RESOLUTION NO. 8290

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., amending Article VIII of the City of Topeka Personnel Code, relating to Non-Disciplinary Reductions in Force as set forth in Resolution No. 7758 as amended by Resolution No. 8235 and rescinding original said sections.

WHEREAS, Resolution No. 7758 set forth the City’s Personnel Code; and

WHEREAS, Resolution No. 8235 amended Section 2 of Article VIII of the Code; and

WHEREAS, it is necessary to further amend Article VIII of the Personnel Code.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS, that City of Topeka Personnel Code, Article VIII, Non-Disciplinary Reductions in Force, is hereby amended to read as follows:

ARTICLE VIII. NON-DISCIPLINARY REDUCTIONS IN FORCE

Section 1. Short Term Reduction in Force: Lay Offs.

A. General. A lay off is a temporary reduction in the work force due to a shortage of funds, lack of work, abolishment of a position or other material change in duties or organization. It differs from other forms of separation in that there is an anticipated reinstatement of the employee as soon as the conditions which necessitated the lay off are ameliorated. A lay off is intended to protect a regular, full-time employee’s tenure, related benefits and privileges.

B. Order of Separation.

1. Temporary and part-time employees shall be the first affected by a short term lay off.
2. The order of dismissal for regular, full-time employees shall be determined by a combination of performance, work skills and seniority.

   a. **Performance.** Employees with the highest consistent performance as compared to other employees over a comparable period of time shall be retained, provided they can perform the remaining available work based upon their particular work skills. Performance shall be determined through the following criteria:

      i. The employee’s last four (4) written performance evaluations, if in existence. However, this shall not include any evaluations given after any notice of lay off or within ninety (90) calendar days of such notice.

      ii. The history of an employee’s written disciplinary actions during the past three (3) years.

      iii. The employee’s written record of attendance for the past three (3) years, excluding FMLA leave.

   b. **Seniority.** If two (2) candidates are equal with regard to performance, seniority shall be used to determine the order of separation. Seniority is measured as the length of continuous unbroken service as a regular full-time employee of the City.

   c. The Human Resources Director shall attempt to effectuate the reassignment, transfer or demotion of an employee who is
faced with a lay off, provided that there are existing, vacant positions for which the employee is qualified.

d. The Human Resources Director shall establish by administrative rule and regulation a procedure for bumping.

C. Reemployment.

1. An employee who has been laid off shall have his or her name entered on a reemployment eligibility list and shall be given first consideration when a vacancy occurs in the same or similar position the employee last held. An employee’s name shall remain on a reemployment eligibility list for six (6) months.

2. An employee’s name may be removed from the reemployment eligibility list for any one (1) of the following reasons:

   a. Expiration. If the time limit for recall from the reemployment eligibility list expires, as detailed in the following schedule,

      | Time Limit For Recall As Determined By Length Of Service |
      | Year(s) Of Continuous Service (Employment) | Maximum Time Allowed On Lay Off For Recall |
      | 0 - 1 Year | 0 | Must be separated effective date of lay off |
      | 1 - 2 Years | 4 Weeks | Employees with 2 or more years of service from last date of employment, on lay off |
      | 2 - 3 Years | 8 Weeks | Employees with 2 or more years of service from last date of employment, on lay off |
      | 3 - 4 Years | 12 Weeks | Employees with 2 or more years of service from last date of employment, on lay off |
      | 4 - 5 Years | 16 Weeks | Employees with 2 or more years of service from last date of employment, on lay off |
      | 5 - 6 Years | 20 Weeks | Employees with 2 or more years of service from last date of employment, on lay off |
      | 6 - 7 Years | 24 Weeks | Employees with 2 or more years of service from last date of employment, on lay off |
      | 7 - 8 Years | 28 Weeks | Employees with 2 or more years of service from last date of employment, on lay off |
      | 8 - 9 Years | 32 Weeks | Employees with 2 or more years of service from last date of employment, on lay off |
      | 9 - 10 Years | 36 Weeks | Employees with 2 or more years of service from last date of employment, on lay off |
b. **Waiver.** After a period of eight (8) weeks, an employee may elect to waive the right to recall by signing a waiver form provided by the City. Employees who waive their right to recall shall immediately become eligible to receive severance pay.

c. **Forfeiture.** Employees forfeit the right to recall if they:

i. Refuse a job in a position that is not more than two (2) pay ranges below their position at the time of lay off.

ii. **Refuse/Fail to accept** recall within five (5) days of notice.

iii. Fail to answer written inquiries from the City’s Human Resources Director.

iv. Fail to advise the City of a change of address and/or telephone number.

D. **Reinstatement.**

1. **Wages.** If employees are recalled to their former position within six (6) months, they shall be paid at their previous rate of pay plus any across-the-board adjustments to which they would have been entitled had the lay off not occurred. If recalled to a lower position, employees shall receive compensation at a rate of pay consistent with the duties and responsibilities of that position.

2. **Benefits.**

   a. **Vacation.** When employees on lay off are recalled within the
time limits provided in this policy, they will then recommence to 
accrue and be entitled to vacation pay.

b. **Sick leave.** Any sick leave accumulated and not utilized at the
time of lay off will be reinstated at the time of recall.

c. **Seniority.** Employees retain seniority for the sole purpose that 
they be able to resume earning leave time immediately upon 
recall.

E. **Notice.**

1. **Regular, full-time employees.**

a. A department head shall give written notice to the employee 
and the City Manager of any proposed lay off and the reasons 
therefore at least five (5) working days prior to the separation, 
provided the employee is being laid off through no fault of his 
or her own.

b. This five (5) working day notification may be waived in lieu of 
five (5) days pay at the employee's straight time, base rate.

2. **Non full-time employees.**

a. A department head may notify temporary and/or part-time 
employees of the date of termination of employment in writing 
at the time of appointment.

b. Temporary or part-time employees may be notified of lay offs 
any time prior to the effective date of the lay off.

F. **Employee Benefits During Lay Off.**
1. **Vacation time.** An employee on lay off may elect to take any vacation and/or compensatory time which the employee has accrued prior to the lay off. Vacation time, however, does not accrue during the separation. Payment for vacation time taken during the lay off may be made by the City in equal increments on a pay period basis.

2. **Group Insurance.** An employee may elect to continue group insurance for eighteen (18) months. Timely payment of premiums will be the responsibility of the employee.

3. **Other benefits.** Additional benefits (holiday, health coverage, retirement contribution or other insurance) will neither accrue nor be paid during an employee's lay off.

G. **Grievance.** Lay offs and demotions necessitated by the conditions given forth in Section 1A of this article shall not be subject to grievance except to contest the order of reduction in force among affected employees.

Section 2. **Permanent Reduction In Force: Severance Pay.**

A. **General.** The purpose of the severance pay policy is to provide temporary relief to employees who have lost their job through no fault of their own. Such separation occurs for reasons such as but not limited to the following:

1. An employee is not recalled from lay off within the time limit set forth in C2a Section 1 C1;

2. An employee voluntarily waives the right to recall, as described in Section 1 C2b;

3. Work is eliminated and is not anticipated to be necessary in the
4. Work is reassigned to other employees; or
5. The qualifications for a position change.

Employees who are eligible for recall shall not be eligible to receive severance pay.

B. Order of Separation.
1. Temporary and part-time employees shall be the first affected by a layoff unless, in the judgment of the Human Resources Director, continued employment of temporary and/or part-time employees is a more fiscally responsible decision for the Department.
2. The order of dismissal for regular, full-time employees shall be determined in accordance with Section 1 B.

BC. Severance Pay.
1. Eligibility. Severance pay set forth herein is available only to employees who meet all of the following eligibility requirements:
   a. Employee’s position has been eliminated pursuant to the provisions of this Article, Sections 1 or 2 and the employee has waived the right to recall from the reemployment eligibility list;
   b. Employee has been employed with the City for one or more continuous years;
   c. Employee is not continuing to work for the City in a position of equal or greater job classification; and
   d. Employee has executed an agreement and complete release of
all claims against the City.

2. Amount.
   a. Eligible employees hired after December 31, 2010, shall be eligible to receive severance pay at the rate of one (1) week of salary for every year of service, pro-rated to the nearest month, but in no case less than four (4) weeks salary and in no case more than twenty-six (26) weeks salary.
   b. Eligible employees hired prior to January 1, 2011, shall be eligible to receive severance pay shall be compensated according to the following schedule:

<table>
<thead>
<tr>
<th>Length of Service</th>
<th>Separation Pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>-0- Less than 1 Year</td>
<td>-0-</td>
</tr>
<tr>
<td>1 Year - Less than 10 Years</td>
<td>One (1) week's salary for each complete year of service, as of the date of separation</td>
</tr>
<tr>
<td>Over 10 Years</td>
<td>Two (2) weeks' salary for each complete year of service, as of the date of separation</td>
</tr>
</tbody>
</table>

However, in no case shall severance pay exceed one (1) year's salary. Severance pay shall be calculated using the employee's regular base hourly wage and shall not include any premium payments for overtime, longevity and so on.

23. Disbursement Schedule. The City may elect to make severance
payments in equal increments on a pay period basis until the employee receives all severance pay due. In such a case, the payment will amount at least to the base pay of a regular bi-weekly pay period.

Other Benefits.

1. **Vacation time.** Following a non-disciplinary, permanent separation, employees with six (6) months of service or more will be paid the unused portion of vacation time accrued.

2. **Unemployment Compensation.** Whether employees can draw both severance pay and unemployment compensation benefits will depend on state laws.

Forfeiture of Severance Pay.

1. **Ineligibility.** Employees who resign, voluntarily retire or are fired for cause are not eligible to receive severance pay. Employees who are eligible for recall shall not be eligible to receive severance pay.

2. **Relinquishment.** The City may, at its discretion, provide outplacement counseling and assistance to employees who lose their job through no fault of their own. If such outplacement assistance results in an offer of employment or employment for separated employees, severance pay shall be waived.

Grievance. Lay offs and demotions necessitated by the conditions set forth in Sections 1 and 2 of this Article shall not be subject to grievance.

Section 3. **Administrative Leave.** A department head and/or City Manager may
require an employee to take an administrative leave with pay. An administrative leave is not considered a corrective or disciplinary action and is therefore not subject to the grievance process. An administrative leave shall only be authorized for a period not exceeding ten (10) consecutive work days. A department head must receive approval from the City Manager prior to requiring an employee to take an administrative leave. Approval shall only be given if the department head provides evidence satisfactory to the City Manager justifying the action.

BE IT FURTHER RESOLVED that Article VIII of Resolution No. 7758 and Resolution No. 8235 are hereby rescinded. All resolutions or rules, or portions thereof, inconsistent with the provisions of this resolution are hereby rescinded or repealed. Should any section, clause or phrase of this resolution be declared to be invalid, the same shall not affect the validity of this resolution as a whole, or any part thereof, other than the part so declared to be invalid.

ADOPTED and APPROVED by the City Council September 21, 2010.

CITY OF TOPEKA, KANSAS

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William W. Bunten, Mayor

ATTEST:

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Brenda Younger, City Clerk