

ORDINANCE NO. O-4-09

AN ORDINANCE TO REPEAL AND REENACT WITH AMENDMENTS
CHAPTER 17 OF THE CITY CODE ENTITLED "PERSONNEL"

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that certain sections of Chapter 17 of the City Code, are hereby amended to read as follows:

ARTICLE I. IN GENERAL

Sec. 17-1. Definitions.

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Classified employee. Classified employees comprise all positions not specifically included by this section in the unclassified service. All ~~offices and~~ positions included in the classified service shall be subject to the adopted merit system rules and regulations.

Exempt employee. An exempt employee is any ~~classified or unclassified~~ employee who is employed in a bona fide executive, administrative or professional capacity as outlined by the Fair Labor Standards Act (FLSA), and who is not subject to the FLSA overtime pay and compensatory leave provisions of FLSA ~~the act~~.

Merit system. A system of personnel rules and regulations for classified employees which may provide for competitive examinations, the use of eligible lists, a classification plan, a compensation plan, a probation period, appeals by classified employees from termination, suspension or demotion ~~dismissal or other disciplinary action~~ and fringe benefits ~~vacation and sick leave regulations~~.

Non-exempt employee. A non-exempt employee is a ~~classified or unclassified~~ any employee who is not employed in a bona fide executive, administrative or professional capacity as outlined by the Fair Labor Standards Act (FLSA), and who is subject to the FLSA overtime pay and compensatory leave provisions of FLSA ~~the act~~.

Unclassified service employee. Unclassified service shall be comprised of public officials and employees in the following offices and positions and are not included within the merit system:

(a) Unclassified officials:

~~(1) The mayor, council members, either elected or appointed, and persons appointed to fill vacancies in these positions.~~

~~(2) The heads of all offices, departments and agencies and~~
Members of city boards, and commissions and committees.

(b) Unclassified employees:

~~(1) The city manager, assistant city manager(s), and city attorney and the heads of all departments established by the city manager.~~

~~(2) Part-time, temporary, unpaid offices and positions, and employees by contract or agreement, but not including independent contractors and volunteers.~~

~~(c)~~

~~(d)~~

Sec. 17-2. Responsibility for administration.

The city manager or his designee shall have the responsibility for implementing the provisions of this chapter and the authority to issue regulations to administer the provisions of this chapter. The city manager shall also have the responsibility for establishing and modifying the classification and compensation plans and for the general supervision of the personnel system.

~~Sec. 17-3. Personnel records.~~

~~The city shall keep personnel records for its employees as required by pertinent federal, state and local laws, and as the city manager shall determine necessary. The city manager shall be the custodian of all such records.~~

ARTICLE II. COMPENSATION AND BENEFITS

Sec. 17-34. Fringe Medical, dental and other insurance benefits.

(a) The city may pay or contribute to the cost of benefits, including, but not limited to, group medical, dental, life and disability or other insurance benefit plans for all employees, elected officials, retirees and retiree and disabled surviving spouses and eligible dependents eligible to participate as defined in the personnel rules and regulations, benefit plan documents. (hereafter "eligible employees"). Coverage may be secured for dependents of eligible employees on a family plan basis, in which case, the city will pay a portion thereof as determined by resolution of the city council. Payments shall be deducted from the employees' compensation for the remaining amount.

(b) The city may establish and pay or contribute to the cost of retirement plans for all employees and elected officials eligible to participate as defined in the personnel rules and regulations.

(c) The city may establish leave for classified and unclassified employees as defined in the personnel rules and regulations.

~~The mayor and members of the city council may elect to join or become members of any group medical or dental plan offered to eligible employees of the city on an individual or family plan basis provided that the subscriber pays the full cost of coverage without contribution or reimbursement from the city. The city may pay or contribute to the cost of any other insurance benefit plans for the mayor and members of the city council as determined by resolution of the city council.~~

~~(b) Medical, dental, and other insurance benefits will be provided to retired and disabled employees on the same basis as for active employees. Life insurance will be carried in the amount in force on the date of retirement or disability, or as modified by the terms of the group policy. When eligible therefor, Medicare Part A and Medicare Part B shall become the primary medical insurance carrier and the city's insurance carrier shall become the supplemental and secondary medical insurance carrier. The city may pay or contribute to the cost of the supplemental and secondary insurance, but shall not pay any of the Medicare premium. In the event of the death of a retiree or disabled employee, the surviving spouse may continue coverage under the benefit plans available to retirees as if he/she was the retiree, under the same terms and conditions as the retiree, except that the surviving spouse may only cover other dependents who were eligible for coverage at the time of the retiree's death, including an unborn child.~~

~~The mayor and members of the city council who leave city service may continue medical, dental, and/or other insurance benefits through the city's group plans provided they are eligible therefor and provided they have served as mayor and/or member of the city council for a cumulative total of eight (8) years prior to leaving city service.~~

~~Benefits added after an employee's retirement/disability date, or after the date a mayor or a member of the city council leaves city service, will not be provided to the retiree/disabled employee or mayor or member of the city council.~~

~~(c) For purposes of this section, disabled means being eligible to receive benefits under the city's long-term disability program.~~

~~(d) For purposes of this section, an employee may retire under the General Retirement Plan at age fifty (50) years with at least fifteen (15) years of service provided that the total of age (in years) plus years of service shall equal at least seventy five (75). An employee may, at his option, use his accumulated sick leave as additional service to meet eligibility requirements. Any sick leave so used would not then be subject to a payment therefor as specified in section 17-127.~~

~~(e) For the purposes of this section, an employee may retire under the Early Retirement Plan at age forty six (46) years with at least twenty (20) years of service. When an employee retires under the Early Retirement Plan, the employee who elects to continue medical and/or dental insurance coverage through the city shall contribute five (5) percent more in employee share cost of premiums than paid by employees in the General Retirement Plan. All other benefits afforded to employees retiring under the General Retirement Plan shall be afforded to employees retiring under the Early Retirement Plan. An employee under the Early Retirement Plan may at employee's option use accumulated sick leave as additional service to meet eligibility requirements. Any sick leave so used would not then be subject to a payment therefor as specified in section 17-127 of this chapter.~~

Sec. 17-~~45~~. Conflicts with law enforcement officers' bill of rights.

In the event of any conflict between this chapter and the law enforcement officers' Bill of Rights (Article 24, sections 727 to 734D of the Annotated Code of Maryland), the latter shall prevail.

~~Secs. 17-6-17-25. Reserved.~~

ARTICLE II. CLASSIFICATION PLAN

Sec. 17-~~526~~. Classification Plan. Establishment of classifications.

The city manager shall classify all those positions in the city service which are required by section 60 of the Charter to be classified. The classification plan may contain a specification of the duties and responsibilities of positions in each class and the qualifications required for appointment.

Except as provided in the Charter, all unclassified employees hired or appointed after June 30, 2009 shall serve at the pleasure of the city manager.

~~Sec. 17-27. Class descriptions.~~

~~The classification plan may contain a specification of the duties and responsibilities of positions in each class and the qualifications required for appointment. Such specification shall not be held to exclude other duties or responsibilities not mentioned, if such other duties and responsibilities are similar as to kind and quality.~~

~~Sec. 17-28. New positions.~~

~~The city manager shall study the duties and responsibilities of each new position as it is created and place it in the appropriate classification.~~

~~Sec. 17-29. Changes in duties and responsibilities of positions.~~

~~Whenever a department head makes a substantial change in the permanent duties or responsibilities of a classified position, he shall report such change to the city manager, who may place the position in a different class.~~

~~Sec. 17-30. Periodic review of classifications.~~

~~The city manager, as part of the annual budgetary process, shall periodically review the classification of positions and, as a result, may combine existing classes or establish new ones, or reclassify positions as the needs of the city may require.~~

~~Sec. 17-31. Reserved.~~

~~Secs. 17-32--17-45. Reserved.~~

~~ARTICLE III. RECRUITMENT AND EMPLOYMENT~~

~~Sec. 17- 646. Equal employment opportunity.~~

~~All personnel actions shall be based on merit and ability and no person shall be discriminated against on the basis of race, color, sex, sexual orientation, gender identity, ancestry, age, religion, national origin, marital or parental status, disability or serious medical condition handicap in practices involving recruitment, selection, training, promotions, transfers, disciplinary action and other terms and conditions of employment.~~

~~Sec. 17-47. Job openings and applications for employment.~~

~~Applications for employment shall be accepted at any time. As a result of a single employment application, candidates may be considered for all positions for which they are qualified. Each candidate for employment shall make application in the manner prescribed by the city manager or his designee.~~

~~Sec. 17-48. Selection procedures.~~

~~(a) The fitness and relative ability of applicants shall be examined in one or more of the following ways:~~

~~(1) An evaluation of education, training and experience as shown on the application or by other information submitted;~~

~~(2) An interview;~~

~~(3) A pre-employment physical examination;~~

~~(4) Verification of ability and character through checking with references;~~

~~(5) Any testing procedures established for the particular position.~~

~~(b) Selection procedures for any classified position shall be approved by the city manager and shall apply to all applicants for that position.~~

~~Sec. 17-49. Physical examinations.~~

~~The city manager may require every applicant for a position in the city service, prior to appointment, to complete successfully a physical examination by a physician designated by the city. The city shall bear the cost of such an examination. The city manager may for good cause require an employee, after appointment, to complete successfully a physical examination relating to the employee's fitness for duty. The city shall bear the cost of such an examination.~~

~~Sec. 17-50. Restriction concerning supervision of relatives.~~

~~No supervisor of a permanent full-time classified employee who is related to such employee by blood or marriage shall make recommendations or decisions directly affecting such employee's regular pay, any awards to the employee, job classification, promotion, transfer or disciplinary actions amounting to suspension, demotion or dismissal. In such matters enumerated herein, recommendations and decisions shall be made by the next highest level supervisor or the city manager. For purposes of this section, "related" shall mean being a parent, spouse, brother, sister, son, daughter, grandparent, uncle or aunt.~~

~~Sec. 17-51. Probation period.~~

~~After the effective date of this section, every classified employee except police officers shall be on probation for the first twelve (12) months of his employment. During such twelve (12) months, the probationary period may be extended for a maximum of an additional six (6) months by the city manager. The employee's department head may request the extension, or the city manager may extend the period without such a request. The probation period shall be used for closely observing the employee's work, for obtaining the most effective adjustment of the employee in his position and for the rejecting and termination of any employee whose performance does not meet the required standards. A classified employee who successfully completes this probationary period shall be referred to in this chapter as a permanent employee. During the probation period, employees may use accrued sick and annual leave and any earned compensatory leave. Any probationary employee who believes that he or she has been discriminated against in the course of their employment on account of race, creed, color, sex, age, national origin, handicap, or marital status may follow the provisions set forth in Article VI of this chapter. No other appeal rights are provided to probationary employees.~~

~~Sec. 17-52. Performance evaluations.~~

~~An evaluation system may be introduced by the city manager for the purpose of appraising employee performance. Performance evaluation may be used by department heads and the city manager as a basis for more effective personnel control. The quality of service rendered by the employee in the past will, in any case, receive due consideration in such personnel matters as promotions, transfers, demotions, lay-offs, dismissals and salary adjustments. Performance evaluations, where used, shall be reviewed by the employee, but such evaluations may not be seen by unauthorized persons.~~

~~**Sec. 17-53. Travel and moving expenses.**~~

~~(a) *Travel, conference, etc., expenses.* With the approval of the city manager, travel expenses may be reimbursed or advanced to employees or municipal officials attending authorized municipal or professional meetings and conferences or on official business of the city outside of the city. Such expenses shall include registration, transportation, meals and lodging. The payment of expenses of any other persons who are not employees of the city must be authorized by the city manager.~~

~~(b) *Moving expenses for new employees.* When specifically authorized by the city manager, all or a portion of the moving expenses incurred by new employees moving to the city to accept employment may be borne by the city. Allowable expenses shall include interview transportation costs and transportation charges for moving household belongings.~~

~~**Sec. 17-54. Outside employment.**~~

~~No classified employee of the city may engage in additional employment without express written permission of the city manager. The standards of such employment shall be based on whether outside employment will cause or could cause a conflict of interest and whether such outside employment will interfere with the employee's performance of the duties and responsibilities of his position.~~

~~**Sec. 17-55. Hours of work.**~~

~~The established number of hours of work constituting a normal work week for classified employees shall be designated by the city manager. Different work groups may have different work schedules, and the total number of hours worked per week need not be the same for all work groups.~~

~~**Sec. 17-56. Employee complaints.**~~

~~(a) *Permanent classified employees.* All complaints which any permanent classified employee may have because of any action~~

accordance with the following:-

~~(1) The employee shall discuss the complaint with his immediate supervisor to effect a settlement.~~

~~(2) A complaint not so settled shall be presented in writing by the employee to the supervisor. The employee may appear before the supervisor in his own behalf.~~

~~(3) The supervisor shall write a disposition of the complaint and send a copy to the employee and the respective department head within two (2) working days after receipt of the written complaint or the appearance of the employee, whichever is later.~~

~~(4) If the employee is not satisfied with that disposition and if the supervisor is not the department head, the employee shall present the complaint in writing to the department head, who shall have three (3) working days in which to write a disposition of the matter with reasons therefor. The employee may appear before the department head to discuss the matter. If the matter has not been resolved under previous steps, a written complaint may be made to the city manager.~~

~~(5) Within five (5) days after receipt of a complaint, the city manager shall call a meeting, which will include the department head, the complainant and any other persons involved in the complaint. The city manager will preside at the meeting and hear the entire case and obtain all the facts. The city manager will make a written report of the decision, which shall be delivered to the employee and the department head. The city manager's decision shall be final for all situations other than those stated in section 17-56.~~

~~(b) *Unclassified temporary full-time or permanent part-time employees.* Any permanent part-time or temporary full-time employee who has been dismissed and/or who believes that he has been discriminated against in the course of his employment with the city on account of race, creed, color, sex, age, national origin, handicap or marital status, may follow the provisions set forth in Article VI of this chapter. No other appeal rights are provided to such employee.~~

Secs. 17- 47 – 17-56. Reserved.

Sec. 17-57. Personnel review board.

~~(a) The city council shall be empowered to act as the personnel review board for the city until such time as the establishment of such board and the appointment of members thereto. In the event that the city~~

~~council shall act as the personnel review board, the provisions of Article VI of this chapter shall apply, with the exception that any action on an appeal shall be a final decision, not a recommendation, and shall not require further hearings.~~

~~(b) The personnel review board shall consist of three (3) members, to be appointed by the mayor with the approval of the council. Each member shall be appointed to a three-year term; except, that the first appointments shall be made in such fashion that no more than one term expires in any one year. One member of the board may be, but need not be, a member of the council. All members of the board shall be subject to removal at any time upon a vote of the majority of the council. The personnel review board shall have such duties and responsibilities as are stated in this chapter and as may be assigned to it from time to time by the city council by resolution.~~

~~Sec. 17-58. Department heads and city manager.~~

~~(a) Department heads shall be permanent unclassified employees appointed by the city manager to administer departments and offices of the city government. Department heads shall have the benefits of, be subject to and be governed by the provisions of this chapter to the same extent as classified employees.~~

~~(b) The following sections of this chapter shall apply to the city manager: 17-4, 17-46, 17-48, 17-50, 17-122 through 17-126, 17-127, 17-128, 17-129, except the last paragraph thereof, 17-130 and 17-131.~~

~~Secs. 17-59-17-85. Reserved.~~

ARTICLE IV. COMPENSATION PLAN

Sec. 17-786. Annual recommendations by city manager and approval.

The city manager shall present once each year, as part ~~not later than the submission~~ of the annual budget, a proposed compensation plan for the next succeeding fiscal year. Such plan shall be deemed to be approved by the city council unless it is modified by the council as part of ~~prior to~~ the adoption of the budget. Such plan shall establish minimum and maximum rates of pay for each classification.

~~Sec. 17-87. Purpose of plan; comparative studies by city manager.~~

~~The purpose of the compensation plan is to provide fair compensation for all classes in light of rates of pay for similar~~

~~jurisdictions in the area, the financial condition of the city and other factors. To this end, the city manager shall make comparable studies of all the factors affecting the level of salary ranges as part of the annual budgetary process.~~

~~Sec. 17-88. Salary and wage increases.~~

~~Salary and wage increases are not automatic, but shall be based on work performance as reflected in periodic performance evaluations, giving due consideration to length of service. No increases shall be made by the city manager except upon the recommendation of the department head in writing, which shall include a justification for the increase and a performance evaluation of the employee.~~

~~Sec. 17-89. Awards for outstanding service.~~

~~An employee who performs the duties and responsibilities of his position in an outstanding manner and whose work generally is well above expectations shall be eligible to be considered for an outstanding service award. Such award shall be initiated by the employee's department head, who shall submit a statement in writing setting forth the reason(s) for recommending such award to the city manager.~~

~~Sec. 17-90. Pay rates in promotion, demotion or transfer.~~

~~When an employee is promoted, demoted or transferred, the employee's rate of pay in the employee's new position shall be established by the city manager.~~

~~Sec. 17-91. Pay for temporary and part-time work.~~

~~The city manager shall determine the basis upon which temporary and part-time employees shall be paid.~~

~~Sec. 17-92. Fair Labor Standards Act, minimum wage, overtime pay, and compensatory leave.~~

~~(a) *Permanent classified employees.* Any classified non-exempt employee shall be entitled to compensation at the rate of one and one-half (1 1/2) times the normal rate of compensation for hours actually worked in excess of the normal work week, except as otherwise provided herein, subject to the following conditions:-~~

~~(1) One and one-half (1 1/2) time compensation shall be paid for positions eligible for paid overtime as identified by the city manager for actual hours worked in excess of the normal work week; for the purpose~~

~~of this section, actual hours worked shall include holidays, annual leave approved in advance and approved sick leave.~~

~~(2) Overtime hours worked must be required by an actual emergency or such other unusual circumstance requiring the assignment of employees to overtime hours of work and must be authorized by the department head and approved by the city manager. Compensation for overtime work without prior approval may be authorized by the city manager when the work is deemed to be in the best interest of the city.~~

~~(3) Twice the normal rate of compensation shall be paid for overtime hours occurring on Sunday in excess of the normal work week, and for work performed on an official city holiday.~~

~~(4) As determined by the city manager, compensatory leave time may be granted in lieu of overtime pay at the same rate as overtime pay is awarded to positions eligible for compensatory leave time as identified by the city manager. Accumulated compensatory leave time shall be subject to the provisions of section 17-93.~~

~~(5) Classified exempt employees whose positions or regular duties involve working beyond the established work week as determined by the city manager shall not be eligible for overtime pay nor compensatory leave time, but may be eligible for other time off.~~

~~(b) *Unclassified full-time temporary employees.* Any unclassified full-time temporary employee who shall, with prior approval of his supervisor, work more hours in any week than his normal work week, as established by the city manager, shall be entitled to be compensated in cash at the rate of one and one-half (1 1/2) times his regular rate of pay.~~

~~Sec. 17-93. Accumulation of compensatory time.~~

~~Compensatory time may be accumulated up to a maximum of eighty (80) hours at the end of any calendar year subject to the provisions outlined below:~~

~~(1) Classified exempt employees will not be reimbursed for unused other time.~~

~~(2) Compensatory time in excess of eighty (80) hours accumulated at the end of a calendar year by a classified employee shall be paid at the rate of one and one-half (1 1/2) times regular rate of pay.~~

~~Sec. 17-94. Payment for compensatory time upon termination of employment.~~

~~Permanent classified non-exempt employees who have earned compensatory time and who resign, retire, are dismissed or are laid off shall be paid in full for unused compensatory time.~~

~~Secs. 17-95--17-120. Reserved.~~

ARTICLE V. LEAVE

~~Sec. 17-121. Leave of absence without pay.~~

~~In the discretion of the city manager, requests for leave of absence without pay for periods not to exceed six (6) months may be granted. In cases exceeding ten (10) working days, employees shall not earn annual or sick leave and will be required to pay the cost incurred by the city for their own hospitalization, life insurance, disability insurance and other fringe benefits.~~

~~Sec. 17-122. Official leave with pay.~~

~~The city manager may grant official leave with pay for the purpose of having employees attend professional meetings, technical conferences, short-term courses in matters relating to official duties or for other valid purposes. Such leave will not be deducted from any other leave earned by employees.~~

~~Sec. 17-123. Maternity leave.~~

~~Accrued sick leave may be used pursuant to the provisions of this chapter for any disability caused or contributed to by pregnancy, miscarriage, childbirth and recovery therefrom whenever an employee is unable to work. A pregnant full-time classified employee may continue to work whenever the pregnancy does not adversely impair the employee's work performance and such continuation at work does not conflict with the attending physician's advice. For purposes of sick leave use, a pregnant full-time classified employee, who does not wish to work, shall be presumed to be temporarily disabled for the performance of duty commencing at approximately six (6) weeks before the anticipated date of birth and ending not more than eight (8) weeks after the date of birth; provided, that the employee shall submit two (2) written certifications from the attending physician, one verifying approximate date of birth and one verifying the date of delivery. For other periods of the pregnancy, a full-time classified employee who is not able to report to work because of pregnancy or childbirth complications of the employee shall be eligible to use accrued sick leave. In such cases, the employee shall notify the department head or have someone else notify the department head on the first day of absence and at such other reasonable times following the first day of absence as may be required by the department head. Certification of use of sick leave requirements provided in this chapter shall be applicable to this type of use of sick leave.~~

~~Sec. 17-124. Jury leave.~~

~~Any employee called upon for jury service shall be granted leave for that purpose for each day that he is required to report for jury service and shall be paid for each such day his full salary. Where the release from jury service on any given day will permit an employee to reach his city office one hour or more prior to the end of his regular day, he shall report for work. Such leave will not be deducted from any other leave earned by the employee.~~

~~**Sec. 17-125. Military leave.**~~

~~Any classified city employee who is a member of any United States Military Reserve or National Guard Unit and is required to engage in training exercises will be granted military leave not to exceed two (2) weeks in any one year. Such employee, for each regular working day or holiday that he is required to engage in training, shall be paid his full regular salary. Such leave will not be deducted from any other leave earned by the employee. Leave without pay may be granted to a full-time employee called for military service other than training exercises.~~

~~**Sec. 17-126. Vacation leave.**~~

~~(a) Amount earned.—~~

~~(1) If hired before April 12, 1983, classified employees:~~

~~a. With three (3) years or less service shall earn vacation leave at the rate of one and one-fourth (1 1/4) days for each month of service;~~

~~b. Who have completed three (3) years of service shall earn vacation leave at the rate of one and one-half (1 1/2) days for each month of service, after their third year;~~

~~c. Who have completed six (6) years of service shall earn vacation leave at the rate of one and three-fourths (1 3/4) days for each month of service after their sixth year;~~

~~d. Who have completed nine (9) years of service shall earn vacation leave at the rate of two (2) days for each month of service after their ninth year.~~

~~(2) If hired on or after April 12, 1983, classified employees:~~

~~a. With three (3) years or less service shall earn vacation leave at the rate of one day for each month of service;~~

~~b. Who have completed three (3) years of service shall earn vacation leave at the rate of one and one-fourth (1 1/4) days for each month of service after their third year;~~

~~c. Who have completed six (6) years of service shall earn vacation leave at the rate of one and one-half (1 1/2) days for each month of service after their sixth year;~~

~~d. Who have completed nine (9) years of service shall earn vacation leave at the rate of one and three-fourths (1 3/4) days for each month of service after their ninth year;~~

~~e. Who have completed twelve (12) years of service shall earn vacation leave at the rate of two (2) days for each month of service after their twelfth year.~~

~~(b) Schedules. The city manager shall require that vacation schedules be prepared in advance and shall have the authority to adjust such schedules so as to maintain an effective working force at all times.~~

~~(c) Accumulation. Vacation leave in excess of thirty (30) days accumulated at the end of any calendar year shall be credited to accumulated sick leave.~~

~~(d) Crediting to employee. Vacation leave shall be credited to each employee after it is earned. No provision will be made for advance crediting of vacation leave.~~

~~(e) Payment for unused leave upon termination of employment. Classified employees who have earned vacation leave and who resign from the city service or are laid off may take such unused portion of vacation leave, or they may request payment in full for all unused vacation leave. Classified employees who are dismissed shall be paid for their unused vacation leave. In no event shall such leave, taken or paid for, exceed thirty (30) days.~~

~~(f) Payment for unused leave under unusual circumstances. In the city manager's discretion, a classified employee may receive payment for unused vacation leave under unusual circumstances; provided, that the classified employee requests such in writing, stating the unusual circumstances. Any such payment shall be reported promptly by the city manager to the city council.~~

~~**Sec. 17-127. Sick leave.**~~

~~(a) Amount per month; accumulation. All employees shall earn one and one-fourth (1 1/4) days of sick leave for each month of service. Sick leave may be accumulated with no maximum.~~

~~(b) *Use by employee.* Conditions under which sick leave may be taken are:~~

~~(1) Personal illness.~~

~~(2) Illness of a parent, spouse or child residing in the employee's household, not to exceed five (5) days in any one year.~~

~~(3) Quarantine.~~

~~(4) Visit to an outpatient unit, a doctor's office or a therapy session.~~

~~(5) Birth of a child, as specified in section 17-123 for female employees, or up to five (5) days for a male employee, to assist in the birth or care of such newborn child.~~

~~(c) *Proof of need.* Any employee who desires to use five (5) or more days of sick leave consecutively shall submit a certificate by a physician or other licensed medical or dental practitioner confirming the illness or injury and the employee's inability to report to work in order to be granted such leave. For periods of absence of less than five (5) workdays, caused by illness or injury, the employee's department head may accept the employee's oral statement as to the reason for the absence. However, the department head may, after consulting with the city manager, require written certification from a physician or other licensed medical or dental practitioner if it is deemed appropriate.~~

~~(d) *Advancements.* In exceptional cases, a classified employee with more than two (2) years' service may be advanced unearned paid sick leave up to a maximum of sixty (60) days of such leave upon recommendation of his department head and approval by the city manager. Written certification from a physician or other licensed medical or dental practitioner as required in section 17-127 shall be submitted prior to any authorization. In the event an employee who has been advanced unearned paid sick leave is terminated from city employment before such leave is earned by the employee, the remaining portion of unearned paid sick leave that has not been repaid to the city shall be deducted from the employee's final paycheck.~~

~~(e) *Payment for unused sick leave.* Upon retirement from the service of the city, a classified employee shall be paid one day's pay for every four days of sick leave which he has accumulated to his credit as of the date of his retirement. For the purposes of this section, the definition of "retirement" shall be that which is set forth in section 17-4 except that for employees employed on or before August 6, 1990, the definition of "retirement" shall be the termination of employment after either the attainment of age fifty-five (55) or the completion of twenty (20) years of service.~~

~~(f) Use when on annual leave. When an employee becomes ill or injured or quarantined while on annual leave, the period of such illness, injury or quarantine may be charged to sick leave, if the employee submits a written certification from a physician or other licensed practitioner confirming the illness, injury or quarantine and that such illness, injury or quarantine would have prevented the employee from reporting to work if the employee had been in a normal work status.~~

~~(g) Sick leave bank. The city manager shall have the authority to establish a sick leave bank which will provide for a central repository of sick leave.~~

Sec. 17-128. Personal leave.

~~Any permanent classified employee is eligible to use the equivalent to two (2) days of their sick leave each calendar year to attend to personal obligations. If the personal leave days are not used during the calendar year, they shall convert back to accrued sick leave.~~

Sec. 17-129. Holidays.

~~(a) The following days shall be official city holidays: New Year's Day; Dr. Martin Luther King, Jr. Day; Presidents' Day; Memorial Day; Independence Day; Labor Day; Veteran's Day; Thanksgiving Day; Thanksgiving Friday (in lieu of Columbus Day); and Christmas Day. Additionally, all eligible employees shall be entitled to one and one-half days off as floating holidays each year with prior approval from their department head. The city manager is authorized to designate additional days as official city holidays; provided, that the manager shall first notify a majority of the members of the council.~~

~~(b) When a holiday falls on a Sunday, the following Monday shall be observed as an official holiday. When a holiday falls on a Saturday, the preceding Friday shall be observed as an official holiday. Except as otherwise provided herein, classified employees shall be granted holiday leave on each official holiday. Holiday leave will not be deducted from any other leave earned by the employee.~~

~~(c) Any classified employee whose duties require him to work on one of the holidays specified herein shall be paid, in addition to his regular pay for the hours worked, twice his normal pay for the hours worked in excess of the normal work week. For the purpose of this section, actual hours worked shall include holidays, annual leave approved in advance and approved sick leave under such rules as may be established by the city manager. At the discretion of the city manager, compensatory leave may be awarded, at the same rate, in lieu of hours worked on a holiday.~~

~~Sec. 17-130. Bereavement leave.~~

~~Any classified employee shall be granted three (3) working days off with pay immediately following the death of the employee's spouse, any child, parent, brother or sister, or any blood relative residing in the employee's household. A classified employee shall be granted one working day off with pay following the death of a grandparent, not living in the employee's household, or a grandchild, mother-in-law or father-in-law. The first two (2) days of additional time off shall be charged to sick leave. Any further time off will be charged to vacation leave. The three (3) or one working days off allowed in the case of death in the employee's family shall not be chargeable to either sick leave or vacation time.~~

~~Sec. 17-131. Workers' compensation for disability.~~

~~In the event an employee shall be temporarily totally disabled by an injury while on the job for the city, he shall receive his regular rate of pay, not to exceed ninety (90) days. Any workers' compensation payments other than those for medical expenses during the period of temporary total disability shall be submitted to the city. No charge shall be made against any accrued leave time during the period of such temporary disability.~~

~~Secs. 17-32-17-150. Reserved.~~

ARTICLE III VI. APPEALS LAYOFFS, DEMOTION, SUSPENSION AND DISMISSAL

~~Sec. 17-151. Layoffs.~~

~~(a) The city manager is authorized to release any employee on the city payroll because of lack of work or funds or abolishment of position. The city manager will consider first the types of activities to be curtailed and the classes of positions thereby affected and will then proceed to the selection of individual employees to be released.~~

~~(b) Employees' previous service will be a factor in determining the order in which employees should be released.~~

~~(c) The possibility of demoting employees in higher classifications to lower classifications for which they are qualified and laying off those in the lower classifications will also be considered.~~

~~Sec. 17-152. Dismissal, suspension or demotion.~~

~~(a) *General regulations.* The city manager may dismiss, suspend with or without pay or demote any permanent classified employee at any time for any of the following reasons:~~

~~(1) The employee has been convicted of a felony, or of a misdemeanor involving moral turpitude.~~

~~(2) The employee has willfully, wantonly, unreasonably, unnecessarily or through gross negligence been guilty of brutality or cruelty to a person in custody.~~

~~(3) The employee has violated any of the provisions of this chapter or any laws, ordinances or regulations of the city.~~

~~(4) The employee has violated any lawful official city regulation or order or failed to obey any proper direction made and given by a superior officer.~~

~~(5) The employee has possessed, distributed or used illegal drugs/intoxicants, or misused legal drugs at the city's workplace.~~

~~(6) The employee has been guilty of insubordination or of disgraceful conduct, either on or off duty.~~

~~(7) The employee has been offensive in conduct and language in public or towards the public, city officials or employees, either on or off duty.~~

~~(8) The employee has been afflicted with any disease or has any mental or physical ailment or defect which, in the opinion of the city manager and the department head, makes the employee unfit for the assigned position.~~

~~(9) The employee is careless or negligent with money or other property of the city.~~

~~(10) The employee is incompetent or inefficient in the performance of assigned duties.~~

~~(11) The employee has failed to pay or make reasonable provisions for future payments of personal debt to such an extent that such failure shall be detrimental to the city service.~~

~~(12) The employee has used, threatened to use or attempted to use personal or political influence in securing promotion, leave of absences, transfer, change of rate of pay or nature of work.~~

~~(13) The employee has induced, or has attempted to induce, an officer or employee in the service of the city to commit an unlawful act or to act in violation of any lawful departmental or official regulation or order.~~

~~(14) The employee has taken for personal use, from any person, any fee, gift or other valuable thing in the course of work or in connection with it, when such gift or other valuable thing is given in the hope or expectation of receiving a favor or better treatment than that accorded other persons.~~

~~(15) The employee has engaged in political activity during working hours or while representing the city in an official capacity.~~

~~(16) The employee has misrepresented material facts relating to the use of sick leave.~~

~~(17) The employee has committed acts detrimental to the good order, discipline and repute of the city or the city service.~~

~~(b) *Hearing.* Before dismissing, suspending, demoting or laying off a permanent classified employee, the city manager shall provide the employee a reasonable opportunity to be heard; provided, that an employee may be suspended without a hearing when, in the city manager's judgment, immediate suspension is required.~~

~~Sec. 17-153. Fringe benefits during suspension.~~

~~Any classified employee who is suspended, whether with or without pay, shall be entitled to all fringe benefits and shall continue to earn vacation leave and sick leave during the period of suspension.~~

~~Secs. 17 – 151 – 17 – 152. Reserved.~~

Sec. 17-8153. Personnel Board.

The personnel review board shall consist of three (3) City residents who are not City employees, to be appointed by the mayor with the approval of the council. Each member shall be appointed to a three-year term; except, that the first appointments shall be made in such fashion that no more than one term expires in any one year. All members of the board shall be subject to removal at any time upon a vote of the majority of the council.

Sec. 17- 9154. Filing of appeal.

Any All permanent classified employee, as well as any department head or assistant city manager hired or appointed prior to June 30, 2009, who has been suspended, demoted, laid-off or terminated dismissed, or who claims to have been discriminated against in the course of his employment on account of race, creed, color, sex, age, national origin or handicap, may file an appeal in writing to the personnel review board and may request a hearing thereon. Such appeal shall state the pertinent facts relative to the action which is being appealed and shall be signed by the employee and filed with the personnel review board within five (5) days after receipt by the employee of the notice of such suspension, demotion or termination, layoff, dismissal or discriminatory action.

Sec. 17- 10455. Consideration of appeal; setting date for hearing.

If no request for hearing is contained in such appeal, the personnel review board, after making such investigation as it deems necessary, shall make and file with the city council its recommendation with reference thereto. If a request for hearing is contained in such appeal, a hearing shall be had thereon within twenty (20) days after the filing of such appeal, at such time and place as shall be fixed by the personnel review board. Such hearing shall be ~~open~~ closed to the public ~~or closed to the public if~~ unless the appellant employee shall so request an open hearing in writing. If the employee appellant makes ~~no~~ such request, the board may determine whether the hearing will be open or closed to the public.

Sec. 17- ~~11156~~. Hearing.

(a) *Notice.* Notice of the time and place of the hearing shall be given promptly by the city manager to the employee ~~appellant~~ at least five (5) days prior to the date of the hearing by mail, addressed to the employee appellant at the last known post office address for the employee appellant.

(b) *Postponement; failure to appear.* The hearing may be postponed only upon good cause shown, and in the event that the employee appellant shall fail to appear in person or by counsel at the hearing, it shall be presumed that the employee appellant has waived the right to a hearing.

(c) *Representation of employee ~~appellant~~.* The employee appellant may be represented by counsel.

(d) *Conduct.* The hearing shall be conducted in an orderly manner, with a view to the presentation of all material facts so that a fair and impartial decision may be made. The personnel review board shall have full authority at all times to maintain orderly procedure and to limit the hearing to relevant facts.

Sec. 17- ~~12157~~. Recommendation of personnel review board, further hearing action by city council.

Promptly after the conclusion of the hearing, the personnel review board shall forward to the city council the appeal, all of the evidence received by it and its recommendation as to the appropriate action to be taken by the council. Copies of the recommendation shall be delivered to the city manager and the employee. The council shall consider the evidence and recommendation of the personnel review board and render a final decision. The meeting of the council to consider the appeal shall be closed to the public, unless the hearing

~~before the personnel review board was open to the public. The city council may, but shall not be required to, hold a further public hearing on the appeal, following reasonable notice to the employee and the city manager.~~

Sec. 17- 13158. Decisions of city council.

The decision of the city council shall be promptly reduced to writing and shall be filed with the city manager, and a copy shall be delivered to the employee. The city council may affirm, reverse or modify the action of the city manager.

Secs. 17 – 14 – 17-158. Reserved.

ADOPTED this 4th day of May, 2009 by the City Council of Gaithersburg, Maryland.

SIDNEY A. KATZ, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 4th day of May, 2009. APPROVED by the Mayor of the City of Gaithersburg, this 4th day of May, 2009.

SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the 4th day of May, 2009 and that the same was approved by the Mayor of the city of Gaithersburg on the 4th day of May, 2009

This ordinance will become effective on July 1, 2009.

Angel L. Jones, City Manager

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
Single strikethrough	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
Double boldface strikethrough	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>