

ORDINANCE NO. 11838  
(New Series)

MAY 5 1976

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 3, DIVISION 12 OF THE SAN DIEGO MUNICIPAL CODE BY RENUMBERING SECTIONS 23.1205, 23.1206 AND 23.1207; BY AMENDING SECTIONS 23.1201, 23.1202, 23.1203, 23.1204, 23.1206, 23.1208 AND 23.1209 AND BY ADDING SECTIONS 23.1205 AND 23.1207 [RULE XI, SECTIONS 1 THROUGH 9 OF THE RULES OF THE CIVIL SERVICE COMMISSION] RELATING TO RESIGNATIONS, REMOVALS, SUSPENSIONS AND LAYOFFS.

WHEREAS, the Charter of The City of San Diego was amended in 1975 to give the Civil Service Commission discretion in establishing procedures for conducting hearings for disciplinary actions; and

WHEREAS, it is necessary to amend the Commission rule relating to the conduct of hearings to conform with the provisions of the Charter amendment; and

WHEREAS, recent case law has expanded the procedures for administering employee discipline with emphasis upon liberalized constitutional due process requirements; and

WHEREAS, it is further necessary to amend the Commission rules to accommodate these legal requirements; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter II, Article 3, Division 12 of the San Diego Municipal Code [Rule XI of the Rules of the Civil Service Commission] be and the same is hereby amended by renumbering the following sections:

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<u>Old Section Number</u>		<u>New Section Number</u>	
<u>Mun. Code</u>	<u>[Rule XI]</u>	<u>Mun. Code</u>	<u>[Rule XI]</u>
23.1205	[5]	23.1206	[6]
23.1206	[6]	23.1208	[8]
23.1207	[7]	23.1209	[9]

Section 2. That Chapter II, Article 3, Division 12 of the San Diego Municipal Code be and the same is hereby amended by amending Sections 23.1201, 23.1202, 23.1203, 23.1204, 23.1206, 23.1208 and 23.1209 [Rule XI, Sections 1, 2, 3, 4, 6, 8 and 9 of the Rules of the Civil Service Commission] to read as follows:

DIVISION 12

RESIGNATION, REMOVAL, SUSPENSION, LAYOFF

SEC. 23.1201 RESIGNATIONS  
 [Rule XI, Section 1 of the Rules  
 of the Civil Service Commission]

An employee in the classified City service who desires to resign in good standing, shall submit a written resignation to the appointing authority, and must give at least one week's notice of intention to leave the service, unless the appointing authority consents to the employee's leaving sooner. Such request when approved by the appointing authority shall be immediately forwarded to the Commission.

SEC. 23.1202 REMOVALS  
 [Rule XI, Section 2 of the Rules  
 of the Civil Service Commission]

Any officer or employee of the City in the classified service who has completed the probationary period prescribed in accordance with these rules may be removed or temporarily

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suspended without pay from office or employment for cause by the appointing authority.

SEC. 23.1203 CAUSE FOR REMOVAL OR SUSPENSION  
[Rule XI, Section 3 of the Rules  
of the Civil Service Commission]

The following are declared to be causes for removal or suspension from the classified service of the City, though charges may be based on causes other than those enumerated:

a. That the employee is incompetent or inefficient in the performance of his or her duty.

b. That the employee has been offensive in his or her conduct toward fellow employees, wards of the City, or the public.

c. That the employee has some permanent or chronic physical or mental ailment or defect which incapacitates the employee for the proper performance of his or her duties.

d. That the employee has violated any lawful or official regulation or order or failed to obey any lawful and reasonable direction given by a superior officer when such violation or failure to obey amounts to insubordination or serious breach of discipline which may reasonably be expected to result in lower morale in the organization or to result in loss, inconvenience, or injury to the City or the public.

e. That the employee has solicited or taken for personal use a fee, gift, or other valuable

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thing in the course of his or her employment or in connection with it when such fee, gift or other valuable thing is so solicited or given the employee by any person in the hope or expectation of receiving a favor or better treatment than that accorded other persons.

f. That the employee has failed to pay or make reasonable provision for future payment of just debts when annoyance is caused the employee's superior officer or other City officer or scandal is caused the service because of such failure.

g. That the employee has been convicted of a criminal offense involving moral turpitude.

h. That the employee through negligence or wilful conduct has caused damage to public property or waste of public supplies.

i. That the employee has been guilty of any conduct unbecoming an officer or employee of the City.

j. That the employee has been absent without leave, contrary to the rules of the Commission, or has failed to report after leave of absence has expired, or after such leave of absence has been disapproved, revoked or canceled by the Commission; provided, however, that if such absence or failure to report is excusable, the Commission may dismiss the charges.

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k. That the employee has hindered the regular operation of the department or division because of excessive absenteeism.

l. That the employee has violated the provisions of Section 134 of the Charter of The City of San Diego.

m. That the employee has violated the provisions of Section 135 of the Charter of The City of San Diego.

n. That the employee has failed to obey an order from the City Manager or other department head to terminate or desist from outside employment or enterprise that has been determined by the Civil Service Commission to be incompatible with City employment or detrimental to the efficiency of his or her regular City work.

SEC. 23.1204 PROCEDURE FOR REMOVAL  
[Rule XI, Section 4 of the Rules  
of the Civil Service Commission]

The following steps shall be completed by the appointing authority prior to making a final decision to remove any officer or employee, except when the appointing authority deems immediate removal necessary in order to maintain the safety of the community or the reputation, morale or harmony of the organization. The employee must be:

a. Given advance notice of the proposed action which includes a statement of the reasons for the action;

b. Provided with a copy of the proposed charges and, if practical, a copy of the materials or documents upon which the charges are based;

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c. Given the right to respond either orally or in writing to the appointing authority;

d. Notified that he or she may have representation at any time during this procedure.

After due consideration has been given to the information provided by the employee, personal service of written notice of removal or written notice delivered and left at or mailed to the employee's last place of residence shall be sufficient to put any such removal into effect. Such notice shall include a statement of the charges upon which the action is based and a statement advising the employee of any rights of appeal. A copy of such notice shall also be provided to the Civil Service Commission.

SEC. 23.1206 PROCEDURE FOR SUSPENSION  
[Rule XI, Section 6 of the Rules  
of the Civil Service Commission]

Any officer or employee of the City may be suspended without pay for disciplinary purposes for one or more periods aggregating not more than ninety (90) days in a calendar year. The procedure and rights afforded the employee prior to such suspension shall be the same as those prescribed in the rules relating to removal, including the provision for immediate suspension necessary in order to maintain the safety of the community or the reputation, morale, or harmony of the organization.

SEC. 23.1208 REDUCTION IN PERSONNEL  
[Rule XI, Section 8 of the Rules  
of the Civil Service Commission]

The appointing authority shall have the power to lay off or suspend any employee because of lack of funds,

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lack of work, or where there has been an insufficient appropriation to meet the salary requirements necessary to maintain existing personnel in any office, department, division, or bureau. Whenever it becomes necessary to reduce the number of employees in a given class, for the reasons enumerated in this section, the appointing authority shall, prior to such impending reduction, notify the Personnel Director of the number of positions in the class to be vacated, and the reasons therefor. Layoff shall be made by class or, upon the determination by the Personnel Director that separate eligible lists for the class were established in accordance with Rule IV, Section 1, by such subdivision of the class. The Personnel Director shall furnish to the appointing authority the names of the employees in the order in which such layoff shall be effected. The order of any appointing board or officer laying off an employee or employees in accordance with the provisions of this section for any of the reasons enumerated herein shall be final and not subject to review by the Civil Service Commission.

SEC. 23.1209 LAYOFFS  
[Rule XI, Section 9 of the Rules  
of the Civil Service Commission]

a. ORDER OF LAYOFF. A reduction in the number of employees in a class or subdivision of a class shall be made in the following order: Provisional, Limited, Probationary, Permanent. The order of layoff for permanent employees in a class or subdivision

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thereof shall be determined by City-wide seniority. Seniority shall be computed according to the length of last continuous service in the class or subdivision thereof, or a higher ranking class. Ties shall be broken by first considering the length of total City service, and then by grades attained in the examination which resulted in certification to the class affected by the layoff.

b. JOB RIGHTS. Subject to the provisions of Rules VI, IX, and XI, a permanent employee whose layoff is imminent shall have the right of transfer to any vacant position in the same class or subdivision thereof in any other department. If there is no such vacancy, said employee shall have the right of competition for retention in the next and successively lower classes in which he or she has served satisfactorily with permanent status.

Section 3. That Chapter II, Article 3, Division 12 of the San Diego Municipal Code be and the same is hereby amended by adding Sections 23.1205 and 23.1207 [Rule XI, Sections 5 and 7 of the Rules of the Civil Service Commission] to read as follows:

SEC. 23.1205 APPEAL OF REMOVAL  
[Rule XI, Section 5 of the Rules  
of the Civil Service Commission]

a. APPEAL PROCEDURE. Within five days of receipt of notice of removal, an employee may file an appeal by submitting a written demand to the Civil Service Commission for the right to be heard before the Commission.

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1. Failure of the employee to submit said written demand to the Commission within five days after the receipt of notice of removal shall result in the waiver of the right to appeal and the forfeiture of all rights to a hearing in the case before the Commission.

2. The employee may at any time withdraw an appeal to the Commission. Such withdrawal may be either by written request prior to the public hearing, or may be made orally by the employee at or during the time of public hearing.

3. Any employee who has appealed to the Commission for a public hearing and who fails to make an appearance at the hearing either in person or through a duly authorized representative after having received notice of the time and place for such hearing may be deemed to have abandoned the appeal. In the event of such failure to appear, the appointing authority or the appointing authority's representative may move the Commission to dismiss the appeal. The Commission shall have the discretion to grant or to deny such motion.

4. On verified petition of any party, the Commission may order the testimony of any material witness be taken by deposition in the

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manner prescribed by law for depositions in Civil actions. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of the testimony; a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify.

b. CONDUCT OF HEARING. With the fulfillment by the employee of the above appeal procedure, the Commission shall fix a time and place for a public hearing.

1. The employee under charges shall be given an opportunity to produce witnesses and testimony and to be represented by counsel. The appointing authority shall have the same rights.

2. The proceedings shall be as informal as is compatible with the requirements of justice, and the Commission need not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the matter through oral testimony and records presented at the hearing, which is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit and provisions of

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the Charter. The testimony taken at the hearing shall be under oath and shall be recorded by a reporter.

3. The Commission shall have the power to subpoena and require the attendance of witnesses and the production of pertinent documents, and to administer oaths and, if necessary, to continue the hearing from time to time.

c. ORDER OF PROOF. The order of proof in any hearing of complaint shall be as follows:

1. The appointing authority shall present the evidence in support of the charges.

2. The employee shall then produce such evidence as he or she may wish to offer in defense.

3. The parties in interest may then offer rebuttal evidence.

d. FINDINGS AND DECISIONS. The Commission shall report its findings and decisions to the appointing authority responsible for the removal. Thereupon, said appointing authority shall make such final disposition of the matter as may be determined by the Commission. The Commission may at its discretion:

1. Order the restoration of the employee to the position without loss of pay, or with reduced pay during the period between the filing of the charges and the making of the order.

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2. Order the demotion of the employee to a class for which a lower maximum rate of compensation is prescribed.

3. Order the removal of the employee from the position; provided that in case of such removal the Commission may at its discretion put the name of the employee on the eligible list for the class for certification when a vacancy occurs in some other department. The decision of the Civil Service Commission in any such case shall be final. A copy of the written statement of reasons given for any removal, and a copy of any written reply thereto by the officer or employee involved, together with a copy of the findings of fact and decision of the Commission, shall be filed as a public record in the office of the Civil Service Commission.

SEC. 23.1207 APPEAL OF SUSPENSION  
[Rule XI, Section 7 of the Rules  
of the Civil Service Commission]

The procedures and rights for appealing a suspension shall be the same as those prescribed in the rules relating to removal, except that the Commission, at its discretion, may appoint one or more of its members, to hear the appeal and submit findings of fact and a decision to the Commission. Based on the findings of fact, the Commission shall ratify or may modify the decision.

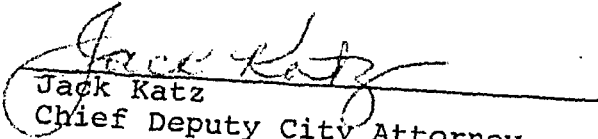
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Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By

  
Jack Katz

Chief Deputy City Attorney

JK:k:301

3-2-76

Or.Dept.: Personnel

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Passed and adopted by the Council of The City of San Diego on MAY 5 1976,  
 by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Gil Johnson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Maureen F. O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lee Hubbard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Floyd L. Morrow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Tom Gade	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jess D. Haro	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON  
 Mayor of The City of San Diego, California.

EDWARD NIELSEN  
 City Clerk of The City of San Diego, California.

(Seal)

By Kathleen Martinez, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

APR 21 1976

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, and on

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

EDWARD NIELSEN  
 City Clerk of The City of San Diego, California.

By Kathleen Martinez, Deputy.

RECEIVED  
 CITY CLERK'S OFFICE  
 1976 MAR 16 PM 3:25  
 SAN DIEGO, CALIF. (Seal)

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CC-1255-A (REV. 12-73) MAY 10 1978

Office of the City Clerk, San Diego, California	
Ordinance Number	<b>11838</b>
Adopted	<b>MAY 5 1976</b>
	<b>01508</b>

ATTORNEY(S)

San Diego, City of  
202 C St., 12th Floor  
San Diego, CA 92101  
Attn: Kathleen Martinez

**CERTIFICATE OF PUBLICATION**

No.

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IN THE MATTER OF

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ORDINANCE AMENDING CHAPTER II, ARTICLE 3

---

I, PATRICIA M. DUTRA hereby certify  
that San Diego Daily Transcript is a daily newspaper of general  
circulation within the provisions of the Government Code of the  
State of California, printed and published in the City of San Diego,  
County of San Diego, State of California; that I am the principal  
clerk of said newspaper; and the

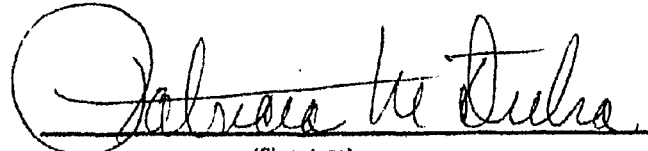
ORDINANCE NO. 11838

is a true and correct copy of which this certificate is annexed  
and was published in said newspaper on

May 20, 1976

I certify under penalty of perjury that the foregoing is true  
and correct, at San Diego, California, on

May 20, 1976



(Signature)

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48 1/2" @ 4.84 = 234.74 ✓

**ORDINANCE NO. 11838**

(New Series)

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 3, DIVISION 12 OF THE SAN DIEGO MUNICIPAL CODE BY RENUMBERING SECTIONS 23.1205, 23.1206 AND 23.1207; BY AMENDING SECTIONS 23.1201, 23.1202, 23.1203, 23.1204, 23.1206, 23.1208 AND 23.1209 AND BY ADDING SECTIONS 23.1205 AND 23.1207 (RULE XI, SECTIONS 1 THROUGH 9 OF THE RULES OF THE CIVIL SERVICE COMMISSION) RELATING TO RESIGNATIONS, REMOVALS, SUSPENSIONS AND LAYOFFS.

WHEREAS, the Charter of the City of San Diego was amended in 1975 to give the Civil Service Commission discretion in establishing procedures for conducting hearings for disciplinary actions; and WHEREAS, it is necessary to amend the Commission rule relating to the conduct of hearings to conform with the provisions of the Charter amendment; and

WHEREAS, recent case law has expanded the procedures for administering employee discipline with emphasis upon liberalized constitutional due process requirements; and WHEREAS, it is further necessary to amend the Commission rules to accommodate these legal requirements; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter II, Article 3, Division 12 of the San Diego Municipal Code (Rule XI of the Rules of the Civil Service Commission) be and the same is hereby amended by renumbering the following sections:

Old Section Number	New Section Number
Mun. Code (Rule XI) 23.1205 (5)	23.1208 (6)
23.1206 (6)	23.1208 (8)
23.1207 (7)	23.1209 (9)

Section 2. That Chapter II, Article 3, Division 12 of the San Diego Municipal Code be and the same is hereby amended by amending Sections 23.1201, 23.1202, 23.1203, 23.1204, 23.1206, 23.1208 and 23.1209 (Rule XI, Sections 1, 2, 3, 4, 6, 8 and 9 of the Rules of the Civil Service Commission) to read as follows:

**DIVISION 12**

**RESIGNATION, REMOVAL, SUSPENSION, LAYOFF**

**SEC. 23.1201 RESIGNATIONS**  
(Rule XI, Section 1 of the Rules of the Civil Service Commission)

An employee in the classified City service who desires to resign in good standing, shall submit a written resignation to the appointing authority, and must give at least one week's notice of intention to leave the service, unless the appointing authority consents to the employee's leaving sooner. Such request when approved by the appointing authority shall be immediately forwarded to the Commission.

**SEC. 23.1202 REMOVALS**  
(Rule XI, Section 2 of the Rules of the Civil Service Commission)

Any officer or employee of the City in the classified service who has completed the probationary period prescribed in accordance with these rules may be removed or temporarily suspended without pay from office or employment for cause by the appointing authority.

**SEC. 23.1203 CAUSE FOR REMOVAL OR SUSPENSION**  
(Rule XI, Section 3 of the Rules of the Civil Service Commission)

The following are declared to be causes for removal or suspension from the classified service of the City, though charges may be based on causes other than those enumerated:

- a. That the employee is incompetent or inefficient in the performance of his or her duty.
- b. That the employee has been offensive in his or her conduct toward fellow employees, wards of the City, or the public.
- c. That the employee has some permanent or chronic physical or mental ailment or defect which incapacitates the employee for the proper performance of his or her duties.
- d. That the employee has violated any lawful or official regulation or order or failed to obey any lawful and reasonable direction given by a superior officer when such violation or failure to obey amounts to insubordination or serious breach of discipline, which may reasonably be expected to result in lower morale in the organization or to result in loss, inconvenience, or injury to the City or the public.
- e. That the employee has solicited or taken for personal use a fee, gift, or other valuable thing in the course of his or her employment or in connection with it when such fee, gift or other valuable thing is so solicited or given the employee by any person in the hope or expectation of receiving a favor or better treatment than that accorded other persons.
- f. That the employee has failed to pay or make reasonable provision for future payment of just debts when annoyance is caused the employee's superior officer or other City officer or scandal is caused the service because of such failure.
- g. That the employee has been convicted of a criminal offense involving moral turpitude.
- h. That the employee, through negligence or willful conduct, has caused damage to public property or waste of public supplies.
- i. That the employee has been guilty of any conduct unbecoming an officer or employee of the City.
- j. That the employee has been absent without leave, contrary to the rules of the Commission, or has failed to report after leave of absence has expired, or after such leave of absence has been disapproved, revoked or canceled by the Commission; provided, however, that if such absence or failure to report is excusable, the Commission may dismiss the charges.
- k. That the employee has hindered the regular operation of the department or division because of excessive absenteeism.
- l. That the employee has violated the provisions of Section 131 of the Charter of The City of San Diego.
- m. That the employee has violated the provisions of Section 135 of the Charter of The City of San Diego.
- n. That the employee has failed to obey an order from the City Manager or other department head to terminate or desist from outside employment or enterprise that has been determined by the Civil Service Commission to be incompatible with City employment or detrimental to the efficiency of his or her regular City work.

**SEC. 23.1204 PROCEDURE FOR REMOVAL**  
(Rule XI, Section 1 of the Rules of the Civil Service Commission)

The following steps shall be completed by the appointing authority prior to making a final decision to remove any officer or employee, except when the appointing authority deems immediate removal necessary in order to maintain the safety of the community or the reputation, morale or harmony of the organization. The employee must be:

- a. Given advance notice of the proposed action which includes a statement of the reasons for the action;
- b. Provided with a copy of the proposed charges and, if practical, a copy of the materials or documents upon which the charges are based;
- c. Given the right to respond either orally or in writing to the appointing authority;
- d. Notified that he or she may have representation at any time during this procedure.

After due consideration has been given to the information provided by the employee, personal service of written notice of removal or written notice delivered and left at or mailed to the employee's last place of residence shall be sufficient to put any such removal into effect. Such notice shall include a statement of the charges upon which the action is based and a statement advising the employee of any rights of appeal. A copy of such notice shall also be provided to the Civil Service Commission.

**SEC. 23.1206 PROCEDURE FOR SUSPENSION**  
(Rule XI, Section 6 of the Rules of the Civil Service Commission)

Any officer or employee of the City may be suspended without pay for disciplinary purposes for one or more periods aggregating not more than ninety (90) days in a calendar year. The procedure and rights afforded the employee prior to such suspension shall be the same as those prescribed in the rules relating to removal, including the provision for immediate suspension necessary in order to maintain the safety of the community or the reputation, morale, or harmony of the organization.

**SEC. 23.1208 REDUCTION IN PERSONNEL**  
(Rule XI, Section 8 of the Rules of the Civil Service Commission)

The appointing authority shall have the power to lay off or suspend any employee because of lack of funds, lack of work, or where there has been an insufficient appropriation to meet the salary requirements necessary to maintain existing personnel in any office, department, division, or bureau. Whenever it becomes necessary to reduce the number of employees in a given class, for the reasons enumerated in this section, the appointing authority shall, prior to such impending reduction, notify the Personnel Director of the number of positions in the class to be vacated, and the reasons therefor. Layoff shall be made by class or, upon the determination by the Personnel Director that separate eligible lists for the class were established in accordance with Rule IV, Section 1, by such subdivision of the class. The Personnel Director shall furnish to the appointing authority the names of the employees in the order in which such layoff shall be effected. The order of any appointing board or officer laying off an employee or employees in accordance with the provisions of this section for any of the reasons enumerated herein shall be final and not subject to review by the Civil Service Commission.

**SEC. 23.1209 LAYOFFS**  
(Rule XI, Section 9 of the Rules of the Civil Service Commission)

a. **ORDER OF LAYOFF.** A reduction in the number of employees in a class or subdivision of a class shall be made in the following order: Provisional, Limited, Probationary, Permanent. The order of layoff for permanent employees in a class or subdivision thereof shall be determined by City-wide seniority. Seniority shall be computed according to the length of last continuous service in the class or subdivision thereof, or a higher ranking class. Ties shall be broken by first considering the length of total City service, and then by grades attained in the examination which resulted in certification to the class affected by the layoff.

b. **JOB RIGHTS.** Subject to the provisions of Rules VI, IX, and XI, a permanent employee whose layoff is imminent shall have the right of transfer to any vacant position in the same class or subdivision thereof in any other department. If there is no such vacancy, said employee shall have the right of competition for retention in the next and successively lower classes in which he or she has served satisfactorily with permanent status.

Section 3. That Chapter II, Article 3, Division 12 of the San Diego Municipal Code be and the same is hereby amended by adding Sections 23.1205 and 23.1207 (Rule XI, Sections 5 and 7 of the Rules of the Civil Service Commission) to read as follows:

**SEC. 23.1205 APPEAL OF REMOVAL**  
(Rule XI, Section 5 of the Rules of the Civil Service Commission)

a. **APPEAL PROCEDURE.** Within five days of receipt of notice of removal, an employee may file an appeal by submitting a written demand to the Civil Service Commission for the right to be heard before the Commission.

1. Failure of the employee to submit said written demand to the Commission within five days after the receipt of notice of removal shall result in the waiver of the right to appeal and the forfeiture of all rights to a hearing in the case before the Commission.

2. The employee may at any time withdraw an appeal to the Commission. Such withdrawal may be either by written request prior to the public hearing, or may be made orally by the employee at or during the time of public hearing.

3. Any employee who has appealed to the Commission for a public hearing and who fails to make an appearance at the hearing either in person or through a duly authorized representative after having received notice of the time and place for such hearing may be deemed to have abandoned the appeal. In the event of such failure to appear, the appointing authority or the appointing authority's representative may move the Commission to dismiss the appeal. The Commission shall have the discretion to grant or to deny such motion.

4. On verified petition of any party, the Commission may order the testimony of any material witness be taken by deposition in the manner prescribed by law for depositions in Civil actions. The petition shall set forth the nature of the pending proceeding, the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony, a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify.

b. **CONDUCT OF HEARING.** With the fulfillment by the employee of the above appeal procedure, the Commission shall fix a time and place for a public hearing.

1. The employee under charges shall be given an opportunity to produce witnesses and testimony and to be represented by counsel. The appointing authority shall have the same rights.

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2. The proceedings shall be as informal as is compatible with the requirements of justice, and the Commission need not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the matter through oral testimony and records presented at the hearing best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit and provisions of the Charter. The testimony taken at the hearing shall be under oath and shall be recorded by a reporter.

3. The Commission shall have the power to subpoena and require the attendance of witnesses and the production of pertinent documents, and to administer oaths and, if necessary, to continue the hearing from time to time.

c. **ORDER OF PROOF.** The order of proof in any hearing of complaint shall be as follows:

1. The appointing authority shall present the evidence in support of the charges.

2. The employee shall then produce such evidence as he or she may wish to offer in defense.

3. The parties in interest may then offer rebuttal evidence.

d. **FINDINGS AND DECISIONS.** The Commission shall report its findings and decisions to the appointing authority responsible for the removal. Thereupon, said appointing authority shall make such final disposition of the matter as may be determined by the Commission. The Commission may at its discretion:

1. Order the restoration of the employee to the position without loss of pay, or with reduced pay during the period between the filing of the charges and the making of the order.

2. Order the demotion of the employee to a class for which a lower maximum rate of compensation is prescribed.

3. Order the removal of the employee from the position; provided that in case of such removal the Commission may at its discretion put the name of the employee on the eligible list for the class for certification when a vacancy occurs in some other department. The decision of the Civil Service Commission in any such case shall be final. A copy of the written statement of reasons given for any removal, and a copy of any written reply thereto by the officer or employee involved, together with a copy of the findings of fact and decision of the Commission, shall be filed as a public record in the office of the Civil Service Commission.

**SEC. 23.1207 APPEAL OF SUSPENSION**

(Rule XI, Section 7 of the Rules of the Civil Service Commission)

The procedures and rights for appealing a suspension shall be the same as those prescribed in the rules relating to removal, except that the Commission, at its discretion, may appoint one or more of its members, to hear the appeal and submit findings of fact and a decision to the Commission. Based on the findings of fact, the Commission shall ratify or may modify the decision.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

Introduced on April 21, 1976.

Passed and adopted by the Council of The City of San Diego on May 5,

1976.

**AUTHENTICATED BY:**

**PETE WILSON**

Mayor of The City of San Diego, California.

**EDWARD NIELSEN**

City Clerk of The City of San Diego, California.

By **KATHLEEN MARTINEZ**, Deputy

(SEAL)

Pub. May 20, 1976

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