

PLEASE NOTE:

This copy of Ordinance No. 111.9 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

Text changes presented at meeting of April 5, 2011 are in **green** font.

Text changes adding performance based criteria for meeting of April 19, 2011 are in **blue** font.

Administrative edits are in **red** font.

REGULAR

NUMBER: 111.9

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 102 OF TITLE VI OF THE MILPITAS MUNICIPAL CODE RELATING TO PROVISIONS FOR REDUCING CITY WORKFORCE

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, there is currently an economic budget crisis facing the City of Milpitas; and

WHEREAS, a budget gap of at least \$10 million dollars exists which reflects a significant structural deficit requiring long term cuts to all levels of municipal government; and

WHEREAS, labor costs are the largest significant component to the General Fund budget and cuts in this area are essential to the long-term health of the City organization; and

WHEREAS, lay-offs may become necessary as a component of budget reduction and such lay-offs will necessarily reduce the City workforce and will likely require a heightened level of efficiency on the part of remaining employees to complete the City's mission of providing municipal services to the citizens and employers within the City of Milpitas; and

WHEREAS, the current provisions of the Municipal Code providing for employee seniority and bumping rights which can and may hamper the efficient provision of municipal services in the context of a reduced workforce, are contrary to the needs of the City during this time of fiscal distress. In order for a pared-down municipal workforce to most efficiently provide municipal services, it is necessary to amend the current Municipal Code to allow lay-offs according to the functional needs of the City and according to performance based criteria; and

WHEREAS, all labor groups affected by this proposed ordinance amendment have been contacted and met with regarding its purported effects, satisfying the meet and confer obligations imposed upon the City by the Meyers-Milias-Brown Act.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE VI, CHAPTER 102

Chapter 102 of Title VI of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

VI-102-1.00 Abolition or reduction of authorized positions

Whenever in the judgment of the City Council it becomes necessary in the interest of economy or because the necessity for any authorized position in the City service no longer exists, the City Council may eliminate or reduce the number of any or all authorized positions within the City service without the right of appeal of the decision to eliminate or reduce the positions.

VI-102-2.00 Reduction by functional needs and Performance Based Criteria

~~Demotion within the competitive service classification above the entry level~~

In reducing the number of personnel within classification(s), ~~employees' functional grouping shall be considered regarding~~ ~~displacement through the least senior employee(s) within the affected class(es) shall be displaced either through demotion or lay-off.~~ ~~If an Operational Group or any employee within an Operational Group or within a particular function is eliminated, the employees existing therein shall be the persons laid off, irrespective of seniority.~~ ~~There shall be no bumping rights.~~ ~~Operational Group Seniority for the purpose of this section, is defined as a group of employees, or an individual within a particular function, regardless of rank or classification, that operates to fulfill a functional area within the organization. the employee's total time served within the specified classification, or higher classification(s) within the job series.~~ ~~In situations where an entire Operational Group is not eliminated or where organizational function is less detrimentally affected by individualized reductions, lay-offs shall be determined by the following factors which shall each be considered: Performance Based Criteria, seniority and the functional needs and best interests of the organization as it will exist in its residual form after a workforce reduction, all as determined by the City Manager. In making this determination, functional value shall be the primary consideration. The relative seniority amongst employees shall not be a consideration.~~ ~~Performance Based Criteria (pursuant to City of Milpitas Personnel Rules and Regulations including, but not limited to annual performance evaluations) shall mean those qualities of an employee that allow him or her to function in a superior way in a reduced workforce setting. These criteria shall include experience in potential areas of assignment, versatility, work-place efficiency, cross training, education or knowledge of the assigned work, and any other criteria indicative of superior functional value to the organization. —Unless it is contrary to the best fiscal or operational interests of the City, the event two or more employees have served the same amount of time in a classification, seniority shall be determined by their respective position on the employment list for the specified classification.~~ ~~All temporary employees in the affected class or classes shall be laid off prior to the displacement of any probationary or permanent employee.~~

~~Employees displaced due to lay-off may not avoid lay-off by choosing demotion in lieu of lay-off. "Bumping rights," to the extent they have previously existed, are hereby abolished. Any permanent employee who is displaced as provided for in Section 1, may elect to accept a demotion in lieu of lay off to a lower level related classification, or an unrelated classification previously held on a permanent basis, provided, however, that two conditions are met:~~

- ~~1) — that the employee accepting demotion meets the qualifications for the classification he/she has elected for the demotion OR has previously held the classification; and~~
- ~~2) — that the employee accepting demotion must have a length of service either in the higher classification(s), the classification he/she is considering for demotion, or a combination of both which is greater than the least senior employee in the classification to which he/she intends to accept the demotion.~~

~~**VI-102-3.00 — Exempt employees may return to the competitive service**~~

~~Any exempt employee who was promoted from the Competitive Service may elect a demotion to the Competitive Service in lieu of layoff. Once elected, said employee shall be eligible for demotion to a lower level classification in accordance with the provisions of Section 2.~~

VI-102-4.00 Lay-Off

~~Seniority, for the purpose of this section, shall be defined as the total cumulative time of City service and shall be observed in effecting lay-offs. The order of lay-off shall be in the reverse order of total cumulative time served in permanent positions in the City service upon the effective date of lay-off. Lay-off shall be made within classes of positions, and all temporary employees in the affected class or classes shall be laid off prior to the lay-off of any probationary or permanent employee.~~

Each employee laid off shall receive a final performance evaluation to be based on job performance since the employee's last performance appraisal. Thereafter, the Department head shall certify as to the affected employee's competency if overall service in the classification has been satisfactory. If not certified as having given satisfactory service, the employee laid off may interpret the action as a discharge and request a hearing as provided by the Personnel Ordinance. An employee who is laid off must be certified as competent, in order to be placed on the re-employment list.

~~VI-102-5.00 Time served on military leave For the purpose of determining displacement within classifications in accordance with this Chapter, time served on military leave shall be included as time served within the classification held at the time the military leave was taken, and in accordance with the Military and Veterans Code of the State of California.~~

VI-102-56.00 Notice of Lay-Off

Pursuant to Section 1 of this Chapter, the City shall provide employees who may be affected by lay-off a thirty (30) calendar day written preliminary notice of intent to lay-off. ~~The preliminary notice shall also advise the employee whether, in accordance with this Chapter, they may elect demotion in lieu of lay-off. Employees who are notified that they may elect demotion in lieu of lay-off, must advise the City Manager's Office within fifteen (15) calendar days, of their decision to exercise the demotion option or forfeit their rights to the demotion in lieu of lay-off.~~ Thereafter, the City shall provide a written confirmed notice of lay-off at least ten (10) working days prior to the effective date of lay-off. Reasonable effort shall be made to ensure notification. The recognized employee group representatives for the affected classes shall be notified concurrently on the preliminary and confirmed lay-off notices.

VI-102-67.00 Re-employment lists

The names of probationary and permanent employees laid off ~~or demoted~~ in accordance with this Chapter shall be placed on a re-employment list in the reverse order of their displacement, ~~whether it be by lay-off or demotion.~~ The lists shall be prepared by classes which, in the opinion of the City Manager, require basically the same qualifications and duties and responsibilities for those of the class or classes of positions from which lay-off ~~or demotion~~ occurred. Re-employment lists shall remain in effect for ~~three~~ seven years following their promulgation. Rehiring from the re-employment lists shall be at the discretion of the City Manager based on the functional needs of the organization., ~~except that the names of employees who are laid off shall be removed after three years.~~

Employees who are laid off in accordance with this Chapter are required to keep the Human Resources Department~~City Manager's Office~~ informed of any change of address or telephone number. Employees shall be returned in the reverse order of their displacement, subject to City Manager approval.

An employee's name shall be removed from the re-employment list, if:

- 1) the individual has been certified for appointment three times and has refused the appointments; and/or
- 2) has resigned (including retirement) from City service during the period the list is in effect.

In the event an employee's name is removed from the re-employment list for refusing an appointment three times, he/she may petition the City Manager in writing for reinstatement to the list. If good cause can be demonstrated as to why the individual did not accept any of the appointments, the City Manager may reinstate the individual to the list.

VI-102-~~78~~.00 Conditions of re-employment

Upon re-employment, any employee who was laid off in accordance with Section 4 of this Chapter shall have his/her status restored and/or modified pursuant to the existing Memorandum of Understanding in effect at the time of lay-off or subsequent Memorandum of Understanding. The intent of this Section is to restore at least the following:

- 1) the same vacation accrual rate;
- 2) his/her sick leave balance in effect at the time of lay-off;
- 3) his/her seniority (time served in permanent positions within the City service), at the time of lay-off;
- 4) if re-employed in the same classification, or substantially the same classification, the employee shall be returned to the same step of the current salary range for that classification;
- 5) if re-employed in a lower classification, the employee's salary shall be established as though he/she had been demoted to the position; and
- 6) upon re-employment the applicant shall provide a written statement that he/she has not incurred any disability during the period of lay-off which would prevent the applicant from performing the duties of that position.

VI-102-~~89~~.00 Waiver and Applicability

Unless modified herein, all other existing provisions remain as established. To the extent any Memorandum of Understanding with a recognized bargaining group representing employees of the City of Milpitas (MOU) contains provisions contrary to the express provisions of this Ordinance, such MOU provisions shall govern until the written termination date of such MOU and thereafter this ordinance shall govern. Provisions in this Ordinance not contrary to any such MOU shall take effect within 30 days of adoption.

VI-102-~~94~~.0 Severability

See I-1-4.12

~~VI-102-11.0 — Criteria for demotion within exempt classification~~

~~In reducing the number of exempt personnel, displacement within classification(s) shall be made by the City Manager after reviewing the Department Head's recommendation and may take into consideration the following four factors:~~

- ~~1) — consideration of the seniority of the employee(s) affected;~~
 - ~~2) — the nature of the services performed by the employee(s) affected or which the employee(s) affected are capable of rendering;~~
 - ~~3) — the importance of the service rendered to the City and the community;~~
- ~~and~~
- ~~4) — the availability of funds.~~

SECTION 3. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.