

# OAKLEY



CALIFORNIA

## STAFF REPORT

**Date:** June 28, 2016  
**To:** City Council  
**From:** Bryan Montgomery, City Manager

A handwritten signature in blue ink, appearing to read 'B. Montgomery', written over the name 'Bryan Montgomery' in the 'From:' field.

**SUBJECT: Approval of the Memorandum of Understanding between the City and the Oakley Police Officers Association**

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### **Background and Summary**

On August 11, 2015 the City Council approved a Personnel Policies Manual for the to-be-formed Oakley Police Department. This document set forth the conditions of employment for the incoming police officers and assisted them in making a decision of whether to join the Police Department or not. At that time, no Police Officers Association was formed and the document was not considered a Memorandum of Understanding that is typical in a collective bargaining arrangement with law enforcement.

The transition of police services from the County to the City is now complete and an employee association, the Oakley Police Officers Association, has been formed. This new arrangement calls for the evolution of the Police Personnel Policies Manual to a formal Memorandum of Understanding (MOU). The proposed MOU is attached and the recommended changes between the two documents are identified in track changes.

### **Fiscal Impact**

The costs to implement the Memorandum of Understanding are included in the budget and were part of the Police Services Study that was conducted prior to the decision to transition the delivery of police services to the City.

### **Recommendation**

Adopt a resolution approving the Memorandum of Understanding between the City and the Oakley Police Officers Association and authorize the City Manager to execute the document.

### **Attachments**

1. Resolution
2. Proposed Memorandum of Understanding

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY  
APPROVING THE MEMORANDUM OF UNDERSTANDING WITH THE OAKLEY  
POLICE OFFICERS ASSOCIATION AND AUTHORIZING THE CITY MANAGER  
TO EXECUTE THE DOCUMENT**

**NOW, THEREFORE, BE IT RESOLVED** that the City Council hereby approves the Memorandum of Understanding, a true and accurate copy of which is attached as Exhibit A, and authorizes the City Manager to execute the document.

The foregoing resolution was adopted at a regular meeting of the City Council held on the 28<sup>th</sup> day of June, 2016 by the following vote:

AYES:

NOES:

ABSTENTION:

ABSENT:

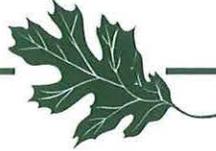
APPROVED:

\_\_\_\_\_  
Kevin Romick, Mayor

ATTEST:

\_\_\_\_\_  
Libby Vreonis, City Clerk                      Date

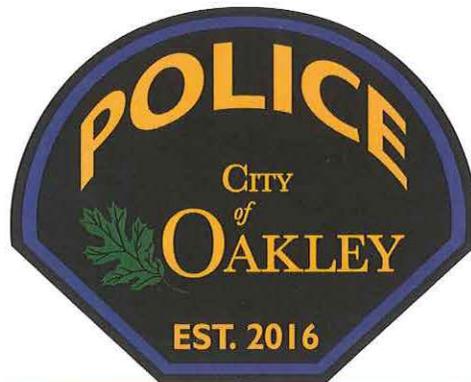
# OAKLEY



CALIFORNIA

**MEMORANDUM OF**  
**UNDERSTANDING**  
**between the City of Oakley and the**  
**Oakley Police Officers Association**

*August 2015 June 28, 2016*



## DEFINITIONS

**Appointing Authority:** the City Manager or his/her designee.

**Association: the Oakley Police Officers Association – recognized as the collective bargaining unit for the positions of Police Officer and Police Sergeant.**

**Immediate Family:** an employee shall include his or her spouse and the following relatives: children of either spouse, step-children, parent of employee or spouse, brother or sister, half-brother or half-sister, either grandparent and grandchildren.

**Newly-Hired Employee:** a person who has not completed a probationary period in any position within the organization or a person who has previously completed a probationary period, but has had more than a three (3) month break in service from the City.

**Probationary Employee:** an employee working a test period during which he or she is required to demonstrate his or her fitness to perform the duties of the class of position to which he or she is appointed by actual performance of those duties.

**Regular Full-Time Employee:** a person employed by the City in a full-time capacity, who has successfully completed a probationary period, and has been retained according to the provisions of the City of Oakley Police **Personnel Policies Manual** **MOU**.

**Regular Part-Time Employee:** a person employed in a regularly budgeted class or position which a regular employee may be appointed, and whose normal work schedule is less than the standard hours of work, but at least twenty (20) hours per workweek.

OAKLEY POLICE DEPARTMENT OFFICERS ASSOCIATION  
PERSONNEL POLICIES MANUAL MEMORANDUM OF UNDERSTANDING

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*This Memorandum of Understanding supercedes and replaces the previously approved Personnel Policies Manual adopted in August of 2015*

## **Section 1. APPLICABILITY AND RECOGNITION**

### **1.1 Applicable Employees and ~~Recognized Employees~~ Association Recognition**

~~The Oakley Police Department Personnel Policies Manual~~ The City of Oakley hereby recognizes the following classifications of employees as represented by this Memorandum of Understanding (hereinafter "MOU"): Police Officer and Police Sergeant. Lieutenants may become associate members of the Association; however, they are not represented herein). ~~shall be applicable to all sworn officers within the Department. The "Oakley Police Officers Association" is the formally recognized employee organization for collective bargaining.~~

### **1.2 City Recognition**

The City Manager, or any person or organization duly authorized by the City Manager, is the representative of the City of Oakley, hereinafter referred to as the "City" in employer - employee relations.

## **Section 2. NO DISCRIMINATION**

Discrimination or harassment based on age, sex, religion, color, disability, race, national origin, ancestry, citizenship, marital status, veteran status, medical condition, or sexual orientation is prohibited.

The City shall not interfere with, intimidate, restrain, coerce or discriminate against employees because of the exercise of their rights under the Meyers Milias Brown Act.

## **Section 3. EMPLOYEE RIGHTS**

### **3.1 Right to Representation**

An employee, upon the employee's request, shall be entitled to have representation, at employee's expense, by the designated law firm (currently the law firm of Rains, Lucia Stern) present during any meeting which is disciplinary or a meeting which the employee reasonably believes may result in disciplinary action.

### **3.2 Personnel Files**

There shall be one (1) official personnel file and one internal affairs file, maintained in the Administrative offices of the Police Department. An employee shall be permitted to review his/her personnel/Internal Affairs file provided the employee makes a request twenty-four (24) hours prior to the time the employee wishes to review the file. A representative of Human Resources shall be present during the review of the personnel file. ~~An~~ employee's representative, with written permission from the employee and twenty-four (24) hours' notice to the City, shall also be permitted to review the employee's personnel file. The City Manager, Chief of Police, or Administrative Lieutenant will be present should an employee request to review his/her Internal Affairs file An employee shall be entitled to receive copies of any material in his/her personnel file or any

material which will be submitted to the personnel file.

### 3.3 Notice

The employee shall be provided copies of all notices related to discipline which results in a loss of pay. At the request of the employee, a copy will also be provided to the law firm of Rains, Lucia Stern. The request must be in writing and addressed to Human Resources.

## **Section 4. CITY RIGHTS**

It is understood and agreed that the City retains all of its powers and authority to manage municipal services and the work force performing those services.

It is agreed that the following rights shall remain solely a function of management except as may be limited by this agreement and/or by applicable state and federal law:

1. Determine and modify the organization of City government and its constituent work units.
2. Determine the nature, standards, levels, and mode of delivery of services to be offered to the public.
3. Determine the methods, means, and the number and kinds of personnel by which services are to be provided.
4. Determine whether goods or services shall be made or provided by the City, or shall be purchased, or contracted for.
5. Direct employees, including scheduling and assigning work, work hours, and overtime.
6. Establish employee performance standards and to require compliance therewith.
7. Discharge, suspend, demote, reduce in pay, reprimand, and withhold salary increases and benefits, or otherwise discipline employees, subject to the requirements of applicable law.
8. Relieve employees from duty because of lack of work or lack of funds or for other legitimate reasons.
9. Implement rules, regulations, and directives consistent with law and the specific provisions of this ~~Personnel Policies Manual~~ MOU.
10. Take all necessary actions to protect the public and carry out its mission in emergencies.

To the extent that management's exercise of these rights enumerated above impacts the employees' terms and conditions of employment, the City is not relieved of its obligation to meet and confer on these impacts as required by law.

## **Section 5. PROBATIONARY PERIOD**

### **5.1 Probationary Period**

All appointments, promotional appointments and reappointments shall be tentative and subject to a probationary period dated from the time of appointment to a regular full-time or regular part-time position. The probationary period shall be for a one (1) year period of actual service. The City Manager, upon written request of the Chief of Police, may grant an extension of the probationary period up to a maximum of six (6) months beyond the end of such probationary period, for a maximum total probation of eighteen (18) months.

An employee remains on probation until such time as the City takes formal, written action to remove the probationary employee from probationary status. This is done by the employee's supervisor completing a written performance evaluation at the approximate date of the probationary employee completing one (1) year in the probationary position. This performance evaluation must be signed by the Chief of Police and forwarded to the City Manager for final review and approval.

### **5.2 Dismissal of Newly-Hired Employees**

During the probationary period, a newly hired employee may be suspended, demoted or dismissed at any time by the appointing authority without the right of appeal. A probationary employee is an "at-will" employee. Notification of dismissal in writing shall be served on the newly-hired employee and a copy filed with Human Resources.

### **5.3 Demotion of Promoted Employees**

An employee who is promoted to a new position in a higher classification may be demoted to his/her previous position at any time during the one (1) year probationary period without recourse to right of appeal. The employee shall be returned to the position which he/she held prior to the promotion and shall be placed at the salary level held prior to the promotion.

## **Section 6. COMPENSATION**

### **6.1 Merit System**

In order to properly compensate an employee, adjustments in salary shall be based on a merit system as outlined in the City's Compensation Policy. Adjustments shall not be automatic, but shall depend upon results of the annual performance evaluation. All merit adjustments are recommended by the Police Chief and approved by the City Manager.

### **6.2 Salary and Wage Plan**

The City Manager and his/her designee(s) shall administer the Compensation Policy for employees.

1. All initial employment shall be at a salary level which is within the salary range for the classification for which the employee is hired. ~~The current salary ranges are as follows:~~

**Table 6.2.1 – Salary Ranges for Fiscal Year ~~2015~~2016-1617, effective the first pay period in August**

<i>Position</i>	<b>SALARY RANGE</b>
Sergeant	\$7,500 - <del>\$10,500</del> <u>11,135</u>
Patrol Officer	\$6,200 - <del>\$8,800</del> <u>9,350</u>

~~2. New employees who are hired shall be placed within the salary range. For employees serving as sworn officers assigned in Oakley prior to April 15, 2015 shall be placed in the salary range at the approximate location of the step they were at with the Contra Costa County Sheriff's Office as of the date of hire. The table below indicates where in the salary range employees will be placed:~~

~~Table 6.2.2 – Initial placement in City range for sworn officers assigned to Oakley as of the date of hire~~

<i>Position</i>	<del>Non S.O.</del>	<del>S.O. Step 1</del>	<del>S.O. Step 2</del>	<del>S.O. Step 3</del>	<del>S.O. Step 4</del>	<del>S.O. Step 5</del>	<del>S.O. Step 6</del>
Sergeant	<del>\$7,500</del>	<del>\$8,500</del>	<del>\$8,866</del>	<del>\$9,247</del>	<del>\$9,644</del>	<del>\$10,059</del>	<del>\$10,500</del>
Officer	<del>\$6,200</del>	<del>\$7,000</del>	<del>\$7,329</del>	<del>\$7,673</del>	<del>\$8,034</del>	<del>\$8,412</del>	<del>\$8,800</del>

All initial employment shall be at a salary level which is within the salary range for the classification for which the employee is hired. No employee shall be hired at or promoted to a level below the salary range minimum without mutual agreement between the City and the employee.

3. New or any modifications to salary ranges will be recommended by the City Manager and adopted by the City Council. It is the City's objective to establish ranges that closely use the salary ranges of surveyed classifications at the mean (average) of the survey agencies plus 13% for the top end of the range. After reaching the maximum point, an employee has the opportunity to earn a lump sum merit award based on outstanding performance, but may not be considered for base salary increases unless his or her salary range is adjusted.

4. The City desires to set salary ranges that are competitive and comparable to relevant cities near Oakley. The comparative cities currently utilized by the City are:

- Antioch
- Brentwood
- Hercules
- Pittsburg
- Benicia
- Pleasant Hill

City and Association agree to review and confer on a recommendation to the City Council for modification to the list of comparative cities. Said recommendation shall be presented to the City Council for consideration prior to January 30, 2017.

5. At least every two years, the City's individual job classifications will be surveyed to assess the City's position relative to the comparative cities as described above. City and Association agree that updated salary ranges will be in place prior to fiscal year 2017-18. Benchmark classifications will be included in the survey along with other positions that may be common among the survey agencies. Salary ranges will be adjusted at the discretion of the City Council, if necessary to maintain the City's competitive position in the market, taking into consideration the City's financial situation.

### 6.3 Salary Adjustments

1. Individual compensation adjustments within the salary ranges will not be "automatic," step-oriented or based solely on cost-of-living adjustments, but will be based on 1) fiscal prudence, 2) objectives achieved, and 3) exceptional individual performance.

2. Adjustments in salary shall be based upon employee performance as determined by the performance evaluation. It is the duty of the supervisor and Police Chief to give a fair and unbiased evaluation based on job performance of the employee. Adjustments in salary shall be determined as pursuant to the Compensation Policy, approved by the City Manager and within the merit increase range approved by the City Council.

3. At the time employees are evaluated, the level of performance for each employee will be determined. The range for the percentage of any merit increase (x % - x %) will be determined by the City Council before July 1st of each year depending upon the City's competitive position in the market and taking into consideration the City's financial situation. Performance evaluations for all employees will then be conducted and any merit increase considered by the City Manager to be effective the first full pay period of August. (The City Manager will consider, when determining any merit increase, if an employee began employment near the first full pay period of August).

After reaching the maximum point of the salary range, an employee has the opportunity to earn a lump sum merit award based on outstanding performance, but may not be considered for base salary increases unless his or her salary range is adjusted.

#### **6.4 Salary Following Promotion**

1. A promoted employee will be placed in the appropriate classification salary range and such employee shall be placed in the new salary range at least five percent (5%) above the promoted employee's previous salary level, unless that amount exceeds the maximum salary of the new classification's range.

2. Future salary increases will be considered prior to July 1<sup>st</sup> and effective the first full pay period of August, pursuant to the Compensation Policy.

#### **6.5 Salary Following Demotion**

1. In the case of the demotion of an employee, such employee shall be moved to ~~three and one-half~~ five percent (5%) below the employee's salary prior to the demotion or the top of the new range, whichever is less.

2. The annual performance review schedule shall be maintained and there shall be no additional probationary period.

#### **6.6 Salary on Reclassification of Positions**

If an employee is reclassified, the employee shall be placed in the salary range of the new classification at the same amount as the employee's salary prior to the reclassification plus ~~three and one-half~~ a five percent (5%) increase in salary. There shall be no additional probationary period.

#### **6.7 Salary for Work Performed in a Higher Classification**

1. On occasion an employee may be required to perform duties of another classification with a higher salary range because of a temporary vacancy in that position. In such cases, the employee's salary may be adjusted to compensate for the higher level of duties.

2. In order to receive adjusted compensation for working in a higher classification the employee must be assigned, assume and perform substantially all the duties and responsibilities of the position, and perform them for at least one week (five consecutive working days, without regard to the calendar week).

3. Adjusted compensation for working in a higher classification shall consist of a flat five percent (5%) increase above the employee's current salary, or the lowest salary within the higher salary range, whichever is greater, but not to exceed the maximum of the range established for the higher classification.

4. Each case will be evaluated on an individual basis and recommendation for compensation for work in a higher classification will be made by the Police Chief and approved by the City Manager. Such approval should be made in advance whenever possible.

#### **6.8 Designation of Beneficiary**

When termination is caused by the death of the employee, pay for unused vacation shall be paid to the beneficiary the employee has designated. Such designation shall be in writing, signed by the employee and filed with Human Resources. If the employee is married and designates a beneficiary other than the spouse for more than fifty percent (50%) of the benefits payable, the signature of the spouse also shall be required on the designation. In the event an employee has not designated a beneficiary, the payment shall be made to the estate of the employee.

#### **6.9 Differential and Longevity Incentive Pay**

##### **a. POST Certifications**

All sworn personnel with an Intermediate POST Certification shall receive a two and one-half percent (2.5%) augmentation to base salary and an additional two and one-half percent (2.5%) for an Advanced POST certification. Such augmentations will take place with first complete pay period following documentation being received by Human Resources of these certifications.

##### **b. Field Training Officer (FTO) Duty**

Any officer assigned as an FTO shall receive five percent (5%) augmentation to base salary for actual time served as an FTO. ("Time served" is defined as the time training an officer in this capacity).

##### **c. Motorcycle Officer Duty**

Any officer assigned to motorcycle duty shall receive a five percent (5%) augmentation to base salary for time served as a motorcycle officer.

##### **d. Graveyard Shift**

Any officer assigned to the Graveyard Shift shall receive a 5% augmentation to base salary in the first full pay period following being assigned to Graveyard.

##### **e. Detective Duty**

Any officer formally assigned as a Detective shall receive a 5% augmentation to base salary in the first full pay period following being assigned as a Detective.

##### **f. Bilingual Pay**

Any officer deemed full professionally proficient in the Spanish language will receive a one and on-half (1.5%) augmentation to base salary as Bilingual Pay.

**g. Longevity Incentive Pay for former Contra Costa Sheriff's Office Personnel**

All sworn officers that were serving in the City of Oakley with the Contra Costa Sheriff's Office as of April 15, 2015 shall be eligible for Longevity Incentive Pay, which shall be a two and one-half percent (2.5%) augmentation to base salary at the completion of year 5 and two and one-half percent (2.5%) for every five (5) years of service thereafter until twenty five (25) total years have been served. The augmentation shall take commence the first full pay period following Human Resources being notified and confirming the years served. Time already served with the Contra Costa Sheriff's Office will count towards this calculation.

- h. Sworn officers not serving with the City as of April 15, 2015, will be eligible for Longevity Incentive Pay at a rate of two and one-half percent (2.5%) augmentation to base pay at the completion of five (5) consecutive years of service as a City employee, and two and one-half percent (2.5%) for every five (5) years of service thereafter until twenty five (25) total years have been served. The augmentation shall take commence the first full pay period following Human Resources being notified by the officer and confirming the years served.

## **Section 7. HOURS OF WORK AND OVERTIME COMPENSATION**

### **7.1 Hours Worked**

Police Services has a variety of different work shifts to meet the needs of the City and the Department. The work hours cover a period of seven (7) days a week and twenty-four (24) hours a day. ~~An employees work week will be considered (40) hours.~~

The regular work hours for unit employees shall be four (4) shifts of ten (10.0) work hours in a seven (7) day work period. Additionally, regular work hours may be considered (3) shifts of thirteen hours and twenty minutes (13.3) in a seven (7) day period.

Alternative schedules may be used to accommodate the needs of the Department.

### **7.2 WorkWeek**

The workweek for employees, consistent with the 7(k) exemption of the Fair Labor Standards Act, is one hundred seventy-one (171) hours per 28-day period. The workweek is not necessarily the same as the calendar week. The workweek for all sworn police officers, begins at 12:00 a.m. ~~Monday-Sunday~~ and ends at 11:59 p.m. ~~SundaySaturday~~.

### **7.3 Overtime Policy**

It is the policy of the City to avoid the necessity for overtime work. When overtime work is necessary, such overtime shall be authorized by the Police Chief or his/her designated representative, but shall be kept at a minimum.

Overtime work for employees, except as otherwise provided, shall be defined as any time worked beyond ten (10) hours or thirteen hours and twenty minutes (13.3)-, depending on shift assignment, in a twenty four (24) hour period, or over forty (40) hours during the calendar week, or over 171 hours in any work week (the FLSA 28-day period). Vacation and Sick Leave as well as compensatory time used count as hours worked for the purposes of overtime calculations.

#### 7.4 **Overtime Compensation and Computation Policy**

All overtime pay is compensated for at the rate of one and one-half (1-1/2) times the employee's base rate of pay, not including any differentials or shift pays. Any special differentials which are applicable during overtime hours worked will be computed on the employee's base rate of pay (not on the overtime rate of pay).

Employees may choose to be compensated for overtime work through compensatory time-off (comp time) at the rate of one and one-half (1.5) hours comp time per overtime hour worked instead of receiving cash payment. The decision to receive overtime pay or compensatory time credit shall be made at the end of the pay period in which the overtime is worked. There is no provision for converting compensatory time to overtime pay except at termination. Compensatory time may be accrued up to a maximum of forty (40) hours per employee.

If an employee has any unused accrued comp time at termination, the employee will be paid for such unused comp time at his/her regular rate of compensation at termination.

In case of less than one-hundred seventy-one (171) hours worked in a workweek, due to vacation, holidays, sick leave, or other paid or unpaid leave, employees who work approved additional hours shall be paid overtime compensation for those hours paid in excess of ten (10) hours per workday; or thirteen hours and twenty minutes (13.3), if assigned to an alternative schedule.

#### 7.5 **Overtime - Conditions of Civil Disaster or Local Peril**

In case of civil disaster, state of extreme emergency or local peril, the procedure for payment of overtime may be suspended temporarily by the City Manager for the period of the emergency. During such period, the City Manager shall determine the compensation procedure. However, such procedure shall not change the rate of overtime compensation.

#### 7.6 **Pay Periods**

Payday shall be every other Friday (bi-weekly) for the two (2) ~~work~~-calendar week period ending on Sunday of the preceding week.

## 7.7 Court Appearance Compensation

If a Police Services employee appears on a court subpoena during his/her off-duty time, he/she will be compensated. Employees shall be compensated for off-duty court appearances on work days as follows:

- An employee shall be compensated with a three (3) hour overtime minimum or actual time in court, whichever is greater, for any court appearance that starts more than one-half (.50) hour before an employee's shift or more than one-half hour after the conclusion of an employee's shift.
- For court appearances which begin during an employee's shift or within a half- hour of the start or conclusion of an employee's shift, the employee shall be compensated for the actual time worked.
- An employee shall be entitled to not more than two (2), three (3) hour minimum each day.

Employees shall be compensated for court appearances on scheduled days off as follows:

- An employee shall be compensated with a four (4) hour minimum or actual time in court, whichever is greater.
- An employee shall be entitled to not more than two (2), four (4) hour minimums per day.
- An employee shall be entitled to only one(1) four (4) hour minimum per court session, e.g. one in the morning, one in the afternoon, or one in the evening (after 6:00 p.m.)

## 7.8 Shift Trades

1. Employees may trade one or more work shift(s) with each other, subject to the following conditions:
  - a. Shift trades shall be made only with the prior approval of the Police Chief or his/her designee.
  - b. Requests and approvals shall be documented by email
  - c. Both employees involved in the shift trade document the trade on the applicable timesheets
  - d. Employees trading shifts shall be qualified to work for each other.

2. An employee not able to fulfill a shift trade agreement shall either:
  - a. Secure another employee to work the shift, subject to the provisions of this section; or
  - b. Notify the Police Chief that the shift will be vacant due to the inability of the employee to fulfill the shift trade and the Department will deduct the appropriate number of Vacation Leave hours from the employee's Vacation Leave accruals (from the employee not able to fulfill a shift trade agreement) and fill the vacant shift with an employee selected by the Department. If the Department must fill the vacant shift with an employee on overtime status, Vacation Leave at the rate of the time and one-half will be deducted from the employee's Vacation Leave accruals (from the employee not able to fulfill a shift trade agreement).
3. The Police Chief reserves the right to cancel any and all shift trades if he/she deems AND to restrict the number of shift trades if it is deemed to be in the best interests of the Department.

## **Section 8. STANDBY AND CALLBACK PAY**

### **8.1 Standby Status and Standby Pay**

When it is necessary to require an employee to leave work where he/she can be reached for emergency call out or other services during a specified period of time, other than scheduled hours of work, such employee shall be considered on standby status. (This provision does not apply to court ordered standby status issued by the District Attorney's Office or Judge.)

The following provisions apply to standby status:

#### ***Compensation:***

1. Any employee formally placed on stand-by status in writing shall be paid two-hundred and fifty dollars (\$250) per week (7 days). A partial week on stand-by status shall be prorated.
2. If an employee is called out for an emergency while on standby status, he/she will be compensated for a minimum of two (2) hours work at one and one-half (1.5) times the regular hourly pay rate. Any time worked in addition to the two-hour minimum will be compensated at one and one-half (1.5) times the normal hourly rate for each additional hour or fraction thereof. Work time shall commence from the time the employee is called to work until the time the employee returns home.
3. Employees called back to work after midnight may elect to arrive at work

that same day an amount of time past the normal starting time equivalent to the time worked past midnight. If an employee elects to exercise this privilege, he/she must notify the supervisor in advance of the normally scheduled workday or within one-half hour (30 minutes) of normal start time. If it is deemed to be detrimental to the operation of the City to grant this time off, the supervisor may deny the request. Employees who use this option will be paid the regular hourly rate for hours actually worked that day.

4. The employee shall not use alcohol or prescription medication which may impair job performance during the entire period he/she is on stand-by status.

## 8.2 Call Out Procedure

Employees may be called out during other than normal work hours to perform necessary work. In the event that an employee is called back to work before or after normal working hours, he/she will be compensated for a minimum of two (2) hours work at one and one-half (1.5) times his/her normal rate of pay. Any time worked in addition to the minimum two (2) hours will be compensated at one and one-half (1.5) times the normal hourly rate of pay for each additional hour or fraction thereof. In the event an employee is called in to work and the time worked runs into the employees regular work shift, the employee will be compensated at his/her regular rate of pay once the regular work shift begins. Work time shall commence from the time the employee is called to work.

## Section 9. HOLIDAYS

### 9.1 Holidays

The following holidays are recognized as regular holidays for pay purposes. Regular full-time employees who work a minimum of forty (40) hours per week on a continuous basis are entitled to receive eight (8) hours of holiday pay at a rate of one and one half (1.5) times their normal hourly rate.

~~Regular and probationary full-time employees shall have the following days off with pay~~The City will observe the following holidays:

- December 31st - New Year's Eve Day
- January 1<sup>st</sup> - New Year's Day
- Third Monday in January - Martin Luther King Jr. Day
- Third Monday in February - President's Day
- Last Monday in May - Memorial Day
- July 4<sup>th</sup> - Independence Day
- First Monday in September - Labor Day
- November 11<sup>th</sup> - Veteran's Day
- Fourth Thursday in November - Thanksgiving Day
- Fourth Friday in November - Day After Thanksgiving

- December 24<sup>th</sup> - Christmas Eve Day
- December 25<sup>th</sup> - Christmas Day
- Employee's Birthday

~~When any day recognized as a holiday by the City falls on a Sunday, the following Monday shall be considered the holiday. When any day recognized as a holiday by the City falls on a Saturday, the preceding Friday shall be considered the holiday.~~

An employee who wishes to be excused from work in observance of a religious holiday (not listed as a "Regular Holiday for Pay Purposes") shall request approval of such absence from the Police Chief. If approved, such time off shall be charged against the employee's accumulated compensatory time, discretionary holidays, or vacation leave.

## **9.2 Holiday Pay Eligibility**

If a holiday falls on an employee regular work day or scheduled day off the employee will receive eight (8) hours of holiday pay. If a holiday falls on an employee regularly scheduled work day and the employee calls in sick on that day, the employee will not receive holiday pay.

If a holiday falls on an employee's regular work day, and the employee is on a scheduled vacation, the employee will receive eight (8) hours of vacation-holiday pay; however, the vacation hours taken that day will be deducted from time credited to his/her vacation accrual in lieu of holiday pay.

## **Section 10. VACATION**

### **10.1 Eligibility**

There is no waiting period before an employee can request to take accrued vacation time; however, vacation hours cannot be used in the pay period within which they are earned. An employee may not accrue vacation while on any unpaid leave of absence or while on Family Medical Leave.

### **10.2 Initial Accruals**

The City Manager, upon recommendation of the Police Chief, may grant up to additional vacation leave and sick leave at the time of initial appointment to new employees who enter City employment with prior local government experience as necessary to recruit and retain employees.

*Note:* All new employees that were serving in the City of Oakley with the Contra Costa Sheriff's Office as of April 15, 2015 shall receive an initial accrual of forty (40) hours of vacation and forty (40) hours of sick leave on the date of hire.

### 10.3 Holiday during Vacation

An employee will not be charged vacation leave for a holiday (as specified herein) occurring during the employee's scheduled and approved vacation

### 10.4 Illness during Vacation

Vacation leave may be changed to sick leave IF an employee submits a doctor's certificate/note satisfactory at the discretion of Human Resources that the employee was ill and unable to work during the employee's scheduled vacation.

### 10.5 Vacation Accrual

The City recognizes its employees' loyalty and longevity of service by granting an increase in vacation hours at milestone anniversary dates. Regular full-time employees shall be entitled to accrue paid vacation for active completed service according to the following schedule:

YEARS OF SERVICE	VACATION HOURS ACCRUED PER YEAR
Year 0-3	80 hours per year
Year 4-7	120 hours per year
Year 8+	160 hours per year

The increase in rate of vacation accrual is effective on the next pay period following the anniversary of the employee's hire date. For example, if an employee completes three full years of service on July 1<sup>st</sup> and the next full pay period begins on July 5<sup>th</sup>, the employee will begin accruing the 120 hours per year on July 5<sup>th</sup>. Vacation accruals are calculated on a bi-weekly basis with the City's pay period schedule and are reflected on the employee's paycheck.

**Note:** All new employees that were serving in the City of Oakley with the Contra Costa Sheriff's Office as of April 15, 2015 shall receive credit for years served with the Contra Costa Sheriff's Office to determine rate of vacation accrual.

### 10.6 Vacation Accumulation

The City provides vacation leave to encourage employees to take time away from work on a regular basis. For this reason, employees may earn and accumulate vacation leave up to a maximum of two and one-half (2.5) times the amount of the accrual of the employee

Each regular full time and probationary employee shall accrue vacation at the following rate for continuous service performed as follows:

<b>Year 0-3</b>	200 hours maximum
<b>Year 4-7</b>	300 hours maximum
<b>Year 8+</b>	400 hours maximum

### 10.3 Use of Vacation

Vacation shall be requested via email as far in advance as possible with the employee's supervisor or Police Chief. An employee shall submit an email request to the Police Chief and approval of the Police Chief or designee is required prior to taking vacation time off. The Police Chief or designee shall respond to the employee via email within seven (7) calendar days after submission of the request. Vacation leave shall not be used beyond the time accrued. The time at which an employee may use her/his accrued vacation leave and the amount taken at any one time shall be determined by the Police Chief, or the Police Chief's designated representative, with particular regard for the needs of the Department.

### 10.5 Vacation at Separation

A regular full-time or regular part-time or new hire probationary employee whose employment with the City terminates shall be paid for that part of his/her vacation accumulation that remains unused at the time of separation. Payment for unused vacation shall be made at the rate of pay in effect for the employee at the time of separation.

### 10.6 Vacation sell back

1. Employees are eligible to exchange up to forty (40) hours of accrued vacation for a lump sum payment at the employee's current base salary rate up to two timestwice each fiscal year as follows:

- a. The lump sum payments will occur in conjunction with the last pay period for March and for October of each year.
- b. Although there is no qualifying period to be eligible to exchange vacation for pay in March, the employee must have successfully completed her/his probationary period to be eligible.
- c. The employee desiring to exchange vacation leave has taken at least two weeks (the equivalent of ten (10) 8-hour working days) off from work during the previous twelve (12) months. This could be in the form of vacation, compensatory time off, or management leave. Use of sick leave or leave without pay does not satisfy this program requirement.
- d. The employee, after the requested exchange of vacation leave, will still have at least one-hundred and twenty (120) hours of vacation leave remaining.

2. In the event that an employee, eligible for vacation accrual, experiences a financial hardship due to circumstances beyond their control, they may submit a request to the Human Resources to receive cash payment of accrued vacation at

any time during the year. Hardship Request forms are available in the Human Resources. Examples of qualifying hardship requests include: unexpected legal expenses, unbudgeted medical expenses not covered by other means, or situations that cannot be planned or anticipated.

In order to keep hardship requests and the circumstances surrounding such a request as confidential as possible, all hardship requests will be reviewed within the following manner:

- a. The employee submits a completed Hardship Request form to Human Resources.
- b. The Human Resources office will obtain an updated copy of the employee's absence schedule from payroll to verify the number of vacation hours available. The employee must still have at least one-hundred and twenty (120) hours of vacation leave remaining to be eligible for a Hardship Request.
- c. If clarification is necessary, Human Resources will contact the requesting employee to obtain additional information.
- d. A request that meets the qualifications described above will be reviewed by Human Resources and then presented to the City Manager with a recommendation for denial or final approval.
- e. The employee will receive a response regarding the status of their request within five (5) working days from the date it is received by Human Resources.
- f. The approved request will be delivered to payroll. A check will be prepared within three (3) business days.

## **Section 11. SICK LEAVE**

### **11.1 Statement of Policy**

Paid sick leave is an employee benefit of time off granted to an employee in cases of personal illness or accident, medical or dental treatment, or as described in this Manual. It is not an "entitlement" benefit such as vacation. The employee shall make notification by contacting the on-duty Supervisor as soon as possible after determining leave will be taken and prior to the time set for reporting to work on the first day of such leave and as often thereafter as directed by his/her Supervisor or the Police Chief. Notifications shall be made by telephone to the Supervisor. If the Supervisor is out of the office, the employee shall notify Dispatch of the sick call and provide a telephone number where the employee can be contacted. Dispatch will notify the on-duty Supervisor of the call.

With advance written notice from the Police Chief: an employee may be required to provide a written statement from the attending health care practitioner or dentist that the employee is or was incapacitated and unable to

perform his/her duties. The written notice shall state the reason that the employee is required to provide such a statement. The Police Chief also may require a health care practitioner or dentist's statement that the employee is capable of and released to return to all his/her duties.

Any employee who is absent from work due to sick leave shall not engage in any activity or work which would inhibit his/her ability to return to work at the earliest possible time.

### **11.2 Accrual**

Regular full-time employees earn 3.69 hours per pay period. Sick leave is earned during any paid leave of absence, but is not earned during any unpaid leave of absence, or during Family Medical Leave. Employees that are off of work due to illness or injury shall not accrue sick leave once they begin to received disability benefits or are no longer receiving wages through payroll, beginning with the first full pay period that they are off payroll, unless required by law.

### **11.3 Accumulation**

An employee may accrue seven hundred and twenty (720) hours of sick leave. Once the accrual maximum is reached, the employee can earn no other paid sick leave until the accrual balance is reduced.

### **11.4 Use**

Sick leave may be used by the employee for purposes as described in this Manual MOU. As stated herein, a written health care practitioner's statement may be required before approval of sick leave pay. In the event of continued, regular absence requested as sick leave, an employee may be further counseled by the Police Chief and required to see the City's physician at no cost to the employee. Pay for approved sick leave shall be authorized until the employee's accumulated total sick leave hours have been exhausted and at such time the employee shall receive no further pay for sick leave.

An employee shall be granted time off chargeable to sick leave for a visit to a health care practitioner or dentist.

An employee shall have his/her accumulated sick leave balance reduced by an amount equal to the number of sick leave hours for which pay is received.

Sick leave will not be granted for any of the following causes:

1. Disability arising from any sickness or injury purposely self-inflicted or caused by employee's own willful misconduct.
2. Disability arising from any sickness and injury related to employment other

than with the City of Oakley.

Abuse of sick leave, i.e., used for unauthorized purposes, may result in disciplinary action.

### **11.5 Depletion of Sick Leave**

In the event of an employee's continued illness after depletion of his/her sick leave, such absence may, with the approval of the Police Chief, be charged to vacation time accrued. Upon depletion of leave benefits, a medical leave without pay may be granted with approval of the City Manager.

### **11.6 Leave Chargeable to Sick Leave**

An employee may be granted time off with pay for the following:

1. Absence due to the illness or injury of a member of the employee's immediate family, defined as employee's spouse, child, domestic partner, or parent.
2. Absence beyond three (3) days, or five (5) days if outside the state, due to the death of a member of the employee's immediate family.
3. Birth of child to employee's spouse- while spouse is hospitalized.

Such time off shall be considered as sick leave and shall be charged against the accumulated sick leave of the employee.

### **11.7 Abuse of Sick Leave**

The City of Oakley provides a generous amount of sick leave hours and encourages employees to use these hours wisely and maintain a comfortable number of hours available for unforeseen situations. The City considers the abuse of sick leave as a serious offense and evidence substantiating use of sick leave for willful injury, gross negligence, intemperance, or any instances of misrepresentation will result in disciplinary action, up to and including termination from employment.

Other examples of abuse of sick leave include the following:

- Failure to notify supervisor of medical absence
- Failure to provide physician's verification when required
- Fraudulent physician verification
- Use of sick leave for that which it was not intended or provided
- Continued pattern of maintaining zero or near zero leave balances or seeking approval of leave without pay because sick leave accrual has been exhausted
- Pattern of abuse, for example, the routine use before, and/or after holidays;

before, and/or after weekends or regular days off; after pay days; of any one specific day; following overtime worked; frequent use of half days; and/or any routine use of any combination of the above.

The City maintains minimum staffing levels and excessive absenteeism creates a negative impact on the workplace by disrupting work schedules, increasing overtime costs, leaving projects incomplete, decreasing organizational efficiency, moving additional work upon others, and creating an overall negative morale within the organization.

#### **11.8 Sick Leave Conversion at retirement or resignation**

Sick leave is forfeited and not cashed out upon separation from employment, unless an employee has completed five (5) years or more with the City at the date of separation and then fifty percent (50%) of the value of accrued sick leave will be paid to the employee at separation. If an employee is retiring at separation, the cash payment for sick leave may be disbursed to the retiring employee through a lump sum cash payment that is deposited into the employee's deferred compensation account (as allowed under terms and conditions of the plan and Internal Revenue Service regulations); used as a payment to CalPERS to buy service time, if eligible; placed in a retiree health savings account; or, a combination of these options at the election of the employee.

*Note:* All new employees that were serving in the City of Oakley with the Contra Costa Sheriff's Office as of April 15, 2015 shall receive credit for years served with the Contra Costa Sheriff's Office to determine eligibility for sick leave conversion.

#### **11.9 SICK LEAVE DONATION FOR CATASTROPHIC CIRCUMSTANCES**

An employee may be eligible to receive donations of up to four-hundred eighty (480) hours of paid sick leave to be included in the employee's sick leave balance, if exhausted, with the City Manager's written approval and only if she/he has suffered a catastrophic illness or injury which prevents the employee from being able to work, and only if the employee is in good standing. A catastrophic illness or injury is a medically-certified illness, injury impairment, or physical condition that prevents an eligible employee from returning to work for a period of sixty (60) or more calendar days.

1. *Rules of Sick Leave Donation Program*
  - a. An employee is not eligible to receive sick leave donations if she/he is currently receiving workers' compensation, short-term or long-term disability benefits.
  - b. No sick leave or other leave accruals are accrued by an employee using donated sick leave; however, other benefits, such as insurance and participation in the CalPERS retirement defined benefit plan, will be

- provided to employee while utilizing donated sick leave.
- c. Donated leave shall be considered sick leave, but shall never be converted into a cash benefit.
2. An Employee may donate sick leave if the donating employee:
- a. Voluntarily elects to donate sick leave and does so with the understanding that donated leave will only be returned if not used by the affected employee within ninety (90) days of the donation;
  - b. Donates a minimum of eight hours;
  - c. Retains a combined leave balance (vacation and sick) of at least one-hundred sixty (160) hours;
  - d. Donates time in one (1) hour increments. For every one (1) hour of sick leave time donated by the donor, the recipient will be credited with one (1) hour of sick leave. The pay levels of the two employees shall not affect the transaction;
  - e. No sick leave or other leave accruals are accrued by an employee using donated sick leave; however, other benefits, such as insurance and retirement, will be provided to employee while utilizing donated sick leave;
  - f. Donated leave shall be considered sick leave, but shall never be converted into a cash benefit.
3. Donations are Voluntary and the City Manager shall respect an employee's right to privacy, however, she/he may, with the permission of the employee who is in need of leave, inform employees of their co-worker's critical need for sick leave hours. The City Manager or any other employee shall not directly solicit leave donations from employees. The donation of leave shall occur on a strictly voluntary basis.

#### **11.10 On-the-Job Injury**

An employee injured in the course of employment must report the accident to his/her supervisor. The supervisor is responsible for submitting a statement signed by the employee and giving all details within twenty-four (24) hours of the accident.

When an employee is off work as the result of a valid on-the-job injury or illness sustained in the service of the City, the City shall continue his/her pay in the amount of his/her monthly rate for up to but no longer than one (1) year of compensated time off as dictated by California Government Code Section 4850. Such pay shall be considered as on-the-job injury leave and shall not be charged as sick leave.

During the time that an employee is off work as the result of a valid on-the job injury, the employee will retain his/her Department seniority.

### **11.11 Off-the-Job injury**

Any injury/illness occurring other than in the service of the City may be compensated for through the provisions of the long-term disability insurance plan provided by the City.

## **Section 12. OTHER LEAVES OF ABSENCE**

### **12.1 Personal Leave of Absence without Pay**

Upon recommendation of the Police Chief, the City Manager may grant an employee a leave of absence without pay in cases of emergency or where such absence would not be contrary to the best interests of the City. No such leave shall be granted except upon written request, and the approval must be in writing. Requests should be made as far in advance as practical. Such leave shall not exceed three (3) calendar months duration. Loss of service credit will occur for the duration of the leave; no benefit credit will be accrued toward vacation or sick leave. Employee insurance benefits will remain in effect. Performance review will be deferred if necessary or may be rescheduled upon return to work.

### **12.2 Family Care and Medical Leave**

Employees are entitled to a total of twelve (12) workweeks of leave during any twelve (12) month period. The twelve (12) month period for calculating leave entitlement will be a "rolling period" measured backward from the date leave is taken and continuing with each additional leave day taken. Thus, whenever an employee requests leave, the City will look back over the previous twelve (12) month period to determine how much leave has been used to determine how much leave an employee is entitled to.

Leave is only permitted for the following reasons:

1. The birth of a child or to care for a newborn of an employee;
2. The placement of a child with an employee in connection with the adoption or foster care of a child;
3. Leave to care for a child, parent or spouse who has a serious health condition;  
or
4. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position.

An employee is eligible for leave if the employee has been employed for at least twelve (12) months and has worked at least 1,250 hours during the twelve (12) month period immediately preceding the commencement of the leave.

An employee's entitlement to leave for the birth of a child or placement of an adopted or foster care child expires twelve (12) months after the birth or placement.

Leave under this section is unpaid. While on leave, employees will continue to be covered by the City's group health insurance to the same extent that coverage is provided while the employee is on the job. Employees on leave may make appropriate contributions to continue other benefits. Employee contribution rates are subject to any changes in rates that occur while the employee is on leave. If an employee fails to return to work for a period of at least thirty (30) days, the City shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition which would entitle the employee to leave, or because of circumstances beyond the employee's control. The City shall have the right to recover the cost of premiums through deduction from any sums due the employee (e.g., unpaid wages, vacation pay, etc.).

If an employee requests leave for any reason permitted under this section, he/she must exhaust all accrued leave (except sick leave) in connection with the leave. The exhaustion of accrued leave will run concurrently with the leave under this section.

If an employee requests leave for his/her own serious health condition, in addition to exhausting accrued leave, the employee also must exhaust accrued sick leave.

Employees who request leave for their own serious health condition or to care for a child, parent or a spouse who has a serious health condition must provide written certification from the health care provider of the individual requiring care. If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to perform the essential functions of his/her position.

The City reserves the right to require a medical opinion from a second health care provider chosen by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee. The opinion of the third provider will be binding.

The cost of the second and third opinion shall be borne by the City.

If an employee requests leave intermittently (a few days or hours at a time) or requests a reduced work schedule to care for an immediate family member with a serious health condition or the employee's own medical condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave.

Although the City recognizes that emergencies arise, which may cause employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. If leave is foreseeable, at least thirty (30) days' notice is required. In addition, if an employee knows that he/she will need leave in the future but does not know the exact date(s) (e.g., for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. If the City determines that the employee knew about the requested leave in advance of the request or that the employee's notice is inadequate, the City may delay the granting of the leave until, in the City's discretion, it can cover the position adequately with a substitute.

As a condition of restoration of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform his/her job, the employee must obtain and present a fitness-for-duty certification from the health care provider that the employee is able to resume work. Failure to provide such certification will result in denial of restoration.

### **12.3 Pregnancy Disability Leave of Absence**

Pregnancy Disability leave of absence, paid or unpaid, shall be granted to an employee with a health care practitioner's statement regarding disability due to pregnancy for a period not to exceed four (4) calendar months, provided the practitioner's statement complies with applicable State and Federal law. Employees shall be entitled to use any accrued vacation, compensatory time off, or sick leave during this period of time. Upon the request of the employee and the recommendation of the Department Head, the City Manager may approve an extension of pregnancy disability leave of absence.

While on paid pregnancy disability leave of absence, employees will continue to accrue vacation, sick leave or PERS service credit and be covered by all insurance plans to the same extent that coverage is provided to employees while on the job. In the event any insurance plans which the employee is provided require contributions on part of the employee and such employee contribution rates increase for employees who are on the job, such increases shall apply to the employee who is on leave. Scheduled performance reviews may be deferred if necessary and scheduled upon return to work.

While on unpaid pregnancy disability leave of absence, employees will not be eligible to accrue vacation, sick leave or PERS service credit. Employee insurance benefits will remain in effect to the same extent coverage is provided to employees while on the job. In the event any insurance plans which the employee is provided require contributions on the part of the employee and such employee contribution rates increase for employees who are on the job, such increases shall apply to

the employee who is on leave. Scheduled performance reviews may be deferred if necessary and scheduled upon return to work.

#### **12.4 Bereavement Leave**

Employees shall be granted up to three (3) working days leave with pay by the Police Chief in the event of death in the immediate family of the employee if death occurred within the State and up to five (5) days if death is outside of the State. ("Immediate family" is defined in "Definitions" section of this ~~Manual~~ MOU)

Additional time off in excess of three (3) or five (5) days may be taken by an employee with prior approval of his/her Police Chief and the City Manager. Such additional time off is to be charged in the following order:

- a. Accumulated sick leave
- b. Accumulated vacation leave
- c. Accumulated compensatory time
- d. Leave of absence without pay.

#### **12.5 Military Leave of Absence**

Military leave shall be granted in accordance with the provisions of State Law. All employees entitled to military leave shall give the appointing authority an opportunity, within the limits of military regulations, to determine when such leave shall be taken.

Whenever possible, the employee involved shall notify his/her department of such leave requested at least ten (10) working days in advance of the beginning date of such leave.

Upon termination of military leave, the employee, in accordance with applicable law, may return to his/her classification without loss of seniority or other benefits.

#### **12.6 Military Reserve Training**

Employees attending the two (2) week Summer Camp Sessions held by branches of the military are paid the difference between their regular City base salary and military pay received. Employees should notify their Police Chief as soon as their dates of training are known and submit a copy of their military orders. These sessions do not constitute breaks in employment, and benefits accrue as usual.

#### **12.7 Subpoena**

Employees, who are subpoenaed to appear as witnesses on behalf of the Federal Government or any of its agencies, the State of California or any of its agencies, or the City of Oakley or any of its agencies, shall be granted a leave of absence, upon presentation of the subpoena to the Police Chief. Said employees

shall receive full pay for such appearances, provided the employee remits to the City all fees as soon as received by the employee for such appearances.

For appearances in Contra Costa County as a result of a subpoena from the District Attorney, Public Defender, Department of Motor Vehicles or any other Government Agency, compensation shall be as indicated in Section 7 of this ~~Manual~~ MOU.

Compensation or expenditures of the employee, for mileage or subsistence allowances, shall not be considered as a fee and shall be retained by the employee.

### **12.8 Jury Duty**

Employees required to report for jury duty shall be granted leave for such purpose, upon presentation of jury notice to the Police Chief. Said employees shall receive full pay for the time served on a jury, provided the employee remits to the City all fees as soon as received by the employee for such duties. Compensation for mileage or subsistence allowances shall not be considered as a fee and shall be retained by the employee.

### **12.9 Medical Leave/Work Related**

All employees are covered by Workers' Compensation as required by law. Employees shall be provided leave consistent with these laws.

### **12.10 Medical Leave/Non-Work Related**

An employee who is disabled due to a non-work related injury or illness shall be granted an unpaid leave of absence for the period of the disability provided the practitioner's statement complies with applicable State and Federal law; however, the period shall not exceed three (3) months, inclusive of the time provided under the "Family Care and Medical Leave" provisions (Section 12.2).

### **12.11 Return from Leave**

Upon expiration of leave, an employee is entitled to be restored to the position of employment held when the leave commenced, or to an equivalent position.

### **12.12 Unauthorized Leave of Absence**

Unauthorized leave of absence shall be considered as days, or portion of days, not worked in which the employee was scheduled to work. Unauthorized leave will be deducted from the employee's pay in an amount equivalent to the time absent. An unauthorized leave of absence will result in disciplinary action. Unauthorized leave of absence for more than three (3) days shall be cause for automatic termination of employment with no right of

appeal.

## **Section 13. LAYOFFS**

### **13.1 City Council Action**

The City Council shall determine which position(s) shall be eliminated within the organization. Human Resources shall determine and notify the employee(s) to be laid off as a result of the eliminated position(s).

### **13.2 Order of Layoffs**

To determine which employee is to be laid off as a result of an eliminated position, Human Resources shall use the following procedure:

1. Prepare a list of every employee in the affected classification. (A classification is defined as a position or group of positions sufficiently similar in duties and responsibilities in which the same title, qualifications, test of fitness and salary range can be applied.)
2. Determine which employee(s) within the classification will be laid off. If there is only one (1) employee in the classification, that employee shall be given a layoff notice.

If there are two (2) or more employees within the same classification, Human Resources shall apply the following order in determining which employee shall be laid off:

First, temporary employees in the classification shall be laid off. The City Manager shall determine which temporary employee(s) shall be laid off.

Second, if there are no temporary employees in the classification, layoff will be determined by seniority in City service.

3. Seniority shall be defined as follows:

As determined by official City payroll records, all service in the employ of the City shall be counted toward the establishment of an employee's City seniority service ranking including temporary, regular part-time, probationary and regular full time, as well as obligatory leaves for military service while an employee of the City. Loss of service credit will occur for the period of a leave of absence without pay. Less than full time service will be consolidated in equivalencies of full-time service for the purpose of establishing City seniority service ranking.

**Note:** All new employees that were serving in the City of Oakley with the Contra Costa Sheriff's Office as of April 15, 2015 shall receive credit for years served with the Contra Costa Sheriff's Office to determine seniority.

### **13.3 Displacement Rights**

An employee designated to be laid off shall receive written correspondence with at least a minimum thirty-day layoff notification and displacement rights.

### **13.4 Notification of Displacement**

An employee scheduled to be laid off must request displacement in writing to Human Resources within seven (7) working days of receipt of notice of layoff. An employee displacing to a lower or related classification shall be placed at the salary tier representing the least loss of pay. In no case shall the salary be increased above the amount received in the classification from which the employee was laid off.

Employees assuming a lower or related classification shall serve a probationary period in the new classification unless they previously have completed a probationary period in the classification.

### **13.5 Reemployment**

The names of employees laid off or displaced shall be entered on a reemployment list in the inverse order specified in Section 13.2 of this Section. As reemployment opportunities become available in the classification from which the employee was laid off: the employees on the list, commencing with the highest score, shall be offered return to those positions. Reemployment lists shall remain in effect for two (2) years.

Laid-off or displaced employees will be notified of reemployment opportunities by certified mail at the last official known address of the laid-off or displaced employee. It shall be the responsibility of the laid-off or displaced employee to inform the City in writing of any changes in his/her address.

The laid-off or displaced employee must notify Human Resources of his/her acceptance within three (3) work days of receipt of the mailing as reflected on the postal service certified return receipt. The employee shall be notified of such time limit in the written reemployment offer. Failure to contact the designated City official within such period shall be deemed as rejection of the vacant position and will remove the employee from the reemployment list.

## **Section 14. EMPLOYEE BENEFITS**

### **14.1 Retirement Plan**

Employees shall participate in the California Public Employees Retirement System (PERS) 2.7% at 57 plan pursuant to the terms and conditions of the California Public Employees' Pension Reform Act of 2013 (PEPRA). The plan includes the 4th Level 1959 Survivor's Benefit and a 3% C.O.L.A.

The City does not participate in the Social Security Plan with the exception of the

mandatory Medicare (FICA) deduction.

#### **14.2 Disability Insurance**

During the term of this agreement, the employee shall pay the cost of long term disability insurance. The cost for this insurance shall be paid monthly through the employee's monthly association dues.

#### **14.3 Health/Life Insurance Program**

The City shall provide a health, dental, vision, and life insurance plan for employees and their dependents consistent with benefits currently in effect with other City employees. Currently, the monthly allotment for health insurance is \$1,235 per month. Dental and vision coverage for employee and dependents is currently paid for by the City. Also, at City expense a life insurance policy of \$50,000 is provided to the employee.

#### **14.4 COBRA - Continuation of Health Coverage**

As required by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) the City's health insurance plans provide for continuation of group health coverage to employees and eligible family members, upon a qualifying event, at the employee or family member's expense according to the provisions set forth in COBRA.

#### **14.5 Deferred Compensation**

Employees may participate in the deferred compensation plan in accordance with the guidelines of that plan as long as such a plan is offered to any employees through the City.

#### **14.7 Mileage Reimbursement/Allowance**

Whenever an employee is required to use a private vehicle in the conduct of City business, such employee is entitled to reimbursement for actual mileage. Mileage is reimbursed at the rates prescribed by the IRS. Also, in the event of an accident while using a private vehicle on City business, the employee's insurance will be primary; however, the City will cover the employee's deductible cost.

#### **14.9 Retiree Medical**

Employees will participate in the Peace Officers Research Association of California (PORAC) Medical Trust. The City will pay four hundred and fifty dollars (\$450) per month into the PORAC Medical Trust on behalf of the employee from the date of hire until the employee's separation date. The \$450 dollar amount will be reviewed annually for increases to reflect increases in salary. After retirement, employees will receive benefits from the Trust based on the years of service and

credits accrued once the minimum age and years of the Trust's participation requirements have been met. Contributions will be made for all employees in the Oakley Police Officers Association and employees may not individually elect against participation in the PORAC Medical Trust Plan.

#### **14.10 Legal Defense Representation**

The employee shall pay the cost of the membership subscription to the Legal Defense fund through monthly association dues.

### **Section 15. UNIFORMS, BOOTS & SAFETY EQUIPMENT**

The City shall pay the full cost of employee uniforms and safety equipment. In the event these uniforms are damaged in the course of work or are worn out as a result of normal wear, the uniforms shall be replaced at no cost to the employee. On a trial basis, the City will also cover the cost of laundering/drycleaning the uniforms at a designated location.

Each employee shall receive a boot allowance of two hundred dollars (\$200) per calendar year. Boots shall be purchased from vendors and with specifications approved by the Police Chief, and worn as directed. Uniformed employees required to ride a motorcycle as part of their duties will be issued one pair of motorcycle boots every two years, paid for by the City.

### **Section 16. DISCIPLINARY PROCEEDINGS**

#### **16.1 Causes for Disciplinary Action**

Employees may be disciplined for just cause including, but not limited to the following:

- a. Fraud of any kind, including in securing appointment or making a false statement on an application for employment
- b. Incompetence, inefficiency, carelessness, inattention, or neglect of duty
- c. Insubordination \ willful disobedience
- d. Less than satisfactory performance
- e. Dishonesty or immorality
- f. Being under the influence of alcohol or medications while on duty
- g. Illegal possession, use, or addiction to the use of narcotics or controlled substances
- h. Unauthorized leave of absence
- i. Abuse of sick leave
- j. Tardiness
- k. Failure to immediately report a an accident involving damage to City vehicles and/or equipment
- l. Conviction of a felony or conviction of a misdemeanor involving moral turpitude

- m. Discourteous treatment of the public or other employees
- n. Prohibited political activity in violation of the California Government Code.
- o. Abuse or misuse, or appropriation for personal use, of City property
- p. Violation of any of the provisions of the Personnel Rules and Regulations, Departmental Rules and Regulations, and/or any provision of this ~~Personnel Manual~~ MOU.
- q. Any willful act of conduct undertaken in bad faith, either during or outside of duty hours, which is of such a nature that it causes discredit to the agency, the employee's department or division.
- r. Outside employment not specifically authorized by the Police Chief and City Manager
- s. Any other conduct equal to the reasons enumerated about as determined by the Chief of Police

## **16.2 Types of Disciplinary Action**

Types of disciplinary action, which may be taken, in order of severity, are: dismissal, disciplinary demotion, disciplinary suspension, written reprimand, oral warning, or an appropriate combination of these disciplinary actions. The aforementioned types of disciplinary action are defined as follows:

### **a. Dismissal**

The discharge of an employee from City service.

### **b. Disciplinary Demotion**

A permanent change in classification of an employee to a position of lower responsibility and pay for unsatisfactory performance or disciplinary reasons.

### **c. Disciplinary Suspension**

The temporary suspension of an employee from City service, without compensation, for a period not to exceed thirty (30) calendar days in any one (1) calendar year.

### **d. Written Reprimand**

Notification in writing to the employee that there is a cause for dissatisfaction with the employee's services and that further disciplinary measures may be taken if the cause is not corrected.

### **e. Oral Warning**

Verbal notification to employee that performance did not meet expectations.

## **16.3 Persons by Whom Disciplinary Action May Be Taken**

The City Manager, Police Chief or his/her designee may take disciplinary action

against an employee under his/her control for cause. The employee shall be informed of the disciplinary action to be taken within two weeks after the completion of the City's investigation.

#### **16.4 Disciplinary Action Procedure**

All disciplinary actions taken against a sworn police employee will be pursuant to and in compliance with the Peace Officer's Bill of Rights as specified in the Government Code.

##### **I. Pre-Disciplinary Action Procedure**

disciplinary action, which would result in loss of employee salary, shall conform to the following procedural safeguards prior to imposition of disciplinary action:

a. *Notice*

Written notice of the proposed disciplinary action shall be served upon the employee;

b. *Reasons*

Reasons shall be cited for the proposed disciplinary action;

c. *Charge and Material*

A copy of the charges and access to material upon which the action is based shall be included;

d. *Employee Response*

The employee shall have the right to respond, either orally or in writing, to the authority initially imposing the disciplinary action.

The above stated notice and charges shall be served upon the employee either personally or by certified mail. The charges shall be detailed so as to give the employee fair opportunity to review and respond to the charges.

Upon receipt of the notice and charges, the employee shall have not less than three (3) working days within which to respond in writing or to request an informal non-evidentiary hearing before the person by whom disciplinary action was taken and /or the Police Chief. The purpose of this hearing is to allow the employee's representative and/or the employee to make any representations believed relevant to the case. The hearing shall be held as expeditiously as possible but not more than three (3) working days after the request for hearing unless there is an agreement to extend by both parties. The hearing shall be subject to taping or transcription.

An employee may be relieved from duty and placed on paid leave pending the final decision of the proposed action if such leave is necessary to protect the public service or public interest.

## **II. Final Disciplinary Action Procedure**

Disciplinary action causing loss of employee salary and any other form of discipline shall be imposed in accordance with the following procedure: A written notice shall be served on the employee and filed with the City Manager with a copy to Human Resources as soon as reasonably possible, but not later than five (5) working days after the date discipline is imposed. The notice shall be served on the employee either personally or by certified mail and shall include:

- a. A statement of the nature of the disciplinary action;
- b. The effective date of the action;
- c. A statement of the cause for the discipline and citing the rule(s) violated;  
and
- d. Said notice may include conditions or future actions to be taken.

### **16.5 Right of Appeal - Procedure**

An employee shall have the right of appeal from any disciplinary action taken under this article. Such appeal must be filed in writing with the Police Chief with a copy to Human Resources within ten (10) calendar days after receipt of written notice of such disciplinary action. The appeal must state specifically the issue(s) in controversy and the facts upon which the issue(s) is based. The Police Chief will respond within ten (10) days of receipt of the appeal. If the employee is not satisfied with the Police Chief's review, the employee may appeal to the City Manager.

Such appeal must be filed in writing with the City Manager with a copy to Human Resources and the Police Chief within ten (10) calendar days of receipt of the Police Chief's response. In the case of suspensions of three (3) days or more, the City Manager may conduct, upon the employee's request, an independent review of the discipline imposed for the purpose of affirming, modifying or reversing the discipline. The City Manager will respond within ten (10) calendar days of receipt of the appeal.

If the employee is not satisfied with the City Manager's review, the employee may appeal the matter to final appeal hearing officer whom shall be selected by the City Manager with input from the employee. The final appeal hearing officer shall be independent, have had no role in the matter and shall have had previous experience serving in such a capacity. The appeal shall be made in writing to Human Resources within ten (10) calendar days of receipt of the City Manager's

decision.

The fees and expenses of the final appeal hearing officer shall be shared equally by employee and the City. Each party, however, shall bear the cost of its own presentation.

The final appeal officer shall conduct a hearing and identify the facts in the case and shall make a final decision on the matter within thirty (30) days of the hearing. The decision of the final appeal officer shall be binding upon both parties.

#### **16.6 Waivers/Withdrawal of Appeal**

Notwithstanding any provisions in this article, any time limit or stage of procedure herein provided may be waived upon consent of both parties involved.

At any time after an appeal has been filed, an employee shall have the right to withdraw his/her appeal by written notification to the City Manager.

Failure of the employee to file an appeal within the period specified constitutes a waiver of appeal.

Failure of the employee to appear at the hearing shall be deemed a withdrawal of his or her appeal and the action of the Police Chief shall be final.

#### **16.7 Effect of Certain Disciplinary Action Interpretive Suspension**

An employee suspended from the City service shall forfeit all rights, privileges and salary, except that the employee shall not forfeit his/her health plan, pension, long-term disability, nor life insurance while on suspension.

#### **Discharge**

An employee who has been discharged from City service shall be paid salary accumulated to the effective date of termination, and any accrued compensatory time or vacation leave.

#### **Demotion**

An employee who has been demoted shall be reduced from a position in one classification to a position in a lower classification having lesser duties and responsibilities and a lower maximum rate of pay for disciplinary purposes.

#### **Official Reprimand**

An employee who has been issued an official reprimand shall be given a written notice, and a copy shall be placed in the employee's personnel file. The employee shall sign an acknowledgment that he/she has received a copy of the written notice.

#### **16.8 Informal Corrective Counseling**

## **1. Purpose**

The effective and efficient operation of the Oakley Police Department requires employees to conform to Oakley Police Department standards. The Chief of Police believes that positive correction is often more effective than punishment. Therefore, an informal system of training and counseling has been established to assist employees in improving behavior and performance without the negative effects of lasting disciplinary measures.

The corrective counseling system is designed to give the employee an opportunity to correct behavior by clearly identifying the problem and defining a course of action to correct the problem. This informal written counseling session will remain in the officer's personnel file for the duration of the annual evaluation period. Employees may be placed into the corrective counseling system by a supervisor of the rank of sergeant or above.

## **2. Interview**

The initial step for placement into the corrective counseling system is a meeting between a supervisor and the employee. Prior to the meeting the supervisor should review available information and conduct any necessary investigation. This meeting allows the employee an opportunity to present an explanation of the incident or behavior and provides the supervisor an opportunity to remind the employee of any rules, policies or procedures that were violated.

At the conclusion of the interview, the supervisor may indicate the need for corrective action, additional training, or increased supervision or the supervisor may require further investigation into the behavior.

If at any time during this process the supervisor should determine that informal corrective counseling is not appropriate and disciplinary action may be recommended the supervisor should discontinue the informal corrective counseling procedure and request further investigation be conducted by an internal affairs investigation through the chain of command.

## **3. Corrective Action**

Each incident requires timely corrective action which directly addresses the employee's behavior problem. Appropriate corrective action can be as simple as the counseling which is provided during the meeting with an employee. Other circumstances may require more stringent monitoring of employee behavior, a more structured work environment, increased supervision, specific training, counseling programs, and medical or psychological evaluation and intervention.

#### **4. Documentation**

The supervisor will prepare an informal corrective counseling memorandum to be forwarded through the chain of command and placed into the officer's personnel file, for six (6) months. This memorandum will be addressed to the employee and it will document the issues discussed during the interview and will clearly describe the course of action to be taken to correct the unacceptable behavior.

The employee will have the opportunity to read and sign the memorandum prior to its placement into the officer's personnel file. The signing of the document by the employee is not an admission of culpability. If the employee refuses to sign the memorandum, the supervisor will note the refusal on the memo. The employee will not be ordered to sign the memo. The employee will be given the original memorandum, and a copy will be forwarded through the officer's chain of command.

The officer may prepare a separate memorandum setting forth that officer's position on the situation. This written memo shall be submitted no later than thirty (30) days after the interview and forwarded through the same chain of command as the informal corrective counseling memorandum. The officer's memo shall remain with the informal corrective counseling memo in the officer's personnel file, until they are both purged at the time of the officer's annual evaluation.

The informal corrective counseling system is designed improve an officer's behavior and performance and is not disciplinary. Placement into the informal corrective counseling system is not subject to the grievance procedure.

### **Section 17. GRIEVANCE PROCEDURE**

#### **17.1 Definition**

A grievance is a complaint or problem, which arises from the application and/or interpretation of this Memorandum of Understanding.

#### **17.2 Procedural Steps**

Any grievance arising from the application and/or interpretation of the provisions of this ~~Manual~~MOU, wherever possible, should be considered within the Department. Use of this procedure shall not reflect unfavorably on the employee, the supervisor (s), the Police Chief or the general management of the City. Retaliatory or discriminatory action against an employee for using this procedure or discrimination in the application of a rule or policy shall be a violation of City policy.

#### **1. Purpose of Rules**

- a. To promote full communication between the City and its employees by providing a reasonable method of resolving disputes regarding the provisions of this ~~Manual~~MOU, wages, hours and other terms and conditions of employment between the City and the employee.
- b. To assure the employee of a prompt and fair discussion of the issue involved.
- c. To provide that complaints shall be settled as near as possible to the point of origin.
- d. To encourage the prompt resolution of problems and complaints of any employee.
- e. To enable employees to make their complaints known by an orderly process.
- f. To provide that complaints shall be heard and settled informally.

## **2. Submission of a Complaint, Grievance or Problem**

In the informal complaint procedure, the complainant may present his/her complaint or problem verbally or in writing. If presented verbally, the complainant may, at any stage of the process or review, submit his/her complaint or problem in writing. The City Manager, the Police Chief or the supervisor may, at any stage of the process or review, request that the complaint or problem be put in writing and submitted.

## **3. Discussion of Complaint, Grievance or Problem**

Any complaint or problem arising out of employment should, wherever possible, be considered within the Department. When a complaint or problem arises, it shall be brought to the attention of the immediate supervisor by the employee involved as soon as possible. Should the employee fail to bring his complaint or problem to the attention of the supervisor within three (3) working days of the date of the action or incident causing his complaint, it shall be considered as a waiver by the employee of his right to submit the complaint.

The supervisor must take action on the complaint and notify the complainant of his action or decision within three (3) working days from the date the complaint was submitted.

If the matter is one which can be adjusted by the immediate supervisor to the satisfaction of the employee, this shall terminate the complaint.

If the matter cannot be adjusted or settled by the immediate supervisor within three (3) working days from the date of submission, or if the complainant is still dissatisfied after the decision of the immediate supervisor, he/she may submit his/her complaint to the Police Chief. The complaint must be submitted to the Police Chief within three (3) working days from the date of the supervisor's decision or the complaint shall be terminated.

The Police Chief shall confer with the complainant, the supervisor and such other persons as may be necessary to gather all the facts and to find a solution. He/she

must take action and notify the complainant of his/her action or decision within five (5) working days from the date the complaint was submitted.

#### **4. City Manager Review of Complaint, Grievance or Problem**

If the complainant is not satisfied after informal discussions and the Police Chief's decision, he/she may, within ten (10) calendar days of the date of the Police Chief's decision, request in writing a meeting with the City Manager. Failure of the complainant to make such a request within the ten (10) day period shall terminate the complaint.

Upon receiving the written request, the City Manager shall within seven (7) calendar days, discuss the complaint or problem with the complainant, his/her representative, if any, and all principals involved for the purpose of resolving the complaint or problem.

The City Manager may make or cause to be made any inquiry, investigation or compilation of facts he deems necessary to assist him/her in reaching a decision. The City Manager shall render a decision in writing to the complainant with a copy to the Police Chief within fourteen (14) calendar days of the date the complainant's written request was received. The decision of the City Manager shall be final.

### **Section 18. SAFETY**

#### **18.1 Safety Committee Appointment**

The Police Department may appoint one (1) employee representative to the City Safety Committee.

#### **18.2 Injury and Illness Prevention Program**

The City will provide a comprehensive Injury and Illness Prevention Program (IIPP) which is designed to prevent workplace accidents, injuries and illnesses.

### **Section 19. CITY'S EXISTING PERSONNEL POLICIES MANUAL**

Reference and guidance for action on any other matters of policy not included in this ~~Personnel Manual~~ MOU for the Police Department, can be found in the City's existing Personnel Policies Manual.

### **Section 20. SEPARABILITY AND SAVINGS**

If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be inoperative but all other provisions shall not be affected thereby and shall continue in full force and effect.

### **Section 21. DURATION OF THE AGREEMENT**

This MOU shall continue in full force and effect from July 1, 2016 to and including June 30, 2019. City and Association agree that any provision of this MOU may be modified during this time frame, but only by mutual, written agreement.

*Approved by the City Council: 0806/1128/20152016*

CITY OF OAKLEY, CA OAKLEY POLICE OFFICERS ASSOCIATION

\_\_\_\_\_  
Bryan H. Montgomery, City Manager

\_\_\_\_\_  
Kevin Morris, President

ATTEST:

\_\_\_\_\_  
Libby Vreonis, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Bill Galstan, Special Counsel