



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

MARK FARRELL
MAYOR

MEMORANDUM
CSC No. 2018-02

Date: March 5, 2018

To: Department Heads
Human Resources Representatives

From: Michael L. Brown 
Executive Officer

Subject: **Civil Service Commission Policy and Procedures on Exempt
Appointments**

KATE FAVETTI
PRESIDENT

F. X. CROWLEY
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

SCOTT R. HELDFOND
COMMISSIONER

ELIZABETH SALVESON
COMMISSIONER

MICHAEL L. BROWN
EXECUTIVE OFFICER

San Francisco City Charter Section 10.104 (attached) requires that all permanent employees of the City and County be appointed through the civil service process by competitive examination unless exempted from the civil service examination and selection process in accordance with Charter provisions.

The following states the Civil Service Commission's ("Commission") policies and procedures on exempt appointments, as updated and adopted by the Commission at its meeting of March 5, 2018. This memorandum shall serve to supersede all previously issued Commission policy memorandums on exempt appointments.

I. OVERVIEW ON EXEMPT APPOINTMENTS

"Exempt appointment" is defined as an appointment to a permanent or temporary position exempt from competitive civil service selection, appointment and removal procedures in accordance with the Charter. Exempt employees are considered "at will" and serve at the discretion of the department head. See the attached for applicable Charter provisions on exempt appointments under this policy.

Civil Service Rules and Commission policies regarding matters other than selections, appointments and separations may still apply to exempt appointees (e.g., discrimination complaint policies and procedures, matters involving the Classification Plan, Civil Service Rules on conflicts of interest and leaves of absence, etc.).

A. Categories of Exempt Appointments

The Charter provides for 20 categories of employment excluded from civil service, which are generally organized into four groups:

1. **Group I** (Charter Sections 10.104-1 through 12) is comprised of a variety of positions, including but not limited to, deputy directors and department heads, executive assistants, confidential secretaries, and legislative analysts/assistants.

This group is subject to a Charter-imposed “cap” of the percent of full-time exempt employees to the total number of employees that existed on July 1, 1994. In accordance with the Charter, the Commission established the cap at 2%. Any requests for exempt positions over that “cap” require Commission approval as provided under Civil Service Rule Series 014.

2. **Group II** (Charter Sections 10.104-13 through 15) continues the 1932 Charter exempt appointments. Included in Group II by example but not limitation, are attorneys, most physicians and dentists, and the Retirement System Actuary. The Commission plays no role with respect to these appointments.

3. **Group III** (Charter Sections 10.104-16 through 19) includes temporary and seasonal appointments which do not exceed half time (1040 hours of service) in a fiscal year, appointments to temporarily backfill civil service employees on leave (limit of 2 years), special projects and professional services with limited term funding (limit of 3 years), and the City’s program for the employment of severely disabled persons.

In accordance with its Charter authority, the Commission has adopted Rules and policies that allow the Director of Transportation (for “service-critical” positions at the Municipal Transportation Agency (“MTA”)) and the Department of Human Resources (“DHR”) (for all other positions) to approve exempt positions in Group III, subject to appeal to the Civil Service Commission.

The Commission’s policies for the review of requests to exempt positions under Charter Sections 10.104-16 through 18 are outlined below. Civil Service Rule Series 015, Rules Related to the Employment of Persons with Disabilities, establishes the guidelines applicable to appointments made under Charter Section 10.104-19 (exempt employment for individuals who are severely disabled).

4. **Group IV** (Charter Section 8A.104(i)) is comprised of managerial employees in MTA service-critical positions/classifications designated by the Director of Transportation as exempt from civil service (in addition to those positions exempted in Groups I, II and III under Charter Section 10.104).

Group IV exemptions are also subject to a cap: the total number of these positions may not exceed 2.75% of the MTA’s total workforce, exclusive of the exempt positions provided in Charter Section 10.104. The Charter does not allow the Director of Transportation or the Commission any discretion to approve exempt appointments over this 2.75% cap. The provisions of Charter Section 8A.104(i) are codified in Civil Service Rule 414.37.7.

B. Two Types of Exempt Appointments

There are two types of exempt appointments: Permanent Exempt (“PEX”) and Temporary Exempt (“TEX”). PEX and TEX appointments may be made to positions that have either part-time or full-time schedules. However, PEX appointments are authorized in the Annual Salary Ordinance (“ASO”) and are therefore generally part of a department and more permanent in nature. TEX appointments are not authorized in the ASO, and they are often of shorter duration and are irregularly scheduled to fill in temporarily or on an “as needed” basis.

Any of the Charter exempt categories can be PEX or TEX, with the exception of those appointments exempted from civil service under Charter Sections 10.104-16 (also known as “As-Needed”), which are exclusively TEX appointments.

II. REVIEW OF EXEMPT APPOINTMENTS

As authorized under the Charter, “The Commission shall establish an inspection service for the purpose of investigating the conduct or an action of appointees in all positions and of securing records of service for promotion and other purposes. All departments shall cooperate with the Commission in making its investigations and any person hindering the Commission or its agents shall be subject to suspension.” (Charter Section 10.101)

The Commission has delegated to the Human Resources Director the authority to review and approve written requests for all exempt positions under Charter Section 10.104 (Groups I through III) (other than “service-critical” positions at the MTA) to ensure that they comply with the Charter and any applicable Civil Service Rules and/or Commission policies as detailed herein. The Commission has also directed the Human Resources Director to establish procedures to ensure that written departmental requests for Group III exemptions are processed expeditiously.

Likewise, the Director of Transportation is responsible for ensuring that any MTA “service-critical” exempt appointment under Charter Sections 10.104 (Groups I through III) or 8A.104 (Group IV) complies with the Charter and any applicable Civil Service Rules and/or Commission policies as detailed herein.

Decisions by the Human Resources Director and Director of Transportation on exempt appointments may be appealed to the Commission in accordance with the Civil Service Rules. The Commission’s decisions on such appeals are final.

As noted below, the Commission requires the Human Resources Director and Director of Transportation to report regularly on positions under Charter Section 10.104-16 through 18 as one of the benchmarks considered in its oversight of the operation of the merit system. The MTA is also required to report to the Commission on its exempt and non-exempt classifications under Charter Section 8A.104 each year so that the Commission can ensure compliance with the Charter.

III. GUIDELINES ADOPTED BY THE CIVIL SERVICE COMMISSION ON GROUP III EXEMPT APPOINTMENTS

Pursuant to its Charter authority, the Commission has established the following standards for exempting appointments from civil service under Charter Section 10.104-16 through 18.

- A. The Human Resources Director (or the Director of Transportation, for MTA “service-critical” positions) must certify that it is not practicable to fill the position or positions for which exemption is requested from a civil service eligible list.
- B. Exempt appointees must possess the minimum requirements for their class or position as established by the last examination announcement or class specification, whichever was issued most recently with a statement of the minimum qualifications. The department must verify and document that the individual meets the minimum qualifications for his or her exempt position in accordance with the Department of Human Resources’ policies and procedures; such documentation must be maintained in the employee’s personnel file in accordance with the Commission’s “Citywide Employee Personnel Records Guidelines (available on the Commission’s website at www.sfgov.org/Civil_Service).”¹
- C. A position once exempted under Charter Section 10.104-16 through 18 shall not be offered to eligibles or holdovers. However, this shall not preclude eligibles or holdovers from applying for exempt positions.
- D. The Human Resources Director and Director of Transportation shall report to the Commission in writing, detailing the appointments authorized under this section. The Human Resources Director and Director of Transportation are required to submit such reports at the first Commission meetings in March and second meeting in August in accordance with the Commission’s current calendar of reports. The Commission may require additional reports as it deems appropriate.
- E. Additional policies specific to the category of exemption:
 1. *Temporary and Seasonal Exemptions (Charter Section 10.104-16)*
 - a. Temporary and seasonal appointments shall be TEX, with full-time, part-time, or as-needed schedules.
 - b. No person, regardless of work schedule, shall exceed 1040 hours of work in any fiscal year.
 2. *Temporary Substitute/Backfill Exemption (Charter Section 10.104-17)*
 - a. An appointment proposed for exemption under Charter Section 10.104-17 shall be for a temporary substitute or backfill for a civil service employee on an authorized leave of absence (e.g., an employee on pregnancy or other medical leave, etc.; it would not

¹For positions exempt under Charter Section 10.104-1 through 15, a public posting is a voluntary best practice. However, selection may be evidence relevant to claims of discrimination, prohibited nepotism or favoritism and subject to inspection service through the Civil Service Commission.

- be appropriate to use this designation to substitute an individual who is no longer a City employee).
- b. The Human Resources Director may approve an appointment in increments of up to 1040 hours (six months); however, the appointment shall not exceed a maximum duration of 4160 hours (not to exceed two years by Charter requirement, or a total of four six-month increments).
3. *Special Project Exemption (Charter Section 10.104-18)*
 - a. An appointment authorized for exemption under Charter Section 10.104-18 must be to a position created for or dedicated to a special project, or for professional services, not to exceed three years by Charter requirement.
 - b. Funding for appointments to perform *professional services* as authorized under Charter Section 10.104-18 shall be for a limited term (e.g., a grant or a “one-time only” appropriation for a specific or special purpose). Departmental requests for such appointments must certify that the funding is limited, identify the funding source and anticipated duration of such funding source, and adequately describe the professional services to be performed.
 - c. Departmental requests for appointments to a *special project* as authorized under Charter Section 10.104-18 must adequately define the special project or professional service to be provided (including but not limited to a description of the project objective, scope of work, and the specific anticipated duration of the project).

IV. LEAVE TO ACCEPT AN EXEMPT POSITION

Permanent civil service employees may be considered for exempt positions, and may take a leave of absence from their permanent civil service position to accept an exempt appointment. Such leave is subject to the approval of their appointing officer (or his or her designee), whose decision is subject to appeal in accordance with the Civil Service Rule Series 020.

Upon conclusion of the exempt appointment or duration of the approved leave, the employee returns to the former class and department where the employee has permanent civil service status. Although the employee may return to a position in the class, he or she does not have a right to a specific assignment in the department.

Civil service layoff provisions apply if the employee’s permanent civil service position is eliminated prior to, or at the time of the employee’s return from his or her leave to take an exempt appointment and: 1) there are no remaining positions budgeted in the employee’s class in the department; or 2) current incumbents in the department have higher civil service seniority ranking than the employee.

QUESTIONS

Questions on Civil Service Rules or Commission policies, procedures and guidelines may be directed to Commission staff at (415) 252-3247.

Attachment: Charter Provisions Applicable to Group I through IV
Exempt Appointments (Charter Sections 10.104 and 8A.104)

CHARTER SECTION 10.104, EXCLUSIONS FROM CIVIL SERVICE APPOINTMENT

All employees of the City and County shall be appointed through competitive examination unless exempted by this Charter. The following positions shall be exempt from competitive civil service selection, appointment and removal procedures, and the person serving in the position shall serve at the pleasure of the appointing authority:

1. All supervisory and policy-level positions within the office of the Mayor and the office of the City Administrator;
2. All elected officers of the City and County and their chief deputies or chief assistants;
3. All members of commissions, boards and advisory committees;
4. Not more than one commission secretary for each commission or board;
5. All heads of agencies and departments, unless otherwise provided for herein;
6. All non-uniformed deputy heads of departments;
7. All uniformed deputy heads of departments, police commanders and Fire Chiefs aides;
8. Not more than one confidential secretary and executive assistant in each department and agency;
9. The Clerk of the Board of Supervisors, legislative analyst and assistants to the members of the Board of Supervisors.
10. All paraprofessional aides of the Unified School District and teaching instructional aides of the Community College District;
11. Persons employed in positions outside the City and County upon construction work being performed by the City and County when such positions are exempted from the classified civil service by an order of the civil service commission;
12. Persons employed in positions in any department for expert professional temporary services, when such positions are exempted from said classified civil service for a specified period of said temporary service by order of the civil service commission.

The proportion of full-time employees in the above exempt categories to the total number of civil service employees of the City and County shall not be greater than such proportion as existed on July 1, 1994, unless modified by Civil Service Commission rule, approved by the Board of Supervisors.

13. All attorneys, including an attorney to the Sheriff and an attorney for the Tax Collector, City Attorney's and District Attorney's investigators, hospital chief administrators, physicians and dentists serving in their professional capacity (except those physicians and dentists whose duties are significantly administrative or supervisory);
14. The law librarian, assistant law librarians, bookbinder of the Law Library, purchaser, curators, Assistant Sheriff, Deputy Port Director, Chief of the Bureau of Maritime Affairs, Director of Administration and Finance of the Port, Port Sales Manager, Port Traffic Manager, Chief Wharfinger, Port Commercial Property Manager, Actuary of the Employee's Retirement System, Director of the Zoo, Chief Veterinarian of the Zoo, Director of the Arboretum and Botanical Garden, Director of Employee Relations, Health Service Administrator, Executive Assistant to the Human Services Director, and any other positions designated as exempt under the 1932 Charter, as amended;

15. Positions determined by the Controller and approved annually by the Board of Supervisors to be positions where the work or services can be practically performed under private contract at a lesser cost than similar work performed by employees of the City and County, except where such work or services are required to be performed by officers or employees of the City and County under the provisions of this Charter or other applicable law.

In addition, with the approval of the Civil Service Commission, exempt employees shall include:

16. Temporary and seasonal appointments not to exceed the equivalent of half-time during any fiscal year, except that such positions may be filled through regular civil service procedures;
17. Appointments, which shall not exceed two years and shall not be renewable, as substitutes for civil service employees on leave, except that such positions may be filled through regular Civil Service procedures;
18. Appointments, which shall not exceed three years and shall not be renewable, for special projects and professional services with limited term funding, except that such positions may be filled through regular civil service procedures; and
19. Entry level positions designated by an appointing officer with approval of the Civil Service Commission for persons who met minimum qualifications and are certified as blind or severely disabled; persons so appointed whose job performance is rated satisfactory by their appointing officer shall after one year of continuous service acquire Civil Service status.

CHARTER SECTION 8A.104, PERSONNEL AND MERIT SYSTEM.

[...]

(b) Except as otherwise provided in this Section, the Agency shall be governed by the rules of the civil service system administered by the City and appeals provided in civil service rules shall be heard by the City's Civil Service Commission. [...]

(h) The Agency may create new classifications of Agency employees. Such classifications shall be subject to the civil service provisions of the Charter unless exempted pursuant to Section 10.104, or subsection (i).

(i) The Agency may create new classifications and positions in those classifications exempt from the civil service system for managerial employees in MTA bargaining units M and EM in addition to those exempt positions provided in Section 10.104; provided, however, that the total number of such exempt managerial positions within the Agency shall not exceed 2.75 percent of the Agency's total workforce, exclusive of the exempt positions provided in Section 10.104. This provision shall not be utilized to eliminate personnel holding existing permanent civil service managerial positions on November 2, 1999. Persons serving in exempt managerial positions shall serve at the pleasure of the Director of Transportation. Such exempt management employees, to the extent they request placement in a bargaining unit, shall not be placed in the same bargaining units as non-exempt employees of the Agency.

(j) The Civil Service Commission shall annually review both exempt and non-exempt classifications of the Agency to ensure compliance with the provisions of subsections (h) and (i).