



COUNCIL AGENDA: 03-01-11  
ITEM: 3.5

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Dennis Hawkins, CMC  
City Clerk

**SUBJECT: SENIORITY RULES FOR  
LAYOFFS**

**DATE:** 02-16-11

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## RECOMMENDATION

As recommended by the Rules and Open Government Committee on February 9, 2011 and outlined in the attached memo previously submitted to the Rules and Open Government Committee:

- (a) Authorize the Administration to initiate the process to change "Bumping" for Program Manager I and II, Division Manager, Associate and Senior Engineer and Other Classifications subject to any applicable meet and confer obligations.
- (b) Direct the Administration to do further research and analysis on including performance as a factor in selecting employees for layoff and whether any changes to the layoff process that could be effective for Fiscal Year 2012-2013.



# Memorandum

**TO:** RULES AND OPEN GOVERNMENT COMMITTEE      **FROM:** Debra Figone

**SUBJECT:** Seniority Rules for Layoffs

**DATE:** February 4, 2011

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## **RECOMMENDATION**

It is recommended that for Fiscal Year 2011-2012 the Administration focus on recommending a list of position-specific exemptions from bumping and create additional specialties within a limited number of classifications. For potential future consideration, it is recommended that the Administration do further research and analysis on including performance as a factor in selecting employees for layoff and whether any changes to the layoff process that could be effective for Fiscal Year 2012-2013.

## **BACKGROUND**

On January 19, 2011, the Rules Committee directed the Administration to determine if the layoff process can be changed and/or amended to include "employee performance" as a factor in selecting employees that would be removed from his or her current position when the City of San Jose eliminates positions in the City's workforce. Staff was directed to return to the Rules Committee on February 9, 2011, with Staff evaluation for possible placement on the March 1, 2011, City Council Agenda.

The current layoff process requires layoffs to be based on seniority and is contained in the Municipal Code's Civil Service Rules, as well as in various contracts with the City's bargaining units.

The Municipal Code Section 3.04.1160 Order of Layoff states:

- A. When one or more employees in the same class in a city department are to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows:
1. Provisional employees in the order to be determined by the appointing authority;
  2. Probationary employees in the order to be determined by the appointing authority;
  3. Permanent employees in inverse order of seniority within the classification being reduced, or in a higher class.

This process is also contained in the Memorandum of Agreements (MOAs) with the following bargaining units:

- Association of Engineers and Architects (AEA Units 41/42 and 43)
- Association of Building, Mechanical and Electrical Inspectors (ABMEI)
- Confidential Employees' Organization (CEO)
- San Jose Fire Fighters, IAFF Local 230 (IAFF)
- International Brotherhood of Electrical Workers (IBEW)
- Municipal Employees' Federation (MEF)
- Operating Engineers, Local No. 3 (OE#3)
- San Jose Police Officers' Association (SJPOA)

The majority of the contracts above expire on June 30, 2011, and the provisions related to layoffs are in effect until then.<sup>1</sup>

## ANALYSIS

If there is direction from the City Council to pursue changing the current layoff process to include "employee performance" as a factor in the selection of employees for lay off, the following are steps that would need to be taken:

### *1. Meet and Confer with the City's 11 Bargaining Units*

This would require meeting and conferring with all of the affected bargaining units, including those that do not have contract provisions related to layoffs. If the Council provides the City's negotiators direction to achieve this with the bargaining units, this direction would need to be provided as soon as possible as negotiations have already begun.

If direction is given to proceed negotiating this provision with the bargaining units immediately, the soonest that it could be put into effect is Fiscal Year 2012-2013. It is highly unlikely that the negotiation process could be completed in time to take effect for Fiscal Year 2011-2012.

### *2. Civil Service Commission Input*

City Charter Section 1103 states that the Council may adopt, repeal or amend any Civil Service Rule for the Classified Service, provided it first receives from the Civil Service Commission a report or recommendation with respect to the proposed new Rule, if a new Rule is proposed to be adopted, or with respect to the proposed repeal or amendment of an existing Rule if an existing Rule is proposed to be repealed or amended; provided, however, that if the Civil Service Commission refuses or fails to submit to the Council a report or recommendation on any proposed new Rule, or proposed repeal or amendment of any existing Rule, within ninety (90) days from and after the date the Council requests such a report or recommendation, the Council may adopt such new Rule or repeal or amend such existing Rule, without first receiving a report or recommendation thereon from the Civil Service Commission.

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<sup>1</sup> San Jose Fire Fighters, Local 230's contract expired June 30, 2009 and we are currently proceeding to arbitration. ABMEI's contract expired June 30, 2010 and terms were implemented for Fiscal Year 2010-2011.

Since the layoff process is subject to meet and confer, the City Council could either seek the Civil Service Commission's input before negotiations start or after the negotiation process, but before the City Council makes any final approval of the changes. It is recommended that modifications to the layoff process be referred to the Civil Service Commission for review and comment after the negotiation process has been completed. We would need to allow time for the Civil Service Commission to review the proposed modifications to the layoff process prior to any changes becoming effective.

### *3. Performance Evaluation System*

If performance becomes a criterion for layoffs, the Administration needs to work with departments to ensure that each employee has an up-to-date performance appraisal.

### *4. Other Analysis*

When considering a change of this magnitude, it is recommended that research be completed to survey other public entities and private sector employers. For example, the Administration could engage the top major employers in San Jose to learn about their practices related to how performance may be used as a factor in achieving workforce reductions.

## **Recommendation to Consider Changes to Bumping Process in Limited Number of Classifications**

The Administration is currently evaluating two different changes to the bumping process, both of which are subject to meet and confer with the bargaining units. As a result of the 2010 bumping process, there have been some impacts on department and employee productivity. Staff is exploring creating additional specialties within a small number of classifications that are used broadly throughout the City organization. Establishing these specialties will avoid having employees who were hired with specialized skill sets being bumped into positions in the same classification in another department that requires a completely different set of skills. In addition, the Administration is exploring eliminating the seniority bumping process in a small number of classifications where high-level classified management employees are in broad classifications where almost every position requires a unique technical specialty and fulfills a different role for the respective department. Additionally, the Administration is looking at classifications where a high number of bumping exemptions have been approved in the last two years and these classifications could be considered for eliminating seniority bumping entirely.

## **Summary**

Staff is proceeding to explore establishment of specialties and elimination of bumping in a number of classifications. Some of these changes may require meet and confer with only some of the bargaining units. It is recommended that these bumping issues be further studied for potential implementation in Fiscal Year 2011-2012.

Rules and Open Government Committee

February 4, 2011

**Subject: Seniority Rules for Layoffs**

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Given the timeframe for completing the analysis on the subject of including performance as a factor in layoffs, it is recommended that the Administration do further research for possible implementation in Fiscal Year 2012-2013.

A handwritten signature in black ink, appearing to read 'Debra Figone', with a small mark to the left.

DEBRA FIGONE  
CITY MANAGER

For questions please contact Alex Gurza, Director of Employee Relations, at (408) 535-8150.