hundred and sixty hours of work during any calendar month, shall be allowed and become creditable to the employee's unused accumulation of ~~v~~[V]acation [Leave] as of the first day of the following month.

~~(j)~~[(e)] Employees in [permanent] positions ~~compensated by a fixed monthly or yearly salary who are on leave or suspension~~ [or leave] without pay for more than eighty hours in any calendar month, and ~~members of the fire-fighting~~ [personnel] ~~forces~~ working a twenty-four-hour shift who are on leave or suspension [or leave] without pay for more than five working shifts in any calendar month, shall not accumulate ~~v~~[V]acation ~~l~~[L]eave for that month.

~~(k)~~[(f)] [~~formerly subsection (k)~~] (Repealed Ord. 6943, 1967).

~~(h)~~[(g)] If a holiday occurs during a vacation, it shall not be charged against [Vacation] ~~l~~[L]eave for vacation except in the cases of ~~firemen who work a twenty four hour shift and policemen~~ [employees who accrue Holiday] ~~l~~[L]eave [on a monthly basis].

~~(m)~~(h) Notwithstanding any other provisions of this section, whenever employees are in part-time service and are paid on an hourly basis~~[.] (excluding those employees in the groups and crafts whose compensation is fixed on an hourly basis in accordance with the second paragraph of Section 809 of the Charter)~~ and the compensation of such employees, including vacations, is budgeted and funded under a program sponsored by another governmental entity, then such employee shall be granted ~~v~~Vacation ~~l~~Leave in accordance with [this section.] ~~Subsection (b) of this section to the extent of such funding.~~

~~(n)~~(i) In a salary resolution, [city] approved [labor] memorandum of understanding, or other action of the Council establishing the rates of pay of employees in the city service, may be designated positions, classes of positions, or employee groups for which the rate of, calculation of, or accumulation of ~~v~~Vacation ~~l~~Leave credit shall be different from that provided in this section.

SECTION 9. Section 3-109 of the Fresno Municipal Code is amended to read:

SECTION 3-109. – LEAVE FOR COMPELLED ATTENDANCE IN COURT
[OR ADMINISTRATIVE HEARINGS].

(a) [With the approval of the City Manager, City Attorney, City Clerk, or Retirement Administrator, as appropriate for their respective areas of authority,] any employee who, ~~during times regularly required for his employment,~~ is compelled by subpoena to attend any hearing or trial for the purpose of testifying [during their regular work hours for the City],

may, with the approval of his the department head, [be entitled to do so] absent himself from duty without loss of pay during the period ~~he is~~ [they are] required to remain in attendance at such hearing or trial~~. If the City Manager City Attorney, City Clerk, or Retirement Administrator, as appropriate for their respective areas of authority, has approved the employee's attendance at such hearing or trial without loss of pay]~~, except that any such [the] employee shall demand and obtain from the person who subpoenas him [them] any fee allowed by law or otherwise payable for such attendance in court [or hearing], and shall promptly pay over to the Controller and Director of Finance the full amount of all fees received for such attendance in court.

(b) Any employee who, during times regularly required for his employment, is required [by the City Attorney or their designee] to attend [for the defense of an action against the city] any civil court proceeding or administrative hearing [during their regular work hours] wherein he~~he~~[they] or the city, or both, are parties defendant as a result of an incident arising out of or occurring in the course of his employment, or wherein his testimony or assistance in court is needed in the defense of an action against the city, shall be entitled to be absent himself from duty [do so] without loss of pay while required to be in attendance in court [or hearing] if the City Attorney [or their designee], or the attorney representing the city's insurance carrier, determines that such attendance is necessary for a proper defense of the action. If an employee is required to attend any such

proceeding or hearing on a day off, he ~~[they]~~ shall be entitled to overtime [if it is required under Section 3-117 or applicable city approved labor memorandum of understanding].

(c) Any employee who, ~~during times regularly required for his employment,~~ is required to attend [during their regular work hours] the trial of any civil action in court as a party plaintiff where the action arises out of or during the course of his employment with the city shall be entitled to a leave of absence with pay if the ~~Chief Administrative Officer~~ [City Manager, City Attorney, City Clerk, or Retirement Administrator, as appropriate for their respective areas of authority], ~~[]~~ determines that his ~~[the]~~ absence is primarily for the benefit and protection of the city's interest and [the employee] shall be entitled to a leave of absence without pay if the ~~Chief Administrative Officer or designee~~ determines that his ~~[determined the]~~ absence is primarily for his ~~[the employee's]~~ own benefit.

SECTION 10. Section 3-110 of the Fresno Municipal Code is amended to read:

SECTION 3-110. – LEAVE FOR JURY DUTY.

All employees shall receive their regular wages or salary during the time they are required to be absent from the duties of their position to attend any court in response to a summons for jury duty or while service on a jury, but shall pay over to the city any fees, ~~including mileage allowances,~~ received for such attendance or service. [This section does not apply to elective voluntary jury service, such as grand jury service.]

SECTION 11. Section 3-111 of the Fresno Municipal Code is amended to read:

SECTION 3-111. – MILITARY LEAVE.

Employees shall be entitled to such military leaves of absence as are provided for by Division II, Part 1, Chapter 7 of the Military and Veterans Code of California, including such leaves with pay as are provided therein, and subject to the rights, benefits, and limitations provided therein and in the Charter, ~~and this Code~~, administrative orders and/or the salary resolution pertaining to ~~reinstatement in the~~ city service.

SECTION 12. Section 3-112 of the Fresno Municipal Code is amended to read:

SECTION 3-112. – LEAVE FOR PHYSICAL [WORKERS' COMPENSATION MEDICAL] EXAMINATIONS, [MEDICAL TREATMENT], AND ATTENDANCE AT [WORKERS' COMPENSATION APPEALS BOARD] HEARINGS.

Employees who have been injured in the course and scope of their employment with the city and who are required, as a result of such injury, to be absent from duty to undergo medical examinations or treatment authorized by the city's workers' compensation administrator or the Workers' Compensation Appeals Board or to attend hearings of the Workers' Compensation Appeals Board may be granted leaves with pay for such absences by the [Personnel] Director when such absences are determined to be in the best interest of the city.

SECTION 13. Section 3-113 of the Fresno Municipal Code is amended to read:

SECTION 3-113. – SUBSTITUTE LEAVE; LEAVE OF ABSENCE WITH PAY FOR FIREMEN [FIRE FIGHTING PERSONNEL]WHERE SUBSTITUTE PROVIDED.

(a) Subject to the conditions and limitations provided in this section a member [firefighting personnel] of the Fire Department, during the time he is [of] incapacitated [incapacity] for the performance of his duty because of illness or injury not incurred in the performance of his employment with the city or with any other employer, shall be entitled to a leave of absence with full pay if a qualified substitute is provided to perform the duties of his [their] position. Such leave of absence shall be designated as "substitute leave."

(b) The right to substitute leave shall be limited to members [firefighting personnel] who are working a twenty-four hour shift at the time the incapacity for duty occurs.

(c) No member [firefighting personnel] who is entitled to substitute leave unless he shall [they] have first exhausted all the s[S]ick l[L]ease, v[V]acation l[L]ease, and h[H]oliday l[L]ease available to him on the date the substitute leave commences or which becomes available to him if the substitute leave continues into a new fiscal year.

(d) No member [firefighting personnel] who is eligible for service retirement, or who is qualified for disability retirement under the Fresno Fire and Police Retirement System shall be entitled to substitute leave, and before any application for substitute leave for such a member

[firefighting personnel] may be approved, there shall be filed with the department head the certification of the [a] C[c]ity Physician that he has examined the applicant [firefighting personnel] and has found that his [the] member [firefighting personnel's] incapacity for performance of duty is not permanent, or anticipated to be extended duration; provided, however, that nothing contained in this subsection shall be deemed to limit or restrict any right or privilege under the provisions of such retirement system to request a determination by the Retirement Board of the applicant's eligibility for disability retirement.

(e) A schedule of substitution, listing the names of all substitutes and the shifts they will work, shall accompany each application for substitute leave, and may be amended from time to time when necessary to add or delete the name of a substitute. The schedule, and any amendments thereto shall be signed by each listed substitute and shall contain a statement over his [their] signature that he assigns [assigning] to the member [firefighting personnel] on leave all right to salary and all other benefits, except benefits resulting from on-the-job injury, which shall accrue on account of work performed by him as a substitute and that for the purpose of payment of salary or the payment of accrual of such benefits, the city may consider the work as having been actually performed by the member [firefighting personnel] on leave. No fireman [fire fighting personnel] shall work as a substitute for more than one

working shift in any calendar week. The schedule of substitution shall be subject to the approval of the department head [or their designee].

(f) In cases where the member [firefighting personnel] claims the illness or injury is industrial but no final determination has been made ~~by the Industrial Accident Commission~~, such illness or injury may nevertheless be deemed non-industrial; for the purpose of eligibility for substitute leave, until such final determination has been made; provided, ~~that~~ if such final determination is that the illness or injury is industrial, all payments of salary to such member [firefighting personnel] while he ~~was~~ [they were] on substitute leave shall be deducted from any entitlement due him under Section 3-118 of this ~~e~~Code.

(g) Substitute leave shall extend for the duration of the incapacity of the member [firefighting personnel] for the performance of his duty or until the member [firefighting personnel] is separated from the city service or retired under the provisions of the Fresno Fire and Police Retirement System; provided, that no member [firefighting personnel] who is eligible for any retirement and who is permanently incapacitated ~~for~~ [from] ~~return~~ [returning] to the duties of his ~~his~~ [their] position and would have otherwise been separated from the service but for his entitlement to substitute leave shall be allowed to remain on substitute leave for any period which, when added to his ~~his~~ [their] prior service, would allow him ~~him~~ [the] member [firefighting personnel] to accumulate ten years of service; and provided further, that in no event shall such leave be allowed for a total

period of more than six months on account of any one illness or injury. The department head [or their designee] may require such further ~~physical~~ [medical] examinations of a ~~member~~ [firefighting personnel] on substitute leave as ~~he~~ [the department head or their designee] may deem advisable to determine the ~~member~~ [firefighting personnel's] continued eligibility for such leave.

(h) Written application for substitute leave, accompanied by the required schedule of substitution, shall be filed in duplicate with the department head. The department head, upon ~~his~~ approval of the application, shall forward a copy thereof to the Director.

SECTION 14. Section 3-114 of the Fresno Municipal Code is amended to read:

SECTION 3-114. – SUBSTITUTE LEAVE; LEAVE OF ABSENCE WITH PAY FOR ~~POLICEMEN~~ [POLICE PERSONNEL]. OVERTIME CREDIT DONATED.

(a) Subject to the conditions and limitations provided in this section a ~~member~~ [police personnel] of the Police Department, during the time ~~he is incapacitated~~ [of incapacity] for the performance of ~~his~~ duty because of illness or injury not incurred in the performance of ~~his~~ employment with the city or with any other employer, shall be entitled to a leave of absence with full pay if overtime credit donations by other ~~members~~ [police personnel] are made as provided in this section and if such leave is approved by the Chief of Police [or their designee]. Such leave of absence shall be designated as "substitute leave."

(b) No member [police personnel] shall be entitled to substitute leave unless he [they] shall have first exhausted all the s[S]ick l[Leave], v[V]acation l[Leave], holiday credit, and overtime credit available to him on the date the substitute leave commences or which becomes available to him if the substitute leave continues into a new fiscal year.

(c) No member [police personnel] who is eligible for service retirement, or who is qualified for disability retirement under the Fresno Fire and Police Retirement System shall be entitled to substitute leave, and before any application for substitute leave for such a member [police personnel] may be approved, there shall be filed with the department head the certification of the C[c]ity P[p]hysician that he has examined the applicant member [police personnel] and has found that his [the police personnel's] incapacity for performance of duty is not permanent, or anticipated to be of extended duration; provided, however, that nothing contained in this subsection shall be deemed to limit or restrict any right or privilege under the provisions of such retirement system to request a determination by the Retirement Board of the applicant's [police personnel's] eligibility for disability retirement.

(d) Written application for substitute leave shall be made to the Chief of Police. The application shall contain a schedule of proposed donations and shall include the written authorization of each member [police personnel] who has agreed to donate the equivalent of one or more days of time from his [their] accumulated overtime credit to the credit of

the member [police personnel] requesting substitute leave. In the authorization, each donor shall agree that he [they] assigns to the member [police personnel] on leave all right to salary and other benefits which shall accrue on account of time donated by him [them]. When donation is made by a member [police personnel] of a different class from that of the member [police personnel] on substitute leave, the value of the time donated shall equal the value of the time received by the member [police personnel] on leave, computed to the nearest hour. For the purpose of payment of salary or the payment or accrual of such benefits the city may consider the work as having been actually performed by the member [police personnel] on leave. The schedule of donations shall be subject to the approval of the Chief of Police, and, upon his [their] approval of the leave of absence and the substitute credits, he [they] shall forward a copy thereof to the Director.

(e) In cases where the member [police personnel] claims the illness or injury is industrial but no final determination has been made by the ~~Industrial Accident Commission~~, such illness or injury may nevertheless be deemed non-industrial, for the purpose of eligibility for substitute leave until such final determination has been made provided, that if such final determination is that the illness or injury is industrial, all accumulated overtime credits donated to and used by such member [police personnel] while he was on substitute leave shall be restored to the member [police personnel] who donated such credits.

(f) Substitute leave may extend for the duration of the incapacity of the member [police personnel] for the performance of his ~~his~~ [their] duty or until the member [police personnel] is separated from the city service or retired under the provisions of the Fresno Fire and Police Retirement System; provided, that no member [police personnel] who is eligible for any retirement and who is permanently incapacitated for return to the duties of his~~their~~ position and would have to remain on substitute leave for any period which, when added to his~~their~~ prior service, would allow him~~them~~ [them] to accumulate ten years of service; and provide further, that in no event shall such leave be allowed for a total period of more than six months on account of any one illness or injury. The department head may require such further physical [medical] examinations of a member [police personnel] on substitute leave as he~~may~~ [be] deem[ed] advisable to determine the member [police personnel's] continued eligibility for such leave.

SECTION 15. Section 3-115 of the Fresno Municipal Code is amended to read:

SECTION 3-115. – UNAUTHORIZED ABSENCE AS DEEMED RESIGNATION.

(a) An employee who without prior authorization is absent or fails to discharge his regularly assigned duty for three consecutive regular working days, or two shifts in the case of a member of the city fire-fighting force [personnel] working 24-hour shifts, shall be deemed to have resigned effective as of the end of the day on which he [they] last

performed any of the duties of his-~~[their]~~ position [or the last day they were absent with prior approved leave]; provided, however, the employee shall not be deemed to have so resigned if he ~~[the employee]~~ renews the performance of his-~~[returns to their]~~ regularly assigned duties at the commencement of his-~~[the]~~ next regular working day or on-duty shift [or obtains written approved leave by their appointing authority] following the expiration of the aforementioned period of absence[. or failure to discharge duties.] Within fifteen calendar days after the effective date of such resignation, such employee may file with his-~~[the]~~ appointing authority a written request for reinstatement. The appointing authority[. in conjunction with the City Manager City Attorney, City Clerk, or Retirement Administrator, as appropriate for their respective areas of authority,] may reinstate the employee on [the appointing authority's] finding there is good cause for the absence[.] ~~Or failure to perform duties such as bona fide illness, injury, or circumstances beyond the control of the employee, and that the employee is ready and able to resume the discharge of his duties.~~ In the event an employee is so-reinstated, such reinstatement shall constitute the period of such absence ~~or failure to discharge duty~~ as a retroactive leave of absence without pay, unless the appointing authority shall-determine[s] that [there was no] absence-of-fault on the employee's part [and allows] ~~entitles him to~~ [the] use of [the employee's paid] leave credits. This subsection shall not apply to elected officers or members of boards or commissions.

(b) An elective officer has resigned when ~~his~~ [their] elective office becomes vacant under the provisions of the Charter or when ~~he has~~ [they have] filed a resignation in writing addressed to the Mayor, Council, or the City of Fresno with the Mayor or City Clerk. Any other officer or employee may resign by tendering ~~his~~ [their] resignation in writing to the Director or ~~his~~ appointing authority. A written resignation shall be effective on the date designated therein, and if no date is so designated, it shall be effective immediately.

SECTION 16. Section 3-116 of the Fresno Municipal Code is amended to read:

SECTION 3-116. – HOLIDAYS.

(a) [Unless modified by an a city approved applicable labor memorandum of understanding or salary resolution,]~~All~~ [all] employees [in permanent positions], ~~except those whose compensation is fixed pursuant to the second paragraph of Section 809 of the Charter,~~ shall be entitled to a leave of absence of no more than eight hours without loss of pay on the following holidays:

- (1) January 1.
- (2) The third Monday in January.
- ~~(3) February 12.~~
- ~~(4)~~[(3)] The third Monday in February.
- ~~(5)~~[(4)] The last Monday in May.
- ~~(6)~~[(5)] July 4.
- ~~(7)~~[(6)] The first Monday in September.

~~(8)~~—September 9.

~~(9)~~~~(7)~~ November 11.

~~(10)~~~~(8)~~ Thanksgiving Day ~~in November~~.

~~(11)~~~~(9)~~ The Friday after Thanksgiving Day ~~in November~~.

~~(12)~~~~(10)~~ December 25.

~~(13)~~~~(11)~~ Any day or part of a day declared by the Council, by ordinance or resolution, to be a holiday.

(b) If January 1st, ~~February 12th~~, July 4th, ~~September 9th~~, November 11th, or December 25th falls upon a Sunday, the Monday following is a holiday.

(c) Unless modified by an applicable city approved labor memorandum of understanding or salary resolution, All all employees in permanent positions; ~~except those whose rate of pay is fixed pursuant to the second paragraph of Section 809 of the Charter,~~ who are required to and do work on any of the holidays specified in Subsection (a) of this section, shall be entitled to additional compensation or compensating time off for such work, in accordance with the overtime provisions applicable to the position~~, if any~~.

(d) When any holiday listed in subsection (a) hereof falls on a Saturday, eight hours shall be credited, on the first day of the next calendar month, to the ~~vacation~~ Holiday ~~leave~~ bank of each employee entitled to leave for holidays pursuant to this section; provided however, that any such employee who is required to and does work on

any such Saturday holiday, and receives overtime compensation for such work, shall not be entitled to any ~~vacation~~ [Holiday] ~~l~~[L]eave credit on account of such holiday. This subsection shall not apply to any such employee whose regularly scheduled work week consists of working days which are other than Monday through Friday, or to any temporary, ~~provisional, or part-time~~ employee.

(e) When the regularly scheduled work week of an employee entitled to leave for holidays pursuant to this section consists of working days which are other than Monday through Friday, and a holiday falls on a regular day off, eight hours shall be credited, on the first day of the next calendar month, to the ~~vacation~~ [Holiday] ~~l~~[L]eave bank of such employee; provided, however, that any such employee who is required to and does work on any such holiday, and receives overtime compensation for such work, shall not be entitled to any ~~vacation~~ [Holiday] ~~l~~[L]eave credit on account of such holiday. This subsection shall not apply to temporary, ~~provisional, or part-time~~ employees.

(f) [Unless modified by an applicable city approved labor memorandum of understanding or salary resolution,]E[e]very employee [in a permanent position], ~~except one whose compensation is fixed pursuant to the second paragraph of Section 809 of the Charter,~~ shall be entitled to a leave of absence of eight hours without loss of pay, or additional ~~vacation~~ [Holiday] ~~l~~[L]eave as hereinafter provided, on each anniversary of his ~~the employee's~~ birthday. ~~If any such employee is~~

~~required to and does work on his birthday anniversary or if any such employee's birthday anniversary falls on a holiday or any regular day off, eight hours shall be credited, on the first day of the calendar month following his birthday, to the vacation leave of such employee. The anniversary of the birthday of any employee born on February 29, shall be March 1 in any year other than leap year. The provisions of this subsection shall not apply to temporary, provisional, or part-time employees. An employee on probationary status or who has served less than six months in a permanent position in the unclassified service shall not be entitled to a leave of absence on his birthday anniversary, but in lieu thereof shall be credited with an additional eight hours of vacation leave.~~

(g) (1) Notwithstanding any other provisions contained in this article, the provisions of this article relating to overtime pay, compensating time off for holiday work, and leave for birthday anniversaries shall not apply to members [firefighting personnel] of the fire department who work a twenty-four-hour shift, or to members [police personnel] of the police department [or airports department].

~~(2) In lieu of any overtime pay, compensating time off, or any other credit or allowance of any kind for work performed on holidays, and without regard for the number of holidays actually worked, and in lieu of any compensation or leave for birthday anniversaries, all members shall be credited with eight hours leave~~

~~with full pay, to be designated as holiday leave, for each completed calendar month of employment; provided, that a member who commences work on or before the fifteenth day of a calendar month shall be credited with eight hours of holiday leave for that month. Holiday leave shall be taken by such members of the fire department in the fiscal year next succeeding the fiscal year for which it is credited and at such time as the department head shall determine, as one continuous leave of consecutive calendar days to the extent of the member's entitlement, and may be split only in cases where the department head finds an emergency to exist requiring the services of a member to prevent loss of life or injury, or damage to persons or property.~~

~~(3) Under the provision of this article relating to compensation for overtime upon separation from employment, such member shall be paid, upon his separation from employment, for all of his accumulated holiday leave. Accumulated holiday leave for which the member shall be paid shall include eight hours for each calendar month or major portion thereof during which the member has been employed by the city during the fiscal year in which the separation occurs. For each full eight hour increment to accumulated holiday leave, the member shall be paid a sum equal to one-thirtieth of the member's monthly salary in effect on the date of separation.~~

~~(g) — (4)[(2)]~~ ~~Members~~ ~~[Firefighting and policing employees]~~ who are absent from duty on leave without pay or suspension without pay, or who are absent from duty with pay because of injury incurred in the course and scope of their employment, for (i) more than five working shifts, in the case of such firemen ~~[fire-fighting personnel]~~, or (ii) more than eighty hours in the case of policemen ~~[police and airport public safety officers]~~, shall not accumulate ~~h~~[H]oliday ~~l~~[L]eave for that month.

~~(h) Notwithstanding any other provisions of this section, whenever employees are paid on an hourly basis (excluding those employees in the groups and crafts whose compensation is fixed on an hourly basis in accordance with the second paragraph of Section 809 of the Charter) and the compensation of such employee, including holidays, is budgeted and funded under a program sponsored by another governmental entity, then such employees shall be entitled to a leave of absence with pay or compensating time off, in accordance with this section to the extent of such funding.~~

~~(i)[(h)]~~ An accumulation of or use of ~~h~~[H]oliday ~~l~~[L]eave different than that previously provided in this section may be established by a salary resolution, ~~[city]~~ approved ~~[labor]~~ memorandum of understanding or other action of the Council.

SECTION 17. Section 3-117 of the Fresno Municipal Code is amended to read:

SECTION 3-117. – OVERTIME.

(a) It is the policy of the city that overtime work is to be discouraged. However, in case of emergency or whenever the public interest requires, the ~~Chief Administrative Officer~~ [City Manager, City Attorney, City Clerk, or Retirement Administrator, as appropriate for their respective areas of authority, or their respective designees], ~~or any department head~~ with respect to any employee in his ~~his~~ [their] department, may require an employee to perform overtime work. ~~No employee shall be required by a department head to perform overtime work except upon the written approval of the Chief Administrative Officer filed with the Controller and Director of Finance. Such approval must be given prior to the performance of the overtime work except when performed in an emergency to prevent loss of life or injury or damage to persons or property or to maintain schedules of the municipal transit system. No employee shall be entitled to compensation or compensating time off for overtime work unless such overtime work is approved as provided in this section.~~

(b) All employees [not exempt from the overtime provisions of the Fair Labor Standards Act (FLSA)], ~~exempt motor coach operators, members of the fire and police departments and employees whose rate of pay is fixed pursuant to the second paragraph of Section 809 of the Charter,~~ shall be compensated for approved overtime work by additional pay [in accordance with their applicable city approved labor memorandum

of understanding or the salary resolution, or other action by Council] as follows.

~~(1) — Work performed on a holiday falling on a regular work day shall be paid for at the applicable hourly rate; provided, that where only a portion of the day is a holiday, employees compensated by fixed monthly or yearly salary who work during such portion may, in the discretion of the department head, be allowed compensating time off with pay in lieu of cash payment, such time off to be taken at such time as the department head shall approve.~~

~~(2) — Work performed in excess of eight hours on a regular work day and work performed on a Saturday which is a day off but not a holiday shall be compensated at one and one-half times the applicable hourly rate.~~

~~(3) — Work performed on a Sunday or a holiday which is a regular day off shall be compensated for at twice the applicable hourly rate.~~

~~(4) — In computing an employee's entitlement to overtime pay under the foregoing rules when his regularly scheduled work week consists of working days which are other than Monday through Friday, the employee's first scheduled day off in such work week shall be deemed the Saturday and his second scheduled day off the Sunday of such work week. The first scheduled day off in~~

~~any such work week shall be deemed to be the first day in the calendar week following Sunday which is a regular day off.~~

~~(5) — The provisions of this subsection shall not apply to any employee who works a regularly scheduled work day of ten hours during a regularly scheduled work week of four days.~~

~~(c) — Members of the fire and police departments shall be allowed equivalent time off with pay for overtime hours worked, such time off to be taken at times designated by the department head, or, in the discretion of the department head, members may be compensated by cash payment in lieu of such time off. If the member fails to take his accumulated time off at the time designated by his department head, his right to time off or cash compensation for such overtime shall be deemed waived. When such time off is ordered, at least seventy-two hours' advance notice shall be given the affected member. If, on June 30 of any fiscal year, a member shall have accumulated unused time off for overtime worked and, in the case of a member of the police department, unused holiday leave, in excess of a total of forty hours, such member shall be compensated by cash payment for such excess on the next payroll at the applicable hourly rate for overtime compensation.~~

~~(d) — In a salary resolution, approved memorandum of understanding, or other action of the Council establishing the rates of pay of employees in the city service, may be designated positions, classes of positions or employee groups for which compensation for overtime work,~~

~~by cash payment or compensating time off, shall not be allowed, or for which the rate of, calculation of, or accumulation of, overtime compensation shall be different from that provided in this section.~~

~~(e)[(c)] Overtime shall not be credited for units of overtime less than one-tenth of an hour, and fractional units of overtime less than one-tenth of an hour shall not accumulate. Each member of the police department who is required, by subpoena or by direction of a court, superior officer, City Attorney, or prosecuting attorney, to attend, and does attend, during off-duty hours, any deposition or court proceeding as a witness, shall be allowed a minimum of two hours overtime credit, regardless of the time he is actually in attendance; provided, however, when he is required to attend, and does attend, a civil proceeding pursuant to a subpoena for which a deposit is required to be made pursuant to Sections 68097.1 to 68097.8, inclusive of the California Government Code, he shall be allowed a minimum of four hours overtime credit. All employees who are required to and do appear for work on a regular day off shall be allowed a minimum of two hours overtime credit, regardless of the time worked. Rules for crediting overtime for motor coach operators and members of the fire department shall be established by the Council, and the provisions of this subsection shall not apply to such persons.~~

~~(f) — The "applicable hourly rate" used for the purpose of overtime compensation for employees who are compensated by monthly salary shall be:~~

~~(1) — For members of the fire fighting forces who work a twenty-four hour shift, the quotient of their monthly salary divided by the total number of hours per month currently required to be worked by such members.~~

~~(2) — For all other such employees, the hourly rate equivalent of their monthly salary as set forth in the current resolution or ordinance fixing such salary.~~

~~(g) — Motor coach operators shall be paid for authorized overtime in accordance with rules established by the Council.~~

~~(h) — Rules for allowance of time off, or cash compensation in lieu thereof as provided in subsection (c) hereof, at a different rate from that provided for in this section, for members of the fire department, may be adopted by the Council.~~

~~(i) — All employees who work a regularly scheduled work day of ten hours during a regularly scheduled work week of four days shall be compensated for approved overtime work by additional pay as follows:~~

~~(1) — Work performed on a holiday falling on a regular work day shall be paid for at the applicable hourly rate; provided, that where only a portion of the day is a holiday, employees compensated by fixed monthly or yearly salary who work during such portion may, in the discretion of the department head, be allowed compensating time off with pay in lieu of cash payment,~~

~~such time off to be taken at such time as the department head shall approve.~~

~~(2) — Work performed in excess of ten hours in one day or on either or both of the first two scheduled days off in a work week shall be compensated at one and one half times the applicable hourly rate.~~

~~(3) — Work performed on the third scheduled day off in a work week or on a holiday which is a regular day off, shall be compensated at two times the applicable hourly rate.~~

SECTION 18. Section 3-118 of the Fresno Municipal Code is amended to read:

SECTION 3-118. – SALARIES WHILE ABSENT DUE TO [ON THE JOB]
INJURY IN LINE OF DUTY.

~~Every employee having permanent or probationary status in the classified service, and every employee serving in a permanent position in the unclassified service, who suffers an injury in the course and scope of city employment, shall receive a percentage of full wages or salary from the city, during the period of absence from duty on account of such injury and until employment with the city is terminated or the individual is retired for disability or service under Articles 3 or 5 of this chapter; provided, that such employee shall pay over to the city an amount equal to such payments as shall be received from the city or its agent for temporary disability for the period of absence from duty; and provided further, that the wage and salary payments authorized by this section shall not be paid~~

~~for absences on account of any one injury which exceed in the aggregate a period of one year. The term "full wages or salary" as used in this subsection, means wages or salary calculated, (1) at the rate of pay, exclusive of any addition for overtime or holiday work, at which the employee was being compensated immediately prior to the commencement of any absence from duty on account of the injury for which payments are authorized by this subsection or (2) if immediately prior to the commencement of any such absence the employee was serving under provisional appointment pursuant to Section 3-258 or under temporary assignment pursuant to Section 3-260, at the rate of pay the employee had been receiving immediately prior to such appointment or assignment; provided, that the employee shall receive normal step increases and salary adjustments during any absence pursuant to this section. [The percentage of wages or salary and benefits received by an employee holding a permanent position who suffers an injury in the course and scope of city employment shall be the percentage and benefits established by the State of California workers' compensation laws set forth in the California Labor Code.]~~

~~(b) When an employee's injury is incurred as a result of his failure to properly utilize safety equipment supplied by the city, such employee shall not be entitled to the benefits of this section during the first thirty days of absence from duty on account of such injury; provided, however, that this section shall not apply if the Chief Administrative Officer~~

~~finds that the employee was performing, at the time of the accident, an emergency duty of such urgency that he could not reasonably have been expected to properly utilize the safety equipment in the proper performance of such duty.~~

~~(c) — The percentage of full wages or salary from the city set forth in subsection (a) for designated positions, classes of positions, or employee groups shall be established by the Council, in a salary resolution, approved memorandum of understanding, or other action establishing rates of pay for city employees. Employees whose salary compensation while industrially disabled is determined by Labor Code Section 4850 are excluded and not eligible to receive benefits as provided in subsection (a) for injuries occurring on or after January 1, 2010.~~

SECTION 19. Section 3-119 of the Fresno Municipal Code is amended to read:

SECTION 3-119. – PAYMENT FOR [MANAGEMENT, ANNUAL, VACATION, HOLIDAY, SUPPLEMENTAL SICK LEAVES,] AND OVERTIME, UPON SEPARATION OF CITY SERVICE.

(a) Any employee of the city who resigns, or is removed for cause, or retires under the retirement provisions of this Code, ~~or enters upon an extended military leave without pay,~~ shall be paid for all of his accumulated [Management, Annual,] ~~v~~[V]acation, [Holiday, and Supplemental Sick] [L]eaves, and accrued overtime, if any, at the time of separation from active employment. If an employee dies, his [the employee's] estate shall be entitled to his [the] accumulated vacation ~~and~~

~~overtime pay [listed above unless otherwise pre-designated in writing by the employee and on file with the city].~~

(b) ~~Employees employed on a fixed monthly or yearly salary shall receive their full entitlement to v[V]acation [or Annual][L]eave for the calendar month of termination [separation of city service] if such separation occurs after the 15th day of such month. Part-time employees paid on an hourly basis who are entitled to vacation leave shall be credited with and paid a full vacation increment of eight hours if, at the time of separation, they have worked more than half of the number of hours required to earn such increment.~~

SECTION 20. Section 3-120 of the Fresno Municipal Code is amended to read:

SECTION 3-120. – ~~SPECIAL~~ [VOLUNTEER RESERVE] POLICE OFFICERS.

(a) The Police Chief shall have the power, on the application of any person showing the necessity therefor~~e~~, to appoint ~~Special~~ [volunteer Reserve] Police Officers to do ~~special~~ [volunteer] police duty in the City of Fresno, at no expense to the C~~o~~nity.

(b) Application for appointment as a ~~Special~~ [volunteer Reserve] Police Officer shall be made to the Police Chief. Before appointing any person a ~~Special~~ [volunteer Reserve] Police Officer, the Police Chief shall first cause an investigation of the applicant to be made, and he shall refuse to appoint anyone as a ~~Special~~ [volunteer Reserve] Police Officer unless, as a result of the investigation, the character of the applicant is

found to be satisfactory and above reproach. In addition, no person shall be appointed a Special [volunteer Reserve] Police Officer unless he ~~is~~ [they are] a citizen of the United States, ~~has~~ [have] received the training required by California Penal Code Section 832, and [at a minimum must] ~~has received a~~ [possess a current Basic] Peace Officer Standard Training Certificate.

(c) Every person appointed a Special [volunteer Reserve] Police Officer shall:

(1) Take an oath administered by, and filed in the office of, the City Clerk that he [they] will faithfully perform the duties of a Special [volunteer Reserve] Officer of the city;

(2) Be issued an identification card in the form prescribed by the Police Chief, containing a statement of the scope of the special [volunteer] appointment;

(3) Sign an agreement holding the city harmless from liability for any activities outside the scope of his [the] special [volunteer] appointment, in a form approved by the City Attorney.

(d) In cases of great public emergency, all Special [volunteer Reserve] Officers shall be subject to call by the Police Chief for active general police duty.

(e) All Special [volunteer Reserve] Officers shall conform in all respects to whatever rules and regulations of the Police Department are applicable to them.

(f) Any Special [volunteer Reserve] Officer may be removed or discharged from service by the Police Chief at any time without cause.

SECTION 21. Section 3-121 of the Fresno Municipal Code is amended to read:

SECTION 3-121. – SPECIAL POLICE PROTECTION.

(a) No member of the police department shall perform any law enforcement, traffic safety, or crowd control services while wearing a city police uniform, badge, or other equipment bearing a city insignia, for any person [or entity] other than the city~~, except as provided below~~.

(b) In conformance with any applicable [city approved labor] memorandum of understanding, any person [or entity] who desires or is required to provide a uniformed city officer or volunteer reserve officer for law enforcement, traffic safety, or crowd control purposes shall file a written request for such services with the Police Chief or designee stating the nature of the event, the number of officers requested, the approximate length of time such services will be required, and an agreement to pay for the city ~~therefore~~ [for the services].

(c) The Police Chief may approve or disapprove such request in his/her [their] sole discretion; provided, however, that when a request is received from a person [or entity] charged with the management or control of any city-owned or operated property or facility for police protection for an event scheduled on or at such property or facility, the Police Chief shall furnish such officer as ~~he/she~~ [they] deems necessary (considering the hours during which the activity or event is to occur, the type and nature of

the activity, the age or character of the participants therein, and the age or character of the audience most likely to attend the same) to enforce the law, maintain the public peace, and protect such property and the public at large.

(d) The person [or entity] requesting police services pursuant to this section, shall, prior to filing of an application hereunder, deposit sufficient funds with the Controller (or make arrangements satisfactory to the Controller) to pay for such services at the rate fixed by the Controller ~~therefor~~, including the cost of workers' compensation insurance and fringe benefits applicable to such services, if any. At the conclusion of such services, the Police Chief shall report to the Controller the names of the officers actually utilized and the number of hours worked by each. The Controller shall thereupon bill the person [or entity] requesting such services for the cost thereof and the same shall constitute a debt to the city.

(e) When assigned for duty hereunder, officers shall be ~~members~~ [police personnel] of the police department ~~as defined in Section 3-101(d) of this Code~~ or volunteer reserve officers [appointed and authorized in Section 3-120 of this Code] and shall be under the general supervision of the Police Chief or any officer in charge under ~~his/her~~ [their] command and in conformance with any applicable [city approved labor] memorandum of understanding.

SECTION 22. Section 3-122 of the Fresno Municipal Code is amended to read:

SECTION 3-122. – LAW ENFORCEMENT SERVICE TO PRIVATE INDIVIDUALS OR ENTITIES.

The city, recognizing the need for additional law enforcement services during a time of severe budgetary constraints, hereby adopts the following ordinance under its authority as a charter city, for the constitution, regulation, and government of the city police force (Cal. Const. Art. XI, § 5) and to preserve the peace, health, safety, and general welfare of its citizens.

(a) The city may contract to provide supplemental law enforcement services to private individuals or private entities to preserve the peace. Contracts entered into pursuant to this section shall provide for full reimbursement to the city of the actual costs of providing those services, as determined by the ~~Director of Administrative Services/~~[City] Controller.

(b) The services provided pursuant to this section shall be rendered by regularly appointed full-time peace officers, as defined in Section 830.1 of the Penal Code, or as negotiated with the respective certified employee organizations.

(c) Peace officer rates of pay shall be governed by a [city approved labor] memorandum of understanding.

(d) A contract entered into pursuant to this section shall encompass only law enforcement duties and not services authorized to be

provided by a private patrol operation, as defined in Section 75821.1 of the Business and Professions Code.

(e) Contracting for law enforcement services, as authorized by this section, shall not reduce the normal and regular ongoing service that the city would otherwise provide.

(f) The Chief of Police is authorized to contract with private parties and to adopt rules and regulations governing the application of this section.

SECTION 23. Section 3-123 of the Fresno Municipal Code is amended to read:

SECTION 3-123. – PROHIBITION ON BASE SALARY REDUCTIONS FOR UNCLASSIFIED EMPLOYEES' JOB PERFORMANCE.

(a) Deductions from an unclassified employee's existing salary or reductions in an unclassified employee's future salary for job performance are detrimental to city employee morale, stable employee relations, and are an inefficient means of providing city services.

(b) Deductions from an unclassified employee's existing salary or reductions in an unclassified employee's future salary for job performance are prohibited.

(c) This prohibition shall apply to all unclassified city employees, including those under an employment agreement or covered by an applicable [city approved labor] M[m]emorandum of U[u]nderstanding (MOU) which took effect prior to the effective date of this Section.

SECTION 24. Section 3-127 of the Fresno Municipal Code is added to read:

[SECTION 3-127 – ANNUAL LEAVE

Annual Leave established by city approved memorandum of understanding or salary resolution can be used in accordance with Section 3-107 and 3-108.]

SECTION 25. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2019.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2019
Mayor Approval/No Return: _____, 2019
Mayor Veto: _____, 2019
Council Override Vote: _____, 2019

YVONNE SPENCE, CRM MMC
City Clerk

BY: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Tina R. Griffin Date
Assistant City Attorney