

COUNCIL AGENDA – FEBRUARY 17, 2015

SUBJECT: AMENDMENT TO EMPLOYEE PAY AND BENEFIT PLAN –
FIRE OFFICER SERIES


SOURCE: ADMINISTRATIVE SERVICES/ HUMAN RESOURCES

COMMENT: Within the scope of the Meyers-Milias-Brown Act, City representatives have concluded labor negotiations with the Fire Officer Series (FOS). City representatives and FOS have reached an agreement, and a written Memorandum of Understanding (MOU) has been executed restating current benefits as well as amendments pertaining to wages, benefits and working conditions.


City Council acceptance and approval of an executed MOU is most commonly demonstrated by Council authorization to change or amend, when applicable, those documents as are necessarily known to implement the points of agreement contained in the MOU.

RECOMMENDATION: That the City Council approve the attached draft resolution amending the Employee Pay and Benefit Plan.


Attachment: Draft Resolution



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Item No. 13

RESOLUTION NO. ____-2015

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
PORTERVILLE AMENDING THE EMPLOYEE PAY AND BENEFIT PLAN
FOR THE FIRE OFFICER SERIES

WHEREAS, the City Council has determined and reiterated that an Employee Pay and Benefit Plan, Classification Plan, Personnel System Rules and Regulations, Health Plan and Retirement Plan are essential for the proper administration of the City's affairs, including employee recruitment and retention, and for proper supervision of City Employees; and

WHEREAS, the City Council recognizes the necessity of amending and/or changing the contents of such plans and regulations from time to time, and of executing instruments to implement and to keep the provisions thereof current, and to maintain the relevancy of the same; and

WHEREAS, there has been concurrence on a Memorandum of Understanding with the Fire Officer Series for the period from July 1, 2014, until June 30, 2015, covering provisions to amend the Employee Pay and Benefit Plan, as they relate to employees holding positions represented by such recognized employee organization.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Porterville that the Employee Pay and Benefit Plan, for employees holding positions represented by the aforementioned recognized employee organization, is hereby amended as follows:

I. TERM OF MEMORANDUM OF UNDERSTANDING

Twelve months, from July 1, 2014, through June 30, 2015.

II. SALARIES

Effective the pay-period after the Memorandum of Understanding is fully executed, or as soon thereafter as possible, FOS employees shall receive a one-percent (1%) salary increase.

Effective concurrent with the implementation of FOS employees' two percent (2%) contribution towards healthcare coverage, FOS employees shall receive a one percent (1%) salary increase.

III. EMPLOYEE HEALTH BENEFIT CONTRIBUTIONS

Effective the pay-period after the Memorandum of Understanding is fully executed, or as soon thereafter as possible, FOS employees shall contribute two percent (2%) of the employees' base salary towards FOS employees' own medical coverage on the City's health plan.

Effective the pay-period after the Memorandum of Understanding is fully executed, or as soon thereafter as possible, contribution rates for FOS employees' dental and vision coverage, and contribution rates for FOS dependents' medical, dental and vision coverage shall be increased as set out in Exhibit A.

IV. EMPLOYEE HEALTH BENEFIT AMENDMENTS

The City shall implement changes to the healthcare benefit of FOS employees as set forth in Attachment 1 and Exhibits. Said changes may be subject to minor modification, to the benefit of the employees, as and when all City bargaining units approve them. Further, said changes to the employees' healthcare benefit shall not become effective until such time as all bargaining units approve same.

V. ONE TIME OFF SCHEDULE PAYMENT

Effective concurrent with the implementation of FOS employees' contribution of two percent of employee's base salary towards healthcare, FOS employees shall receive a one-time payment equivalent to one percent (1%) of the employees' annual base salary.

VI. WORKERS COMPENSATION BENEFIT

Effective the pay-period after the Memorandum of Understanding is fully executed and officially approved, or as soon thereafter as possible, the Workers Compensation benefit provided to FOS employees shall be modified to provide no additional benefit other than those required by applicable State law. This item is separate and apart from any Carve-Out negotiations and/or agreement.

VII. FBOR APPEAL PROCESS

Effective the pay-period after the Memorandum of Understanding is fully executed, or as soon thereafter as possible, the disciplinary appeal process for classification represented by FOS shall be as set forth in Attachment 2 which is agreed to be consistent with FBOR Section 3254.5

VIII. ALTERNATIVE WORK SCHEDULE

At the discretion of the Department Head, the City agrees to allow some modifications to departmental work schedules for 40 hour work week employees, so long as the current level of service is delivered. This could be implemented on a trial basis, and may include 9-80 schedules or 4-10 schedules.

If at any time during the trial period of an alternative work schedule it becomes apparent that demonstrable impacts of the plan are not in the best interests of the City, or the safety and welfare of the residents thereof, or the health, safety and welfare of the employees assigned there to, and parties to this Memorandum of Understanding do hereby agree, at the request of either party, to meet and confer at the earliest time possible in an effort to reach concurrence for an equitable and reasonable resolution of any work schedule impacts demonstrably adverse to said interests of the City, the residents thereof, or the employees involved. Said adverse impacts may include, but are not limited to, problems associated with: declining productivity; staffing shortages; overtime costs; budget reductions; sick leave usage; accidents and injuries attributed to fatigue; significant increase in errors and/or accuracy; or applicable changes to State or Federal regulations affecting any operational premises upon which the alternative work schedule is based.

In the absence of equitable and reasonable solutions for the resolve of adverse impacts attributed to the alternative work schedule, or in the event the parties hereto fail to reach concurrence for the resolve of same within a reasonable period of time, then, and in that event, the City shall declare the trial period terminated and provide each employee involved in the alternate work schedule written notice of the effective termination date. Immediately upon termination of the alternate plan, work schedules will automatically revert to the previous scheduling.

IX. UNIFORM ALLOWANCE

The uniform allowance for FOS employees shall be increased to \$1,000 per year and disbursement shall be split to two payments of \$500 (pay-period ending on 6/30 and 12/31)

X. WORK-OUT TIME

For shift personnel, the City will provide one (1) hour per twenty four (24) hour shift for wellness and physical fitness training. Except where emergency circumstances will not allow it, every effort will be made to schedule such hour between 1100 and 1200 hours; provided that it is understood that, notwithstanding this time allotment, fire personnel shall continue to be expected and required to complete all normal and customary work assignments during the course of such twenty four (24) hour shift. This includes work assigned monthly.

XI. 48/96 SCHEDULE

If the City reaches an agreement with the Porterville City Firefighters Association (PCFA) regarding the implementation of the 48/96 schedule, the City will apply the same schedule to members assigned to the FOS (shift personnel).

XII. STATEMENT OF CONTINUING BENEFITS AND WORKING CONDITIONS

Benefits and working conditions as were previously agreed upon through the Meet and Confer process, and subsequently approved and implemented by appropriate authority shall, unless herein expressly modified or eliminated, remain in effect until such time as they are subsequently modified or eliminated through the Meet and Confer process and similarly approved by appropriate authority.

BE IT FURTHER RESOLVED that the Mayor of the City of Porterville is hereby authorized to execute those documents as are necessary to implement the provisions hereof.

PASSED, APPROVED AND ADOPTED this 17th day of February, 2015.

Milt Stowe, Mayor

ATTEST:
John Lollis, City Clerk

By: _____
Patrice Hildreth, Chief Deputy City Clerk



HEALTHCARE BENEFIT AMENDMENTS

February 3, 2015

Effective January 1, 2015, or as soon thereafter as possible, the City of Porterville ("City") proposes to amend the Employees' Healthcare benefits as follows:

1. An orthodontic benefit shall be added to the City's dental plan. Said benefit shall be for children up to age 19 only, and will have a lifetime maximum benefit of \$1,000 per child.
2. Dental implants shall be added as a covered benefit to the City's dental plan. The plan's current maximum limits shall apply to said covered benefit.
3. Progressive and transitional lenses shall be added as a covered benefit to the City's vision plan. All current maximum limits shall apply to said benefit.
4. Deductible rates for medical coverage (not including dental and vision) will increase from \$150 to \$175 for individual; and from \$300 to \$350 for family.
5. Dependent rate tier structure for medical coverage, and contribution rates for medical, dental and vision coverage shall be amended as set forth in the attached Exhibit A.
6. Co-insurance rates for out-of-network providers shall be increased from 20% to 30%. In-network rates shall remain at 20%.
7. Generic prescriptions shall be mandatory, unless specifically requested otherwise by the treating physician.
8. Mail order for all maintenance medication shall be encouraged.
9. The City shall make available Flexible Spending Accounts ("FSA") including a Healthcare FSA and Dependent Care FSA.
10. The City's Fitness Incentive Program shall be amended to eliminate quarterly fitness incentive testing. Instead, Employees who participate in the voluntary program shall receive incentive pay for verifiable healthy lifestyle choices. Eligible activities shall include verifiable regular physical exercise, completion of a certified weight loss or nutrition program, and completion of a certified smoking cessation program. The Risk Manager shall have the authority to approve or deny the eligibility of any and all proposed activities. The proposed program is more specifically set out in attached Exhibit B.

Proposed Medical Contribution Rates and New Tier Structure
All Bargaining Units
MOU 2014 - 2015

2/3/2015

MEDICAL

CURRENT MONTHLY	PROPOSED MONTHLY	
2011-Present		
Employee Only	\$0 Employee Only	2% of base salary
Plus 1	\$150 Plus Spouse	\$170
Plus 2 or more	\$230 Plus Child/children	\$160
	Plus Spouse & Child/Children	\$250
2005 - 2011		
Employee Only	\$0	
Plus 1	\$150	
Plus 2 or more	\$230	
1995 - 2005		
Employee Only	\$0	
Plus 1	\$150	
Plus 2 or more	\$230	

DENTAL

CURRENT MONTHLY	PROPOSED MONTHLY	
1995 - Present		
Employee Only	\$0 Employee Only	\$0
Plus 1	\$18.66 Plus Spouse	\$21.00
Plus 2 or more	\$25.55 Plus Child/children	\$27.00
	Plus Spouse & Child/Children	\$30

VISION

CURRENT MONTHLY	PROPOSED MONTHLY	
1995 - Present		
Employee Only	\$0 Employee Only	\$0
Plus 1	\$8.18 Plus Spouse	\$11.00
Plus 2 or more	\$19.03 Plus Child/children	\$9.00
	Plus Spouse & Child/Children	\$20

EXHIBIT A

REGULAR PHYSICAL EXERCISE

Monthly Incentive Rates

	"Good"	"Excellent"	"Superior"
Monthly Workouts	10-13 times	14-17 times	18 or more
Incentive Pay	\$30	\$40	\$50

- 1 A maximum of one workout per day shall be eligible. Further, eligible workouts must last at least one hour in duration and should include cardio exercise.
- 2 To be eligible, workouts must be verifiable (i.e. sign in/out sheets at City fitness facilities witnessed/signed by HR staff or employee supervisor; or printout provided from professional third-party gym/fitness membership/classes.)
- 3 To be eligible, participants must submit their completed workout logs (forms to be provided by HR) to HR by the 10th day of each month for the prior month. Incentive pay shall be disbursed to participants on a quarterly basis. Forms submitted after the 10th day, or not containing the appropriate supervisor/HR sign-off or verified third-party gym/class printout shall not be eligible.
- 4 Employees who knowingly sign and/or submit inaccurate/fraudulent sign in/out sheets or workout logs shall be prohibited from participating in the Regular Physical Exercise program for one year from the date of discovery. The Risk Manager maintains the right to make such a determination.

SMOKING CESSATION PROGRAM

Incentive Rate	A one-time payment of up to \$200
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Participating employees shall be eligible for a one time incentive payment up to \$200 for completion of a certified smoking cessation class which shall be pre-approved by the Risk Manager. Proof of completion must be provided to receive payment.

WEIGHT LOSS & NUTRITION PROGRAM

Incentive Rate	Two payments of up to \$50 per Calendar Year
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Participating employees shall be eligible for up to two payments of \$50 each per year for completion of a certified weight loss or nutrition program, which shall be pre-approved by the Risk Manager. Proof of completion must be provided to receive payment.

The Risk Manager shall have the authority to approve or deny the eligibility of any and all proposed programs.

FFBOR APPEAL PROCESS

The following administrative appeal procedures are adopted pursuant to Government Code §3254.5 of the Firefighters Procedural Bill of Rights Act ("FFBOR"). In the event that the FFBOR is amended to allow an administrative appeal in accordance with the standard procedure of the City's Personnel Rules and Regulations, this FFBOR administrative appeal procedure will revert back to such Personnel procedures to the extent permitted by law.

1. DEFINITIONS

- a. The term "firefighter" means an employee who is considered a "firefighter" under Government Code § 3251(a) except for the Fire Chief who is identified as such. For purposes of this policy, "firefighter" does not include anyone in a volunteer capacity. As referenced in Government Code § 3251(a), any employee who has not successfully completed the probationary period established by the City as a condition of employment, is not included in the definition of "firefighter" and is not covered under this procedure. The classifications of employees who are considered a "firefighter" under this policy include: Firefighter and Fire Engineer.
- b. The term "punitive action" means any action that may lead to dismissal, demotion, permanent reduction in salary, or suspension in excess of three (3) work days or one (1) shift (as may be applicable).

2. FIRE OFFICER RIGHTS TO CONFERENCE REGARDING DISCIPLINE

Any regular, full-time firefighter in the competitive City service shall have the right to a conference of disciplinary suspension, salary reduction, demotion, or dismissal. The employee shall follow the City Personnel Policy to initiate a review of a proposed disciplinary action to and through the completion of the Skelly process.

3. APPEAL OF A PUNITIVE ACTION NOT INVOLVING DISCHARGE, DEMOTION OR SUSPENSION IN EXCESS OF THREE (3) WORK DAYS OR ONE (1) SHIFT, AS MAY BE APPLICABLE OF A FIREFIGHTER

Pursuant to Government Code § 11445.20, the following informal hearing procedure shall be utilized for an appeal by a firefighter of a punitive action not involving a discharge, demotion or a suspension in excess of three (3) days or one (1) shift, (as may be applicable).

- a. Notice of Appeal – Within ten (10) calendar days of receipt by a firefighter of notification of punitive action as set forth above, the firefighter shall notify the Fire Chief in writing of the firefighter's intent to appeal the punitive action. The notice of appeal shall specify the action being appealed and the substantive and procedural grounds for the appeal.
- b. Presiding Officer – In an informal hearing, the City Manager or his/her designee shall be the presiding officer. The City Manager or his/her designee shall conduct the informal hearing in accordance with these procedures. The

determination of the City Manager shall be final and binding. If the City Manager cannot serve as the hearing officer because of actual bias, prejudice or interest as defined by Government Code § 11425.40, then the mediator from the California State Mediation and Conciliation Service shall serve as the Presiding Officer. In such cases, the determination of the Presiding Officer shall be final and binding.

- c. Burden of Proof - The employer shall bear the burden of proof at the hearing.

The Department shall have the burden of providing by a preponderance of the evidence the facts which form the basis for the charge and that the punitive action was reasonable under the circumstances.

- d. Conduct of Hearing -

- i. The formal rules of evidence do not apply, although the Presiding Officer shall have discretion to exclude evidence which is incompetent, irrelevant or cumulative, or the presentation of which will otherwise consume undue time.
- ii. The parties may present opening statements.
- iii. The parties may present evidence through documents and testimony.
 - aa. Witnesses shall testify under oath.
 - bb. Subpoenas may be issued pursuant to Government Code §§ 11450.05 – 11450.50.
 - cc. At the discretion of the Presiding officer, the parties may be entitled to confront and cross-examine witnesses.
- iv. Following the presentation of evidence, if any, the parties may submit oral and/or written closing arguments for consideration by the hearing officer.

- e. Recording of the Hearing - The hearing shall be audio recorded. The cost to receive a transcript of the hearing shall be borne by the party requesting the transcript.

- f. Representation - The firefighter may be represented by an association representative or attorney of his or her choice at all stages of the proceedings. All costs associated with such representation shall be borne by the firefighter.

- g. Decision - The decision shall be in writing pursuant to Government Code §11425.50. The decision shall be served by first class mail, postage prepaid, upon the firefighter as well as his/her attorney or representative, shall be

accompanied by an affidavit or certificate of mailing, and shall advise the firefighter that the decision is final and binding.

4. FIRE OFFICER RIGHTS TO APPEAL DISCIPLINARY DECISION INVOLVING DISCHARGE DEMOTION OR SUSPENSION IN EXCESS OF THREE (3) DAYS OR ONE (1) SHIFT, AS MAY BE APPLICABLE

A. Notice of Appeal

If the employee wishes to appeal the decision of the appointing authority, the employee must file a written Notice of Appeal, in a form acceptable to the City Manager, with the City Manager's Office within ten (10) working days after receipt of the appointing authority's decision.

1. The employee shall be entitled to a hearing before a Hearing Panel on the merits of the charges if the employee files a Notice of Appeal, and any such notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a Notice of Appeal shall constitute a waiver of the employee's right to a hearing.
2. The Notice of Appeal shall be in writing, signed by, or on behalf of, the employee and shall state the employee's mailing address.
3. The Notice of Appeal must:
 - a. State the reasons for the appeal
 - b. State the name of the employee's representative, if any.
 - c. State the employee's estimate of time necessary to present the employee's case to a Hearing Panel.
 - d. Specify any new matter to be presented during the employee's defense. No exceptions to the time period provided herein shall be permitted.

B. Hearing Panel

The Disciplinary Action shall be reviewed by a Hearing Panel. The employee shall cooperate to schedule a hearing within the time guidelines, and shall comply with the pre-hearing conference procedures as dictated by these rules and the Hearing Officer, including identification of witnesses and exchange of evidence. Upon preparing and filing the Notice of Appeal, the employee shall promptly identify a City employee to serve on the Hearing Panel.

1. One Hearing Panel member shall be a City employee selected by the appellant and one panel member shall be a City employee selected by the employee's Department Head. The third panel member shall be the Hearing Officer who will chair the Hearing Panel and conduct the hearing. If the Hearing Officer is not an attorney, the City Manager shall appoint a legal advisor who will advise the Hearing Officer on the admissibility of evidence.
2. Selection of the Hearing Officer
 - i. The Hearing Officer shall be selected from a list of five (5) qualified and experienced neutral Hearing Officers jointly developed by the City and the Bargaining Unit. This list shall be updated every two (2) years. In the event that a selected neutral can no longer serve as a Hearing Officer, the City and the Bargaining Unit shall immediately select a replacement. If the list is not updated

within two years, it shall remain in effect until the City and the Bargaining Unit are able to update it.

- ii. If the parties cannot agree upon the selection of a Hearing Officer, the parties shall select a Hearing Officer from the list of approved neutrals by rank and strike. The first strike will be determined by a coin flip, after which the parties will alternatively strike one name from the list until only one name remains.
3. No panel member may be otherwise involved in the appeal nor may they be a witness to the facts underlying the action.
4. The Hearing Officer shall chair the Hearing Panel. If the Hearing Officer is not an attorney, the City Manager shall appoint a legal advisor who will advise the Hearing Officer on the admissibility of evidence. Said legal advisor shall be subject to disqualification for any of the grounds listed in Government Code Sections 11425.30 and 11425.40.
5. Failure on the part of the City or the appellant to appear before the Hearing Panel, without good cause as determined by the Hearing Officer, shall result in forfeiture of the case.

C. Hearing Panel Procedure

The following procedures shall apply to hearings conducted before a Hearing Panel

1. Setting the Hearing. Upon receipt of the Notice of Appeal, the City shall contact the members selected for the Hearing Panel and ascertain presently available dates when the panel members might be available to conduct a formal disciplinary hearing pursuant to these Rules. The City shall notify the employee of the panel's available dates, and work with the employee or the employee's representative to schedule all hearing-related matters.
2. Although it is the employee who is appealing the disciplinary decision, the burden of proof is on the City regarding the facts upon which the discipline was based and the correctness of the penalty imposed.
3. The Appellant's failure to appear at the hearing, or failure on more than one occasion to cooperate with the scheduling of the hearing and the pre-hearing conference procedures, or to abide by the hearing processes necessary to enable the matter to be timely heard, without good cause as determined by the Hearing Officer, shall result in forfeiture of the case or be deemed an abandonment of the appeal.
4. The Hearing Officer will provide written notice to the employee and his/her representative upon the first incidence of their failure to cooperate. If, within five (5) workdays, the employee fails to correct the problem that triggered the notice, such failure shall be deemed a separate incidence of failure to cooperate.
5. The hearing will be closed to the public unless the employee requests in writing that it be open to the public. Notwithstanding, where a hearing is open, either party may request that the Hearing Officer close portions of the hearing where sensitive or confidential or sensational material may be presented or discussed. The employee's department may be represented by counsel and/or have a lay representative present throughout the proceeding.
6. All witnesses who are not parties may be excluded from the hearing by the Hearing Officer except when testifying. If the employee does not testify in his or her own behalf, the employee may be called and examined as an adverse witness.

7. All testimony shall be taken under oath or affirmation.
8. The hearing is not required to be conducted according to technical rules relating to evidence and witnesses. Any evidence upon which reasonable persons might rely in the conduct of their everyday affairs may be admitted. Subject to the provisions herein regarding pre-hearing conferences, any relevant evidence shall be admitted if it is the sort of evidence which responsible persons are accustomed to rely upon in the conduct of serious affairs. Hearsay evidence may be used only for the purpose of explaining or supplementing other evidence, or where otherwise corroborated. Persons who provide direct testimony may be called by the other party for cross examination under oath. Cross examination shall be limited to those areas covered in their prior testimony, unless the Hearing Officer permits otherwise. The Hearing Officer controls which evidence is admitted, and may exclude evidence which is irrelevant, cumulative or otherwise found to be not probative.
9. The proponent of any evidence is responsible for obtaining and presenting the evidence in a clean and legible fashion, and is responsible for having available sufficient copies of the evidence for all parties, including the Hearing Panel members and the court reporter.
10. The Hearing Officer may take official notice of any matter which may be judicially noticed.
11. Each party shall have the right to subpoena witnesses. The City Manager will, on request, issue blank subpoenas.
12. Except for rebuttal testimony, modification of position statements or newly discovered facts, documents or witnesses, information not shared at the pre-hearing conference shall not be presented to or considered by the Hearing Panel. The Hearing Officer may, but is not required to, modify this provision and permit such evidence for good cause and in a manner which is fair to both parties.
13. A certified Court Reporter shall record all testimony.
14. The City Manager may promulgate such additional hearing procedures as he/she deems necessary, and as are agreed to by the parties.
15. The Hearing Officer shall be responsible for preparing and issuing the written decision of the Hearing Panel. During the process of producing the Hearing Panel's written decision the Hearing Officer may be assisted by appointed counsel.
16. The decision of the Hearing Panel shall be by majority vote and shall be made in writing within thirty (30) calendar days after the hearing of the matter is concluded. The decision of the Hearing Panel is final and binding on all parties.
17. The decision shall be signed by the Hearing Officer, who shall provide a copy of Notice of Decision to the employee, the employee's representative, if any, to the employing department, and to the City Manager's Office. The Notice of Decision shall recite that the time within which judicial review of the decision must be sought is governed by the provisions of Code of Civil Procedure § 1094.6.