

# CITY OF TUSTIN

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## Personnel Rules

Adopted by  
City Council Resolution #15-50



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## **SECTION 1. MERIT PERSONNEL SYSTEM**

### **A. Merit System Principles**

The City of Tustin (City) has established a personnel management system consistent with the following merit system principles:

1. Institute equitable and uniform procedures for managing personnel matters;
2. Attract the most competent workforce available to municipal service;
3. Ensure that appointment and advancement of employees are based on merit and ability; and
4. Provide reasonable job security for merit system employees.

### **B. Purpose of Personnel Rules**

#### **1. Objectives**

These Personnel Rules (Rules) are designed to facilitate efficient and economical service to the public and provide a fair and equitable system of personnel management in the municipal government. These Rules set forth policies and procedures to ensure similar treatment for those who compete for original and promotional employment and define certain obligations, rights, privileges, benefits and prohibitions which are placed upon all City merit system employees.

#### **2. Employment Standards**

The City Council and the citizens of the City of Tustin have the right to expect that the City will employ the best qualified individuals available; that the tenure of every City employee will be based on a demonstrated need for the work performed, availability of funds, faithful and effective performance, proper personal conduct, and continuing qualifications for the position; and that each employee will be encouraged, trained, and developed to ensure optimum performance.

#### **3. City Responsibility to Employees**

Each merit system employee has the right to expect to be fully informed of his/her duties and responsibilities; to be provided with adequate administrative and supervisory direction; to be informed of his/her level of job performance; that promotions will be made on the basis of merit and ability; that progressively improved work performance over an extended period will be recognized and rewarded; that incompetence will not be tolerated; and, after acquiring regular

status, to not be subject to suspension, demotion, reduction in salary, dismissal or other disciplinary action without just cause.

4. Promotion and Training of Employees

The City will endeavor to promote from within the City service to fill openings whenever possible, and to provide employees with the training necessary to develop the skills required to qualify for promotional opportunities within normal and/or related career lines.

C. Equal Employment Opportunity

No person applying for employment with the City or employed by the City shall be discriminated against by reason of his/her actual or perceived age, ancestry, citizenship status, color, creed, disability (mental or physical), exercise of rights relating to Family Care and Medical Leave, gender expression, gender identity, genetic information, marital status, medical condition, national origin, political affiliation (or political beliefs), pregnancy, race, religion, sex, sexual identity, sexual orientation, veteran status, or any other classification protected by law.

D. Violation of Rules

Violation of a provision(s) of these Rules shall constitute grounds for disciplinary action including, but not limited to, dismissal, rejection, demotion, reduction in salary, suspension, or written reprimand. A violation shall not make disciplinary action mandatory, but shall be considered as appropriate in view of all the circumstances.

E. Personnel Officer

The Personnel Officer of the City is the City Manager. The City Manager may delegate any personnel powers or duties to another employee of the City, or may recommend to the City Council that certain personnel powers or duties be performed under contract by a qualified individual or firm. The City Manager shall:

1. Prepare and recommend to the City Council, personnel rules and revisions thereto.
2. Administer the provisions of the City's merit system not specifically reserved to the City Council.
3. Appoint all department heads and employees of the City, except the City Clerk, City Treasurer, and the City Attorney, provided that the City Manager may delegate to any other department head or employee the authority to hire or discharge any employees.

F. Amendment and Revision of Rules

The City Council may amend these Personnel Rules by resolution with not less than five (5) days' notice to employees. Employees at the Council meeting shall be given an opportunity to present their support or objection to the proposed rules.

Any modifications involving a term or condition of employment are subject to the meet and confer process with designated representatives of the affected employee group(s).

G. Departmental Rules or Policies

These Personnel Rules do not preclude the City Manager or individual City departments from developing and administering supplemental departmental rules or policies as long as they do not conflict with these Rules, other Council resolutions and ordinances, or existing laws.

H. Application of Personnel Rules

The provisions of these Personnel Rules shall apply to all merit system employees. Except as described below, these Rules do not apply to the following employees or officials:

1. Elected City Council Members.
2. Members of appointive boards, commissions, committees and agencies (unless they are also regular City employees).
3. City Manager and department heads employed at-will under an individual employment agreement.
4. City Attorney.
5. Persons engaged under a professional services agreement to supply expert professional, technical or other services (e.g. contractors or consultants).
6. Volunteer personnel (who are not also regular City employees).
7. Emergency employees who are hired to meet the immediate requirements of an emergency condition which threatens life or property, such as extraordinary fire, flood, or earthquake.
8. Temporary employees hired to fill a full-time or part-time position for a limited period of time.
9. Part-time employees employed at-will (non-benefitted).

10. Project employees hired for a specific project, special assignment, or limited term.

The provisions of Section 16 of these Rules (Standards of Conduct) and Section 1.1 (Employment of Relatives) apply to all employees and officials of the City regardless of whether the individual is included in one of the thirteen (13) groups listed above or in the merit system.

I. Employment of Relatives

These Rules shall not prohibit the employment or assignment of relatives in the same or different department except as outlined below. For the purpose of this section, a “relative” shall be defined as any person who is a relative by blood, marriage, or domestic partnership within the third degree, as defined in these Rules. Specifically, a relative is a spouse, domestic partner, parent, grandparent, great grandparent, child, grandchild, great grandchild, sibling, niece, nephew, aunt, or uncle (including step, adoptive and in-law relatives).

1. No person who is a relative of any City Council member or the City Manager shall be appointed to a paid position within the City service.
2. No person who is a relative of a department head shall be appointed to a paid position within the same department.
3. No relatives shall be employed in positions where one has supervisory responsibility over the other.
4. No relatives shall be employed in positions where one would have access to confidential and privileged information concerning the other. Upon recommendation of the department head (s), exceptions to this rule may be granted by the City Manager, where, in the judgment of the City Manager, the access to confidential and privileged information would not be detrimental to City operations.
5. In the case of a violation of this rule, remedy may be sought through transfer or demotion within the City service or termination of one party, as recommended by the department head. All actions intended to remedy violations of this section are subject to the review and approval of the City Manager. The City Manager may grant exemptions to this policy if he/she deems that such employment does not adversely affect the effective and efficient operation of the City.

J. Conflicting Rules

1. Memorandum of Understanding

Where a conflict exists between items stated in a provision of these Rules and an applicable adopted memorandum of understanding (MOU) with a recognized majority

representative, to the extent of such conflict, the memorandum of understanding shall prevail.

2. State Law

Where a conflict exists between items stated in these Rules and existing California state law, the state statutes shall prevail.

K. Not a Contract

These Rules do not create any contract of employment, either expressed or implied, or any rights in the nature of a contract.

## SECTION 2. DEFINITION OF TERMS

Unless the context indicates otherwise, the following terms, whenever used in these Rules, shall be defined as follows:

1. Acting Appointment – the appointment for a limited period of a person who is already a probationary or regular employee to a position in a higher class for which there is no employment list, or which is temporarily vacant due to a suspension, demotion, termination, or authorized leave of absence.
2. Acting Pay – additional compensation for temporary assignment to a position in a higher classification.
3. Administrative Leave – paid leave of absence provided to employees who are exempt from overtime under the Fair Labor Standards Act (FLSA) employees or initiated by the City related to disciplinary actions.
  - a. Disciplinary Administrative Leave: a temporary leave of absence with pay initiated by the City during a disciplinary action proceeding or investigation. This leave does not accrue and, when used, is not charged against any leave balance.
  - b. Exempt Administrative Leave: paid time off provided as a benefit to FLSA-exempt employees in lieu of overtime compensation as recognition that such employees may be required periodically or routinely to work long or irregular hours, and to attend various meetings and functions outside of normal business hours to fulfill their responsibilities. Typically, this type of leave is referred to simply as “Administrative Leave.” Additional provisions can be found in the applicable salary resolution and/or memorandum of understanding.
4. Advancement – a salary increase of one or more steps within the limits of the pay range established for a classification.
5. Allocation – the assignment of a single position to the proper classification in accordance with the specifications for that class.
6. Applicant – an individual who has completed and submitted a formal application for employment with the City, in accordance with established procedures.
7. Appointing Authority – the City Manager or his/her designee, who has the final authority to appoint or remove a person to or from a position of employment within the City service. The City Council is the appointing authority for the City Manager, City Attorney, and City Treasurer.

8. Appointment – the offer and acceptance of a position in the City service, either on a regular or at-will basis.
9. At-Will – the status of those employees who serve at the pleasure of the appointing authority and may be dismissed without cause or right of appeal, as provided by California Labor Code section 2922. This includes the City Manager, City Attorney, contract employees employed under an individual employment contract, emergency employees, project employees, temporary employees, part-time (non-benefitted) employees, and volunteer personnel as well as employees serving an original probationary period.
10. Calendar Day – a 24-hour day as listed on the calendar.
11. Class Specification – a written description of a classification, setting forth factors and conditions which are essential characteristics of positions in the classification.
12. Classification or Class – a group of positions with sufficiently similar duties, responsibilities, authority, and minimum qualifications for employment to permit combination under a common title and equitable application of common standards of selection, compensation, transfer, and promotion.
13. Classification Series – A group of two or more job classifications that are closely related in duties and where the differences involve required education and experience, complexity, degree of responsibility and other similar factors. A class series typically includes entry, journey, and/or advanced journey level classes.
14. Compensation Plan – the assignment by the City Council of salary ranges to each class, normally included in the annual City Budget.
15. Compensatory Time Off – time off from work in lieu of monetary payment for overtime work.
16. Continuous Service – the employment without an uncredited break or interruption of service of an employee in a probationary or regular status.
17. Contract Employee – an employee hired by written agreement with the City for a specific term and under conditions wholly contained within the employment agreement. The City Manager and certain department heads are contract employees.
18. Day – a calendar day unless specified as a working day.
19. Demotion – the voluntary or involuntary change in status of a regular employee from a position in one classification to a position in another classification having a lower maximum rate of pay.

20. Discharge or Dismissal – the involuntary separation of an employee from City service.
21. Eligible – a person whose name is on an eligible list or employment list.
22. Eligible List or Employment List – a list of individuals qualified for employment in a classification.
  - a. Open Employment List: a list of names of persons who have taken an open competitive examination for a class and have qualified.
  - b. Promotional Employment List: a list of names of persons who have taken a promotional examination for a class and have qualified.
  - c. Re-Employment List: a list of names of qualified regular and probationary employees who have been laid off.
23. Emergency Appointment – an employee hired for the period of an emergency. An emergency employee serves at-will.
24. Employee – an individual who is legally employed by the City and is compensated through the City payroll.
25. Examination – the process by which the Human Resources Department determines the qualifications of applicants for employment in a classification.
  - a. Open Competitive Examination: an examination for a particular classification which is open to all individuals meeting the minimum qualifications for the class.
  - b. Promotional Examination: an examination for a particular classification which is limited to City employees who meet the minimum qualifications of the class.
26. Exempt Employee – an employee who is not entitled to overtime under the Fair Labor Standards Act (FLSA) because he/she is qualifies for one of the exemptions from the overtime provisions of the FLSA.
27. Job Sharing – the sharing of one full-time, regular position by two employees, with the same scheduled work hours, salary and benefits divided between them.
28. Non-Exempt Employee – an employee who is entitled to earn overtime under the Fair Labor Standards Act.
29. Original Appointment – a person’s first appointment as a City employee.

30. Overtime – compensation that is either paid or accrued as Compensatory Time Off at the rate of time and one-half pursuant to the Fair Labor Standards Act or an applicable Memorandum of Understanding (MOU) or salary resolution.
- a. FLSA Overtime: overtime paid pursuant to the Fair Labor Standards Act (FLSA).
  - b. MOU Overtime: overtime paid pursuant to provisions of a MOU and/or salary resolution.
31. Part-Time Status – the status of an employee in a part-time position that is compensated on an hourly basis. A part-time employee may have either a) regular status (sometimes called a part-time benefitted employee) or b) at-will status (may also be called a part-time non-benefitted employee).
32. Part-Time Position – a position having a work week of fewer hours than the full work week established for a full-time position and compensated on an hourly basis.
33. Permanent Position – a full-time or part-time benefitted position that is individually authorized in the budget and which is expected to exist indefinitely.
34. Position – a job with a combination of regularly assigned duties and responsibilities requiring the full-time or part-time employment of one individual.
35. Probationary Employee – an employee who has to serve a probationary period prior to appointment to a permanent position. Upon successful completion of the probationary period, a probationary employee becomes a regular employee.
36. Probationary Period – a working test period that is part of the selection process and during which an employee is required to demonstrate to the City’s satisfaction his/her qualifications for the position to which he/she has been appointed by actual performance of job duties.
- a. Original Probationary Period: an employee’s first probation period during continuous City employment.
  - b. Promotional Probationary Period: the probationary period served upon promotion from one City position to another.
37. Probationary Status – the status of an employee during the probationary period. An original probationary employee serves at-will and may be rejected and separated without cause or right of appeal. A promotional probationary employee may be rejected from the promotional position and returned to his/her previous position without cause or right of appeal.

38. Project Employee – an at-will employee who is hired in either a full-time or part-time capacity for a prescribed period of time to complete a project.
39. Promotion – the advancement of an employee from a position in one class to a position in another class having a higher maximum rate of pay.
40. Provisional Appointment – an appointment to a permanent position of a person who possesses the minimum qualifications established for a particular classification and who has been appointed to a position in that class in the absence of available eligible candidates. A provisional appointment may not exceed six (6) months. An employee receiving a provisional appointment will have at-will status in the position.
41. Reclassification – the movement of an employee from a position in one class to a position in another class as the result of the City’s determination that the duties and requirements of the employee’s position have significantly changed over time and are inconsistent with the assigned classification. Reclassification may be to a position at a higher, lower, or lateral level.
42. Regular Status – the status of an employee who has acquired a regular full-time or part-time benefitted appointment to a merit system position after successfully passing the probationary period.
43. Reinstatement – the re-employment without examination of a former regular or probationary employee.
44. Rejection – the involuntary separation from City service of 1) an employee who does not successfully complete the probationary period in a position and who does not have regular status in another position in a different classification, or 2) the change in status of an employee who did not successfully complete the probationary period in a position to another position in a different classification in which he/she has previously acquired regular status.
45. Relative – any person who is related by blood, marriage, or domestic partnership within the third degree. Specifically, a relative is a spouse, domestic partner, parent, grandparent, great grandparent, child, grandchild, great grandchild, sibling, niece, nephew, aunt, or uncle (including step, adoptive and in-law relatives).
46. Reprimand – a verbal or written censure made as a disciplinary action.
47. Reserve Officer – any person serving the City as a reserve police officer. Such person shall not be considered to have attained appointment to either a permanent full-time or part-time position. Every reserve officer shall serve at the discretion of the Chief of Police and may be terminated without cause or right of appeal.
48. Resignation – the voluntary separation of an employee from City service.

49. Salary Plan – see Compensation Plan.
50. Salary Range – one or more specific salary rates, having a percentage relationship to one another, assigned to a classification as the base compensation for that classification.
51. Salary Review Date – the date on which a probationary or regular employee is eligible, on the basis of satisfactory job performance for a prescribed period, for a merit salary increase within the salary range established for the position the employee occupies.
52. Salary Step – one of the established levels of pay within a prescribed salary range, usually designated by a letter.
53. Suspension – the temporary separation without pay of an employee from City service for purposes of disciplinary action.
54. Temporary Position – a full-time or part-time position of limited duration. Employees filling temporary positions do not acquire regular status and may be dismissed at the pleasure of the appointing authority without cause or right of appeal.
55. Termination – the separation of an employee from City service because of retirement, resignation, death or dismissal.
56. Transfer – a change of an employee from one position to another position in the same class or in another class having the same maximum salary rate, involving the performance of essentially similar duties and requiring substantially the same minimum qualifications.
57. Vacancy – an authorized position that is not occupied by an employee having either a probationary or regular appointment to the position.
58. Work Shift – the number of working hours per day required of an employee occupying a particular position.
59. Working Day – a day on which an employee is scheduled to work. For the purposes of appeal or grievance rights under these Rules, where there is a difference in work schedules between a department head and an employee, working days should be counted based on the employee's schedule.
60. Y-Rating – the process by which an employee's salary is not decreased when either 1) the employee is reassigned to a classification with a lower range on the salary schedule or 2) the salary range for the employee's classification is set to a lower range on the salary schedule. Y-rating will automatically end once future increases bring the employee's new salary range up to a level where the employee's Y-rated salary falls within the new salary range.

### **SECTION 3. CLASSIFICATION PLAN**

#### **A. Purpose**

The Classification Plan provides a complete list of all positions in the City service and an accurate description and specifications for each job classification. The Classification Plan standardizes titles, each of which is indicative of a definite range of duties and responsibilities and has the same meaning throughout the City.

#### **B. Preparation of Plan**

The City Manager has determined the duties and responsibilities of all positions in the City with the assistance of the Human Resources Department and department heads. The Classification Plan defines each class by a class specification, including title, a description of typical duties and responsibilities and a statement of the education, training, experience and other qualifications to be required of applicants and incumbents of the classification. The Classification Plan maintains all positions substantially similar with respect to duties, responsibilities, authority, and character of work within the same class.

#### **C. Adoption of Plan**

The City Council has adopted and may amend the Classification Plan by resolution and upon not less than five (5) days' notice to employees. Suggested amendments and revisions of the Plan by any interested party shall be submitted to the City Council through the City Manager.

#### **D. Allocation of Positions**

The City Manager has allocated every position in the City service to one of the classes established by the Classification Plan.

#### **E. New Positions**

Each new position shall be included in the Classification Plan by amendment and appropriate employment list established before the position may be filled, except as otherwise provided by these Rules.

#### **F. Reclassification**

A position determined by job analysis to have changed substantially over time in terms of duties and responsibilities may be reallocated to a new and appropriate classification upon recommendation of the department head and review and approval of the Human Resources Department. Final approval must be granted by the City Manager or his/her designee. An employee who is reclassified is not required to complete a new probationary period.

#### G. Use of Classification Titles

Classification titles are to be used in all personnel, accounting, budget, appropriation, and financial records. No person shall be appointed to or employed in any permanent position in the merit system under a title not included in the Classification Plan. Other unofficial “working titles” may be used in the course of business to indicate authority, status in the organization, or administrative rank, subject to approval of the department head and the concurrence of the Human Resources Department.

#### H. Use of Class Specifications

Class specifications are to be interpreted in their entirety and in relation to others in the Classification Plan. Particular phrases or examples are not to be isolated and treated as a full definition of the class. Specifications are intended to be descriptive and explanatory of the kind of work performed, and not necessarily inclusive of all duties performed by all employees in the classification.

#### I. Use of Classification Plan

The Classification Plan is to be used as follows:

1. A guide in recruiting and examining candidates for appointment and promotion.
2. In determining lines of promotion.
3. In determining salary to be paid for various types of work.
4. In determining personnel staffing in departmental budgets.
5. In providing uniform job terminology understandable by all City officials and employees and the general public.

#### J. Working Out-of-Class

No employee shall be required to perform duties which are not closely related both in kind of work and in level of responsibility to the duties normally assigned to positions in the employee’s classification, except on a short-term basis. If an employee is performing duties that would normally be assigned to another classification (i.e., works “out-of-class”) for an extended period of time, the Human Resources Department will evaluate whether a reclassification, reassignment of duties, or acting appointment is appropriate.

If an employee is given an acting appointment, the employee may be eligible to receive additional compensation in the form of Acting Pay, in accordance with the provisions of the applicable salary resolution and/or MOU.

K. Changes to Class Specifications

Substantive changes to existing class specifications in the Classification Plan are subject to the meet and confer process with the appropriate representatives of recognized employee organizations. Changes to document formatting or minor revisions to content may be implemented without meeting and conferring.

## **SECTION 4. COMPENSATION PLAN**

### **A. Preparation of Plan**

A Compensation Plan covering all classes of positions in the City service is in place, showing the minimum and maximum rates of pay. In arriving at salary ranges, consideration shall be given to prevailing rates of pay for comparable work in public and in private employment, including consideration of conditions of work; current costs of living; suggestions of department heads; the City's ability to recruit and retain good employees; internal equity; and the City's financial condition and policies. The City may conduct studies considering the factors set forth above.

### **B. Adoption of Plan**

The City Council will amend and revise the Compensation Plan by resolution.

### **C. Format of Plan**

All full-time position classes, except those placed on a flat rate of pay, shall be placed on a salary range containing a designated number of salary steps with increments of approximately five percent (5%) between steps. Each step in a range shall be lettered alphabetically from the lowest step (designated as A) to the highest step.

### **D. Meet and Confer Process**

The Compensation Plan is subject to the meet and confer process with the appropriate representatives of recognized employee organizations.

## **SECTION 5. SALARY ADMINISTRATION**

### **A. Application of Rates**

Employees occupying a position in the City service shall be paid a salary or wage within the range established for that position's classification in accordance with the Compensation Plan.

### **B. Basis of Compensation**

#### **1. Full-time Regular, Probationary, and Acting Appointments**

An employee having a regular, probationary or acting appointment that is on a full-time basis shall be paid bi-weekly, based on the monthly rate specified in the Compensation Plan. The hourly rate of pay is the monthly rate multiplied by twelve (12) and divided by two-thousand and eighty (2080) hours.

#### **2. Other Appointments**

Temporary, provisional, part-time, and emergency employees shall be compensated at an hourly rate, paid bi-weekly.

### **C. Salary Review Dates**

Any employee of the City shall have as a salary review date the date upon which he/she shall next be eligible for consideration of a merit step increase. However, any approved leaves of absence without pay exceeding thirty (30) days will result in the establishment of a new review date. Such date shall be based on the existing salary review date plus the number of calendar days of leave(s) in excess of thirty (30) days. Salary adjustments shall be made at the start of the pay period closest to the employee's salary review date unless otherwise authorized by the City Manager or pursuant to a memorandum of understanding and/or salary resolution.

### **D. Entrance Salary Rates**

#### **1. General**

All new employees shall normally be appointed at salary step "A" of the salary range in effect for the class in which the appointment is made. A new employee may be appointed at salary step "B" or salary step "C" for cause, such as difficulty in recruiting or previous experience, with approval of the Director of Human Resources. The City Manager may approve initial City employment at Step D or a salary rate up to and including the final step of the salary range for cause, such as difficulty in recruiting, previous experience, or other related factors.

## 2. Temporary Appointees

Persons employed or re-employed for temporary or seasonal service may, upon written recommendation by the department head and approval of the City Manager, be compensated at any rate established for the classification.

## E. Merit Increase within the Salary Range

Full-time and part-time benefitted employees are eligible for an increase in salary according to the following schedule. Part-time non-benefitted classifications may have a different criteria or schedule for advancement prescribed by the City Manager or Human Resources Department.

1. The letters A, B, C, D, E, F, and G, respectively, denote the various progressive steps in the salary range.
2. An employee shall be eligible to move from salary step "A" to salary step "B" upon completion of six (6) months of employment where the employee has demonstrated overall satisfactory performance.
3. An employee shall be eligible to move from salary step "B" to salary step "C" (and thereafter to each step through the final salary step in the employee's salary range) upon completion of one (1) year at the salary step where the employee has demonstrated overall satisfactory performance.
4. For all employees eligible to advance between salary steps, the department head shall submit to the Human Resources Department a written evaluation and recommendation to approve, delay, or deny the advancement. All advancements between salary steps are subject to approval by the City Manager.

## F. Salary Range Increase

Whenever a class is reassigned to a higher salary range, the salary of each incumbent on the effective date of the increase shall be increased to the corresponding step in the new range and his/her salary review date shall not change.

## G. Salary in Other Instances

Other salary adjustments may include:

### 1. Special Salary Adjustments

Notwithstanding anything in these Rules to the contrary, in order to correct gross inequities or to reward outstanding achievement and performance, the City Manager may, upon recommendation of the department head, adjust the salary rate of an

incumbent of a particular position to any step within the salary range for that class. If the incumbent is a member of a recognized bargaining unit, the increase in salary is subject to meet and confer.

2. Salary on Promotion

An employee who is promoted shall be assigned to the lowest step of the new salary range which allows an increase of approximately five percent (5%) over the employee's current salary at the time of promotion. The department head may recommend assignment to a higher salary step based on special circumstances. The date of promotion will establish a new salary review date and the employee shall be eligible for the next merit increase in accordance with Section 5.E (Merit Increase within the Salary Range) of these Rules. The promotion date will be effective at the beginning of an established pay period.

3. Salary on Demotion

An employee who is demoted shall have his/her salary set at a salary step in the range for a lower class as follows:

a. Involuntary Demotion

Salary may be set at any salary rate which is less than employee's salary rate at the same time of demotion. If the involuntary demotion is as a result of a reclassification and the salary of the employee is greater than the highest step of the new pay range, the employee will be "Y-rated."

b. Voluntary Demotion

Salary will be set at the highest salary rate which does not exceed the employee's salary rate at the time of demotion.

c. Next Merit Increase

An employee shall be eligible for the next merit increase, based on salary step, in accordance with Section 5.E (Merit Increase within the Salary Range) of these Rules.

d. Probationary Period

An employee who is demoted shall not be required to serve a new probationary period, except that if demoted to a classification in which the employee has no previous experience, a probationary period of one year will be required.

#### 4. Salary on Transfer

Any employee who is transferred shall continue to receive the same salary rate and the salary review date shall not change.

#### H. Overtime

A manager or supervisor may authorize overtime to meet the operational needs of the department. For non-exempt employees, overtime shall either be paid at time and one-half or granted as equivalent Compensatory Time Off (CTO). The method of compensation shall be at the discretion of the department.

An employee may not perform work outside of his/her scheduled work hours without advance approval from a manager or supervisor. Emergencies may arise that call for an exception to this rule. In the event of such an emergency, an employee may perform the work, but must notify a manager or supervisor as soon as possible, and in no event later than the next business day. If the employee's manager or supervisor denies the request to work overtime, the employee must cease working overtime.

Employees are required to record all work time on official City records so that the City may pay employees for their work. Employees may never choose to work and decline compensation. An employee who fails to follow the City's overtime approval policy will be paid for any overtime actually worked, but will be subject to disciplinary action, up to and including termination, for violation of the policy.

##### 1. Full-time Regular and Probationary Employees

The City shall pay overtime compensation or provide Compensatory Time Off to all non-exempt employees as established in the appropriate salary resolution and/or MOU. Exempt employees are not eligible for overtime.

##### 2. Other Employees

Part-time, temporary, or provisional employees shall be paid overtime in accordance with the Fair Labor Standards Act (FLSA).

#### I. Additional Compensation

Employees may be eligible for the following types of additional compensation in accordance with the applicable salary resolution and/or MOU:

Acting Pay.

Advance Holiday Pay.

Bilingual Pay.

Call Back Duty.

Career Officer Pay.

Certification Pay.

Court Pay.

Court Standby Duty.

Educational Incentive Pay / Tuition Reimbursement.

General Leave Cash-Out.

Jury Duty.

Shift Differential.

Special Assignment Pay (e.g. Field Training Officer, K-9 Officer).

Standby Duty.

Training Pay.

Uniform Allowance.

These types of additional compensation, if applicable, will be paid when an employee is in paid status for forty (40) or more hours in a pay period. An employee is in paid status when he/she is receiving his regular salary or wage, receiving salary continuation payments during Industrial Disability Leave, and/or using paid leave on an authorized leave of absence.

These types of additional compensation will not be paid when an employee is on a leave of absence and in an unpaid status for more than forty (40) hours in a pay period. Unpaid status includes leave without pay, the City's 60% disability pay during the STD/LTD elimination period, and days in which the employee is paid a disability benefit by a third party (e.g. STD/LTD benefit or workers' compensation temporary disability benefit).

J. Emergency Cash-Out of Accrued Leave

1. Purpose

In addition to any cash-out of leave provided in a memorandum of understanding or resolution, the City Manager may authorize a cash-out of accrued leave upon a finding of a financial hardship arising from an unforeseen emergency.

2. Definition

For the purpose of this policy, “unforeseen emergency” is defined as a severe financial hardship resulting from a sudden and unexpected illness or accident of the employee or her/his dependent, the employee’s loss of property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the employee’s control. Request for emergency cash-out will not be authorized for expenditures that can be planned for or budgeted, such as a down payment on a home, the purchase of an automobile, payment of property taxes or educational expenses.

3. Policy

In the event of an unforeseen emergency, a regular (non-probationary) employee may request an emergency cash-out of time from his/her accrued General Leave or Compensatory Time Off bank, or any combination thereof, provided at least eighty (80) hours of accrued leave remain in the employee’s leave bank(s) after the emergency cash-out.

Any amount approved for cash-out will be processed as part of a usual and regular payroll process. Additional taxes may be withheld pursuant to applicable state and/or federal tax withholding requirements.

4. Procedure

Requests for emergency cash-out are to be submitted to the Human Resources Department on an Emergency Cash-Out of Accrued Leave Request form, fully describing the circumstances for the request including any relevant documentation.

The Director of Human Resources will review all requests for emergency cash-out for determination of eligibility and make a recommendation to the City Manager for approval or denial.

An emergency cash-out eligibility determination is not subject to any form of administrative or judicial appeal or grievance procedure and the decision of the City Manager, or his/her designee, shall be final.

## **SECTION 6. RECRUITMENT AND SELECTION**

### **A. Applications**

Announcements of employment opportunities shall be publicized as determined by the Human Resources Department to comply with the purposes of the merit system and shall normally specify the title, salary, examples of typical job duties, minimum qualifications required, and official application process. All applications correctly filed on time by a qualified individual may be considered unless rejected for cause as herein provided.

### **B. Rejection of Applications**

The Human Resources Department may reject any application when the applicant does not meet the minimum qualifications for the position; is physically unfit to perform the duties of the position with or without reasonable accommodation if disabled; has been convicted of a felony if applying for a Police Officer position; has made any false statement of any material fact; has attempted to practice any deception or fraud in the application or selection process; or for any material cause, which in the judgment of the Director of Human Resources, would render the applicant unsuitable for the position, including a prior resignation or termination from employment with the City. A defective or incomplete application may be rejected or returned to the applicant for correction.

### **C. Examinations**

The Human Resources Department will evaluate the qualifications of the applicants examined to perform within that class by using one or more examination techniques as deemed by the Director of Human Resources to be appropriate for the position. Examination techniques may include, but are not limited to, application review, supplemental questionnaire, oral interview, written test, performance test, physical agility test, and evaluation of work samples or daily work performance.

#### **1. Recruitment and Selection Type**

Vacancies may be filled by either an open competitive or promotional recruitment and selection process. Any person meeting the requirements specified in the job announcement of an open competitive recruitment may be eligible to compete in the examination process. Promotional recruitments may be used to fill vacancies when determined by the Director of Human Resources to be in the best interests of the City. Only City employees who meet the requirements set forth in the job announcement for a promotional recruitment may compete in the examination process.

## 2. Targeted Recruitment and Selection Process

In an effort to streamline the City's hiring procedures, the City has established a targeted recruitment and selection process, the use of which may be authorized by the City Manager on an as-needed basis. A targeted recruitment and selection process involves direct solicitation to specific individuals and/or professional organizations to seek out prospective candidates who are believed to be highly qualified for a particular position.

The Human Resources Department is authorized to use a targeted recruitment and selection process on those specific occasions when the City Manager determines it is in the best interests of the City to do so. Any individual hired through a targeted recruitment and selection process shall meet all requirements expected of any City employee hired through a traditional recruitment process, including meeting the minimum education and experience qualifications of the job classification, and successful completion of a background investigation, physical examination, and administrative screening. In implementing a targeted recruitment and selection process, the City Manager and City staff shall encourage diversity of the pool of job applicants when feasible, and shall ensure compliance with the City's Equal Employment Opportunity policy.

## 3. Examination Scores

The scoring system for each examination process shall be established as deemed appropriate by the Director of Human Resources. Scores on each examination or examination component may be qualifying (pass/fail), averaged, or given a weighted average. An applicant's failing score on one part of an examination may be grounds for failure on the entire examination or disqualification for subsequent parts of an examination.

## 4. Notification

Each applicant will be notified of his/her status at each step in the examination process.

## 5. Disqualification

An applicant may be disqualified during or after the examination process for any reason set forth in Section 6.B (Rejection of Applications).

## D. Employment Lists (Eligible Lists)

### 1. Open and Promotional Employment Lists

Applicants who successfully pass all phases of the examination process shall earn placement on an open or promotional employment list (eligible list), as the case may be,

in alphabetical order. Such lists may remain in effect for one (1) calendar year unless abolished, exhausted or extended by the Human Resources Department for a maximum of two additional six (6) month periods. Open employment lists may be maintained as the result of a continuous recruitment with names placed on such lists for one (1) year and merged with any other names already on the list in alphabetical order. An employment list may be abolished by the Human Resources Department when it contains fewer than three (3) names or for reasonable cause.

2. Re-Employment Lists

The names of probationary and regular employees who have been laid off pursuant to these Rules may, upon request at the time of layoff, be placed on an appropriate re-employment list, in accordance with Section 10.B.7 (Re-Employment List).

3. Removal of Names

The Human Resources Department shall notify and remove the name of any person appearing on any list if such person requests removal, resigns from City service, or fails to respond without excuse to a scheduled interview of which the individual was notified. The Human Resources Department may also remove an applicant's name from the employment list for any reason set forth in Section 6.B (Rejection of Applications).

E. Types of Appointment

1. Eligibles Available

The City Manager, or his/her designee, shall fill any permanent part-time, permanent full-time or project vacancy from among those certified according to the following priority: 1) re-employment list (mandatory), 2) transfer or demotion, 3) promotional employment list, 4) open competitive employment lists.

2. Provisional Appointment

In the absence of eligibles from which appointment may be made, a person meeting the employment standards for a vacant position may be given an at-will provisional appointment. The appointment shall be subject to certification by the Human Resources Department that the applicant meets the employment standards prior to the effective date of employment. An employment list shall be established within six (6) months for any permanent position filled by a provisional appointment. No special credit shall be given to an employee with a provisional appointment in meeting employment standards for any open competitive examination, in determining rights under these Rules, establishing eligibility for benefits, or against the probationary period. Provisional appointments shall be made for a period not to exceed six (6) months.

3. Project Appointment

Project employees are limited duration employees who hold a position which has been authorized by the City Council for a prescribed period of time or for the duration of a specified project. Project employees shall be employed as if for normal employment and shall be given written notice of the limited nature of their employment and of the fact they are at-will and do not earn the right to employment past the period authorized. Project employees shall receive the same employment benefits to which they would otherwise be entitled as probationary or regular employees, including CalPERS retirement benefits and Flexible Benefits contributions.

4. Emergency Appointment

The City Manager may employ such persons as may be needed for the period of an emergency which threatens life, property, or the general welfare of the City, without regard to the regulations as to recruitment and appointments in these Rules.

5. Temporary Assignment

A temporary employee is a full-time or part-time employee who is hired for a limited duration, typically not to exceed 1,000 hours worked in a fiscal year. The employee serves at-will and is not entitled to benefits, except as required by law.

6. Contract Appointment

An employee hired by written agreement with the City for a specific term and under conditions wholly contained within the employment agreement. Contract employees shall be entitled to only those benefits, rights and privileges as outlined in the employment contract. The City Manager and certain department heads are contract employees.

F. Additional Selection Criteria

1. Pre-employment Review

Prior to employment, a candidate must receive satisfactory results from a background investigation, physical examination, and administrative screening. For positions in the Police Department, the City may also require a polygraph test and/or psychological examination. The physical and/or psychological examinations will be administered only after the Human Resources Department extends the candidate a conditional offer of employment.

2. Job Offer

After a candidate has completed all steps of the selection process to the City's satisfaction, the Human Resources Department may extend to a candidate an official offer of employment.

3. Veterans' Preference

In making an appointment, preference may be given to candidates who are veterans, if the candidates to be selected are identically qualified, in accordance with state law.

## **SECTION 7. PROBATIONARY PERIOD**

### **A. Length of Probationary Period**

All original and promotional appointments shall be tentative and subject to a probationary period of not less than one (1) year of actual service, provided, however, that the department head may recommend to the City Manager to extend for a period not to exceed ninety (90) days the probationary period of any employee. The probationary period for employees in the classifications of Police Communications Officer I and Police Officer is not less than eighteen (18) months of actual service. The City Manager may establish a longer probationary period for specified classifications, provided that prospective employees are notified of the probationary period as a condition of employment.

Prior to the end of the probationary period, the probationary employee's department shall submit to the Human Resources Department the appropriate documentation designating either successful completion of the probationary period or termination from employment.

### **B. Objective of Probationary Period**

The probationary period shall be regarded as a part of the testing process and shall be utilized for observing the employee's work, for confirming a new employee's suitability for the position, and for rejecting any probationary employee whose performance does not meet the City's expectations and required standards of work.

### **C. Promotional Probationary Period**

An employee promoted to a classification with a greater maximum rate of pay than the classification of original appointment shall be deemed a promotional probationary employee and will commence a new probationary period on the effective date of the promotion.

### **D. Rejection of Probationary Employee**

#### **1. Rejection of Probationary Employee**

During the probationary period, an employee may be rejected at any time by the department head, with approval of the Director of Human Resources, for failing to successfully complete the probationary period, without cause and without the right of appeal. Notification of rejection in writing shall be served on the probationary employee and a copy will be filed with the Human Resources Department.

2. Rejection of Promotional Probationary Employee

Any employee rejected during a promotional probationary period shall be reinstated to the position and status from which promoted unless he/she has been discharged for cause or has resigned pursuant to these Rules. The employee is not entitled to notice or a hearing if rejected during probation and reinstated to his/her previous position.

E. Extension Due to Leave of Absence or Modified Duty

The purpose of the probationary period is to ensure an extended period for observation and evaluation before an employee obtains regular status.

Any leave of absence with or without pay exceeding fifteen (15) work days shall cause the employee's probationary period to be extended by the number of days of such leave that are in excess of fifteen (15) days.

Any modified duty assignment exceeding fifteen (15) work days resulting from an employee's temporary inability to perform the essential functions of the job shall cause the employee's probationary period to be extended by the number of days of such modified duty that are in excess of fifteen (15) days.

If an employee is unable to perform his/her regular duties due to a combination of leave of absence and a modified duty assignment that exceeds fifteen (15) work days, the employee's probationary period shall be extended by the number of combined days of leave and modified duty that are in excess of fifteen (15) days.

## **SECTION 8. ATTENDANCE & LEAVES**

### **A. Attendance**

Employees shall be in attendance at work in accordance with the rules regarding hours of work, holidays, and leaves.

#### **1. Timekeeping**

All departments shall keep daily attendance records of employees which shall be reported to the Finance Department in the form and on the dates specified by the Finance Department.

#### **2. Reporting of Absences**

Any employee who is absent from duty shall report the reason for such absence to the department head or immediate supervisor prior to the date of expected absence whenever possible and in no case later than two (2) hours after the beginning of one's normal work shift, except in the Police Department where such notice shall be two (2) hours before the beginning of the employee's normal work shift. Absences not reported in such manner may be considered absence without leave. A deduction of pay shall be made for the duration of any absence without leave. Upon return to work, such absence shall be justified to the department head who shall consider the need for disciplinary action.

#### **3. Job Abandonment**

An employee who is absent without leave for three (3) consecutive work days without reasonable cause and fails to return to duty as established in written notification to return shall be considered to have resigned.

An employee separated for job abandonment will be given an opportunity to explain the absence and failure to notify the City. The employee will be reinstated upon proof of justification for the absence, such as severe accident, severe illness, or false arrest. No employee has a right to an evidentiary appeal for separation as a result of job abandonment.

### **B. Work Schedules**

Work schedules for each position shall be as established by the department head, subject to the provisions of the applicable salary resolution and/or MOU.

C. Continuous Service Requirements

Continuous service, as required for advancement within salary ranges and for other purposes specified in these Rules, is defined as City employment on a probationary, regular or acting appointment basis without break or interruption. Authorized leaves of absence without pay of thirty (30) days or less and leaves of absence with pay for any period shall not constitute an interruption of an employee's continuous service and shall not be deducted in computing total City service. However, authorized leaves of absence without pay in excess of thirty (30) days shall be deducted in computing an employee's total City service for advancement in salary range and for other purposes specified in these Rules.

D. Approval of Leaves

Any leave of absence, including General Leave, in excess of thirty (30) days duration, must be approved by the City Manager or Director of Human Resources. Department heads may approve employee leaves of thirty (30) days or less.

E. General Leave

General Leave is a multi-purpose paid leave providing for the needs of the employee for vacation, personal business, and non-job-related illness or injury (employee or employee's family).

1. Accrual Rates

General Leave is granted to each regular and probationary full-time and part-time benefitted employee, as well as each project employee, at the accrual rates established by the appropriate salary resolution and/or MOU. Leave will be prorated for part-time benefitted employees.

General Leave shall accrue at the full rate when an employee is receiving his/her full regular salary or wage, receiving salary continuation payments during Industrial Disability Leave, and/or using paid leave on an authorized leave of absence during the entire pay period.

2. Maximum Accumulation

General Leave may be accumulated to a maximum accrual as specified in the applicable memorandum of understanding or salary resolution. Once an employee reaches the maximum accumulation, the employee ceases accruing General Leave until his/her leave balance is below the maximum accumulation.

3. Time of Leave

The time during the calendar year at which an employee may take leave shall be determined by the department head with particular regard for the needs of the City and with the consideration for the preference of the employee.

4. Holiday Within a Leave Period

In the event one or more municipal holiday(s) falls within a General Leave period, such days shall not be charged as General Leave.

5. Pro-Rated Accrual While on Unpaid Status

General Leave shall not accrue during any pay period when the employee is on unpaid status for more than forty (40) hours of that pay period. If an employee is on paid status between forty (40) and eighty (80) hours of a pay period, his/her General Leave will be earned on a prorated basis for that pay period. Unpaid status includes leave without pay, the City's 60% disability pay during the STD/LTD elimination period, and days in which the employee is paid a disability benefit by a third party (e.g. STD/LTD benefit or workers' compensation temporary disability benefit).

6. Pay in Lieu of Leave

Unless otherwise provided in an applicable memorandum of understanding or salary resolution, pay in lieu of General Leave will only be granted upon separation of City employment or upon a finding of hardship by the City Manager as described in Section 5.J of these Rules (Emergency Cash-Out of Accrued Leave).

7. Use of Leave at Time of Separation

General Leave may not be used at the time of separation of employment unless such use is approved in advance by the City Manager.

8. Payoff at Separation

Upon the employee's separation, all unused accrued General Leave, Compensatory Time Off, and Administrative Leave shall be paid off at the employee's current hourly rate in the next regularly scheduled payroll process.

F. Administrative Leave

Administrative Leave may be provided to exempt employees in accordance with the guidelines set forth in the applicable salary resolution and/or MOU.

## G. Compensatory Time Off

Non-exempt employees may accrue and use Compensatory Time Off in accordance with the guidelines set forth in the applicable salary resolution and/or MOU.

## H. Holidays

### 1. Eligibility

Employees shall be eligible for those holidays provided in the appropriate salary resolution and/or MOU, subject to the other provisions of this section. This section shall not apply to any employee who is part-time non-benefitted, temporary, emergency, hourly, or works on a daily basis.

### 2. Work on a Holiday

Any regular or probationary full-time or part-time benefitted employee or project employee whose regular schedule requires him/her to work on a holiday shall be compensated in accordance with the appropriate salary resolution and/or MOU. Holiday compensation for part-time benefitted employees will be prorated.

### 3. Holiday During a Leave of Absence

An employee shall receive full holiday compensation during a leave of absence when he/she is in fully paid status immediately before and after the holiday.

An employee is not entitled to holiday compensation when the employee is in unpaid status immediately before or after the holiday. Unpaid status includes leave without pay, the City's 60% disability pay during the STD/LTD elimination period, and days in which the employee is paid a disability benefit by a third party (e.g. STD/LTD benefit or workers' compensation temporary disability benefit). If an employee has received Advance Holiday Pay and is not in fully paid status immediately before and after a Holiday occurs, the City will reduce the employee's leave bank by the amount of hours previously paid for that particular holiday.

## I. Disability Leaves

### 1. Industrial Disability Leave (Workers' Compensation Leave)

An employee who suffers a work-related injury or illness is eligible for Industrial Disability Leave in accordance with applicable Workers' Compensation laws and the guidelines set forth in these Rules.

a. Probationary Civilian Employees and Part-Time Benefitted Employees

For any probationary civilian employee or part-time benefitted employee who is disabled from performing the duties of his/her position by reason of a bodily injury or illness occurring in the course and scope of employment, as contemplated by the workers' compensation laws of the State of California, the City shall pay the employee's regular wages or salary prior to the time the employee is eligible for workers' compensation temporary disability payments pursuant to state workers' compensation law (i.e., during the statutory waiting period).

At the conclusion of the statutory waiting period, the employee may be eligible for temporary disability payments from the workers' compensation claims administrator, in accordance with state workers' compensation law.

During the time that the employee is on Industrial Disability Leave, General Leave shall not be charged for the purpose of paying Industrial Disability Leave benefits. However, the employee may choose to use accumulated General Leave hours to supplement temporary disability payments (up to the amount of regular wages or salary) or health insurance benefits.

b. Sworn Public Safety Employees

Any sworn public safety employee who is a member of the California Public Employees' Retirement System (CalPERS) and is disabled temporarily or permanently by injury or illness arising out of and in the course of employment, shall be paid in accordance with all applicable workers' compensation laws. While so disabled, an employee is entitled to a leave of absence without loss of salary in lieu of temporary disability payments which would otherwise be payable, in accordance with Labor Code Section 4850. If the employee remains on Industrial Disability Leave after salary continuation benefits have expired, the employee may be eligible for temporary disability payments in accordance with the law.

During the time that the employee is on Industrial Disability Leave, General Leave shall not be charged for the purpose of paying Industrial Disability Leave benefits. However, the employee may choose to use accumulated General Leave hours to supplement temporary disability payments (up to the amount of regular wages or salary) or health insurance benefits.

c. Full-Time Regular Civilian Employees

Any civilian employee having a full-time, regular appointment who is disabled from performing the duties of his/her position by reason of a bodily injury or illness occurring in the course and scope of employment, as contemplated by the workers' compensation laws of the State of California, shall be paid the following salary

continuation benefits in lieu of temporary disability payments which would otherwise be payable:

- i. Full salary and benefits up to a maximum of three (3) months if the employee has less than three (3) years of City service; or
- ii. Full salary and benefits up to a maximum of six (6) months if the employee has three (3) or more years of City service.

If the employee remains on Industrial Disability Leave after salary continuation benefits have expired, the employee may be eligible for temporary disability payments in accordance with the law.

During the time that the employee is on Industrial Disability Leave, General Leave shall not be charged for the purpose of paying Industrial Disability Leave benefits. However, the employee may choose to use accumulated General Leave hours to supplement temporary disability payments (up to the amount of regular wages or salary) or health insurance benefits.

Salary continuation and temporary disability benefits will be terminated upon any of the following, whichever occurs first:

- i. The employee returns to duty; or
- ii. Temporary disability payments are terminated by means of agreed settlement or permanent disability rating; or
- iii. The employee retires from City service.

d. Early Return to Work / Modified Duty Program

The City has established an Early Return to Work/Modified Duty Program in order to encourage a speedy and healthful return to work for employees who have suffered an injury or illness. The program applies to all City employees who have a temporary disability which prohibits them from performing full job duties or meeting the essential functions of their position. The Early Return to Work/Modified Duty Program applies to both industrial and non-industrial injuries and illnesses; however, when evaluating the availability of modified duty, those employees who have suffered an industrial injury/illness will be given priority.

A modified duty assignment is not guaranteed, and there may be instances where modified duty is not available. Each case of eligibility for modified duty is considered independently of any other past or present assignments. Thus, the circumstances of each case, the needs of the City, the availability of assignments, and the nature of the work shall determine the availability of modified duty assignments.

Modified duty is defined as temporary work, which can be accomplished by an injured/ill employee within the stipulated work restrictions or functional limitations prescribed by the employee's primary treating physician, and without exposing others to the risk of harm. Modified duty is temporary in nature, and therefore no specific modified duty assignment should exceed six (6) months. The City may consider an extension of a modified duty assignment beyond the initial six (6) months if a written statement from the treating physician is received that indicates a "date certain" that the employee will be released to full duty. The period of modified duty shall not be extended unless the "date certain" is within a reasonable period of time.

The Director of Human Resources, or his/her designee, is responsible for the administration of this program. Employees are responsible for informing their treating physician(s) of the City's modified duty policy. Upon receipt of medical documentation that outlines specific work restrictions or functional limitations, the Director of Human Resources, or his/her designee, will consult with the applicable department head, or his/her designee, as to the availability of modified duty. If it is determined that modified duty is available, the department head, or his/her designee, will work with the Human Resources Department to monitor the employee's progress in returning to full duty status.

e. Time Spent at a Medical Facility

On the date of injury (or on the date the injury is first reported to a supervisor), if the City sends an employee to a medical facility for treatment of an industrial injury, the time the employee is required to spend at the medical facility is compensable as hours worked.

Employees are encouraged to schedule any follow-up examinations and physical therapy sessions outside of their regular work hours. Any time spent at follow-up appointments and physical therapy sessions is not compensable since it is not considered hours worked.

2. Pregnancy Disability Leave

a. Temporary Disability

A pregnant employee shall be allowed to be absent for the period during which, in the opinion of her attending physician and, where necessary, a City-designated physician, she is temporarily disabled because of pregnancy, childbirth or a related medical condition.

When an employee is disabled due to pregnancy, the employee shall furnish the City a statement from her physician giving the anticipated date of delivery, the opinion of

the physician as to her ability to perform her normal work assignment, and her expected date of return to work. Such statement shall be furnished as soon as feasible after a determination of the pregnancy disability has been made.

A pregnant employee will be permitted to work as long as, and return to work when, she is able to safely perform the duties of her position as recommended by her attending physician.

b. Compensation During Leave

Pregnancy Disability Leave is without pay. However, the employee may use accrued General Leave or any other accrued paid time. Pregnancy Disability Leave will be treated as any other disability leave and may entitle the employee to Short-Term / Long-Term Disability Leave or additional unpaid leave requested by the employee and granted by the City Manager.

c. Benefits During Leave

In accordance with the State of California's Pregnancy Disability Leave law, an employee on Pregnancy Disability Leave is entitled to up to four (4) months of job-protected leave for the time that the employee is disabled due to pregnancy and/or childbirth. While on Pregnancy Disability Leave, the employee is entitled to continued coverage in the City's group health insurance and supplemental policies to the same extent as when the employee was working. The City may recover premiums it paid to maintain health coverage, as provided by the family and medical leave laws, if an employee does not return to work following Pregnancy Disability Leave.

General Leave does not accrue while an employee is on unpaid Pregnancy Disability Leave.

d. Reinstatement

Upon the expiration of Pregnancy Disability Leave and the City's receipt of a written statement from the health care provider that the employee is fit to return to duty, the employee will be reinstated to her original or an equivalent position, so long as it was not eliminated for a legitimate business reason during the leave.

If the employee's original position is no longer available, the employee will be assigned to an open position that is substantially similar as the employee's original position in terms of job content, status, pay, promotional opportunities, and geographic location.

If upon return from leave an employee is unable to perform the essential functions of her job because of a physical or mental disability, the City will initiate an

interactive process with the employee in order to identify a potential reasonable accommodation.

An employee who fails to return to work after the termination of her leave loses her reinstatement rights.

e. Lactation

In accordance with California Labor Code section 1030, the City shall provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time, if possible, shall run concurrently with the employee's regular break time.

In accordance with California Labor Code section 1031, the City shall make all reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private.

3. Short-Term / Long-Term Disability Leave

Short-Term Disability Leave and Long-Term Disability Leave will be provided as set forth in the applicable salary resolution and/or MOU.

J. Family Care and Medical Leave (FMLA/CFRA Leave)

1. Policy

To the extent not already provided for under current leave policies and provisions, the City will provide unpaid Family Care and Medical Leave for eligible employees as required by state and federal law. The following provisions set forth certain rights and obligations with respect to such leave. Rights and obligations which are not specifically described below are set forth in the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). Unless otherwise provided, "leave" under this section shall mean Family Care and Medical Leave pursuant to the FMLA and CFRA.

2. Definitions

- a. 12-Month Period – for all purposes other than FMLA leave to care for a covered servicemember a rolling 12-month period measured backward from the date approved leave is taken and continuous with each additional leave day taken. For FMLA leave to care for a covered servicemember, a 12-month period which begins on the first day the eligible employee takes FMLA leave and ends 12 months after that date.

- b. Active Duty or Call to Active Duty Status – a duty under a call or order to covered active duty (or notification of an impending call or order to active duty) which provides for deployment to a foreign country for members of the National Guard, Reserves and members of the Armed Forces as provided for by the FMLA.
- c. Child – a child under the age of 18 years of age, or 18 years of age or older who is incapable of self care because of a mental or physical disability. An employee’s child is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster or step child. A child is “incapable of self care” if he/she requires active assistance or supervision to provide daily self care in three or more of the activities of daily living or instrumental activities of daily living, such as caring for grooming and hygiene, bathing, dressing, and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, and using telephones and directories.
- d. Covered Servicemember – a member of the United States Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.
- e. Domestic Partner – an individual as defined by California Family Code sections 297 and 299.2. A domestic partner shall have the same rights as a “spouse” for purposes of CFRA leave.
- f. Health Care Provider – any of the following individuals:
  - i. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California.
  - ii. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under state law.
  - iii. Nurse practitioners and nurse-midwives, clinical social workers, and physician assistants who are authorized to practice under California state law and who are performing within the scope of their practice as defined under California state law.
  - iv. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

- v. Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.
- vi. A health care provider who practices in another state or in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that state or country.
- g. Next of Kin of a Covered Servicemember – the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority (unless the covered servicemember has specifically designated in writing another blood relative as his/her nearest blood relative for purposes of military caregiver leave under the FMLA): blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provision, brothers and sisters, grandparents, aunts and uncles, and first cousins.
- h. Parent – the biological, adoptive, step, or foster parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parent-in-law.
- i. Outpatient Status – the status of a member of the United States Armed Forces assigned to (1) a military medical treatment facility as an outpatient or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- j. Serious Health Condition – an illness, injury, impairment, or physical or mental condition that involves:
  - i. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery there from); or
  - ii. Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
    - a. A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves one (1) of the following:
      - I. Treatment two (2) or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care

provider, a nurse or physician's assistant under direct supervision by a health care provider, or a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider. The first in-person treatment visit must take place within seven (7) days of the first day of incapacity; or

- II. Treatment by a health care provider on at least one occasion which takes place within seven (7) days of the first day of incapacity and results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
- b. Any period of incapacity due to pregnancy or for prenatal care. (This entitles the employee to FMLA leave, but not CFRA leave. Under California law an employee disabled by pregnancy is entitled to pregnancy disability leave.)
  - c. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
    - I. Requires periodic visits (defined as at least twice a year) by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider; and
    - II. Continues over an extended period of time (including recurring episode of a single underlying condition); and
    - III. May cause episodic rather than a continuing period of incapacity (such as asthma, diabetes, or epilepsy). Absences for such incapacity qualify for leave even if the absence lasts only one day.
  - d. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
  - e. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more

than three consecutive calendar days in the absence of medical intervention or treatment.

- k. Serious Injury or Illness – an injury or illness incurred by a covered servicemember in the line of duty while on active duty that may render the servicemember medically unfit to perform the duties of the servicemember’s office, grade, rank, or rating.
- l. Spouse – a husband or wife as defined or recognized under California State Law for purposes of marriage.
- m. Workweek – the equivalent of the employee’s normally scheduled workweek. For eligible employees who work more or less than five days a week, or who work alternative work schedules, the number of working days which constitute 12 weeks is calculated on a pro-rata or proportional basis.

### 3. Reasons for Leave

Leave is only permitted for the following reasons:

- a. The birth of an employee’s child or to care for a newborn of an employee.
- b. The placement of a child with an employee in connection with the adoption or foster care of a child.
- c. Leave to care for an employee’s child, spouse, registered domestic partner (CFRA leave only) or parent who has a serious health condition.
- d. Leave because of an employee’s own serious health condition that makes the employee unable to perform the functions of his/her position.
- e. Leave for a “qualifying exigency” arising out of the fact that an employee’s child, spouse, or parent is on covered active military duty or has been notified of an impending call or order to active duty. Eligible employees may take leave to care for a military member’s parent who is incapable of self-care when the care is necessitated by the member’s covered active duty. Such care may include arranging for alternative care, providing care on an immediate need basis, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility.
- f. Leave to care for a child, spouse, parent, or “next of kin” who is a covered servicemember of the United States Armed Forces who incurred a serious injury or illness in the line of duty while on active military duty.

#### 4. Eligibility for Leave

An employee is eligible for leave if the employee:

- a. Has been employed for at least 12 months; and
- b. Has actually worked for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

#### 5. Amount of Leave

##### a. Maximum Duration of Leave

Eligible employees are entitled to a total of 12 workweeks of leave, or up to 26 workweeks of leave to care for a covered servicemember, during any 12-month period. Where FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.

##### b. Minimum Duration of Leave

If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one (1) year of the birth or placement of the child. The basic minimum duration of such leave is two (2) weeks. However, an employee is entitled to a leave for one of these purposes (e.g., bonding with a newborn) for at least one (1) day, but less than two (2) weeks duration, on any two (2) occasions.

If leave is requested to care for a child, parent, registered domestic partner, spouse or the employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the employee must comply with the notice and medical certification provisions of this policy.

##### c. Spouses Both Employed by the City

In any case in which both spouses employed by the City are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 work weeks during any 12-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child (i.e., bonding leave) or 26 workweeks during any 12-month period if leave is taken to care for a covered servicemember. This limitation does not apply to any other type of leave under this policy.

## 6. Flexible Benefits During Leave

While on unpaid leave, the employee will continue to receive Flexible Benefits contributions to the same extent that contributions are provided while the employee is on the job.

For any benefit plan costs in excess of the employee's Flexible Benefits contribution, the employee may make the required contribution by payroll deduction or direct payment to the plan(s). Depending on the particular plan, the City will inform the employee whether the premiums should be paid directly to the carrier or to the City. Coverage on a particular plan may be dropped if the employee is more than 30 days late in making a premium payment. However, the employee will receive a notice at least 15 days before coverage is to cease, advising him/her that coverage will be dropped if the premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City shall have the right to recover its share of Flexible Benefits contributions for the entire leave period or recover contributions through deduction from any sums due the City (e.g., unpaid wages, vacation pay), unless the employee does not return because of continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave.

## 7. Concurrent Use of Accrued Paid Leave

While on Family Care and Medical Leave, an employee may elect to concurrently use accrued paid leave. Similarly, the City may require an employee to concurrently use accrued paid leave after requesting FMLA and/or CFRA leave, and may also require an employee to use Family Care and Medical Leave concurrently with another type of leave if the reason for the leave qualifies the employee for FMLA/CFRA leave.

### a. Employee's Right to Use Accrued Paid Leave Concurrently with Family Care and Medical Leave

The employee may elect to substitute accrued General Leave, Administrative Leave, and/or Compensatory Time Off for all or part of any unpaid FMLA/CFRA leave taken under this policy.

### b. City's Right to Require an Employee to Use Paid Leave Concurrently with FMLA/CFRA Leave

The City may require employees to exhaust their accrued General Leave, Administrative Leave, and/or Compensatory Time Off concurrently with FMLA/CFRA

Leave, to the same extent that employees have the right to elect to use their accrued paid leaves concurrently with FMLA/CFRA Leave.

c. City's Right to Require an Employee to Exhaust FMLA/CFRA Leave Concurrently with Other Types of Leave

If an employee takes a leave of absence for any reason which qualifies as FMLA/CFRA leave, even though the employee did not specifically request Family Care and Medical Leave, the City may run the employee's 12-week FMLA/CFRA leave entitlement concurrently with the leave of absence.

d. City's and Employee's Rights if an Employee Requests Accrued Leave without Mentioning FMLA/CFRA Leave

If an employee requests to use accrued paid leave without reference to a FMLA/CFRA qualifying event, the City may not ask the employee if the leave is for Family Care and Medical Leave. However, if the City denies the employee's leave request and the employee provides information that indicates that the requested time off may be for a FMLA/CFRA qualifying purpose, the City may inquire further into the reason for the absence. If the reason qualifies the employee for FMLA/CFRA leave, the City may require the employee to concurrently exhaust General Leave, Administrative Leave, and/or Compensatory Time Off.

8. Certification

a. Requirements

Employees who request leave for their own serious health conditions or to care for a child, parent, registered domestic partner or a spouse who has a serious health condition must provide written certification from the health care provider of the individual requiring care if requested by the City. If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position. This provision may be satisfied with the doctor's portion of the Short-Term / Long-Term Disability form.

Employees who request leave to care for a covered servicemember who is a child, spouse, parent, or "next of kin" of the employee must provide written certification from a health care provider regarding the injured servicemember's serious injury or illness.

The first time an employee requests leave because of a qualifying exigency, the employee is required to provide a copy of the covered servicemember's active duty orders or other documentation issued by the military which indicates that the covered servicemember is on Covered Active Duty and the dates of the covered

servicemember's active duty service. A copy of new active duty orders or similar documentation shall be provided to the employer if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different covered military leave.

b. Timeframe to Provide Certification

When an employee's leave is foreseeable and at least 30 days notice has been provided, the employee must provide medical certification before the leave begins, if certification is requested by the City. When this is not possible, the employee must provide the requested certification within the timeframe requested the City (which will provide the employee with at least 15 calendar days), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. In the case of Industrial Disability Leave, a workers' compensation doctor's report may satisfy the certification requirement.

c. Consequences for Failure to Provide an Adequate or Timely Certification

If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to cure any such deficiency. However, if an employee fails to provide a medical certification within the time frame established by this policy, the City may delay the taking of FMLA/CFRA leave until the required certification is provided.

d. Re-Certification

If the City has a good faith, objective reason for doubting the validity of a certification, the City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee, but paid for by the City. The opinion of the third provider will be binding. An employee may require a copy of the health care provider's opinions when there is a recertification.

e. Intermittent Leave or Leave on a Reduced Leave Schedule

If an employee requests leave intermittently (leave taken in separate blocks of time due to a single qualifying reason) or on a reduced leave schedule (a leave schedule that reduces the employee's usual number of hours per workweek or workday) to care for a sick family member, covered servicemember, or for the employee's own serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

## 9. Employee Notice of Leave

Although the City recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. Except for qualifying exigency leave, if leave is foreseeable, at least 30 days' notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g., for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. Such notice may be given verbally. If the City determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the City may delay the granting of the leave until it can, in its discretion adequately cover the position with a substitute.

For foreseeable leave due to a qualifying exigency, an employee must provide notice of the need for leave as soon as practicable, regardless of how far in advance such leave is foreseeable.

## 10. Reinstatement upon Return from Leave

### a. Right to Reinstatement

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and City, the employee will be reinstated within two business days, where feasible, after the employee notifies the City of his/her readiness to return.

### b. Employee's Obligation to Periodically Report on His/Her Condition

Employees may be required to periodically report on their status and intent to return to work. This is designed to avoid any delays to reinstatement when the employee is ready to return.

### c. Fitness-for-Duty Certification

As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform his/her job, the employee must obtain and present a fitness-for-duty

certification from the health care provider that the employee is able to resume work in a full or modified capacity. The City may also require a fitness-for-duty certification by a health care provider chosen and paid for by the City. Failure to provide such certification will result in denial of reinstatement.

d. Reinstatement of “Key Employees”

The City may deny reinstatement to a “key employee” (i.e., an employee who is among the highest paid 10 percent of all employed by the City within 75 miles of the worksite) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the City and the employee is notified of the City’s intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

11. Required Documentation

Employees must submit the following documents, as applicable, to the Human Resources Department:

- a. A Family Care or Medical Leave Request form is required from the employee when an employee requests leave, documenting the reason, schedule, and expected duration of the leave. The Human Resources Department will respond and set forth conditions of the leave.
- b. Medical certification from an authorized health care provider, as described in this section, is required for leave taken for the employee’s own serious health condition or for the serious health condition of a child, parent, registered domestic partner or spouse.
- c. Written authorization for payroll deductions for continuation of benefit plan coverage is required if the employee has any benefit plan costs in excess of the employee’s Flexible Benefits contribution.
- d. Fitness-for-Duty certification from the health care provider verifying that the employee is able to resume work, as described in this section, is required prior to reinstatement.

K. Other Leaves of Absence

1. Bereavement Leave

The City shall allow time off for Bereavement Leave in accordance with the appropriate salary resolution and/or MOU.

## 2. Medical Emergency / Catastrophic Leave

### a. Purpose

The Medical Emergency / Catastrophic Leave (MECL) policy provides employees a procedure for the voluntary transfer of accrued General Leave to a co-worker who has either suffered a catastrophic illness or injury or whose dependent family member has suffered a catastrophic illness or injury. This plan is intended to enable employees who have exhausted their leave balances to receive voluntary leave donations from other City employees for the period of time that leave is necessary.

### b. Policy

It is the policy of the City to authorize employees to voluntarily transfer accrued General Leave hours to another employee under the criteria specified in this policy. Such transfer of leave balances shall be limited to situations where the requesting employee has exhausted all of his/her available paid leave (e.g., General Leave, Administrative Leave, and Compensatory Time Off) as a result of the employee's, or the employee's dependent family member's, qualifying long-term illness or injury (as defined in this policy) and, therefore will be placed on unpaid leave status.

MECL requests must be submitted in writing and are subject to approval by Human Resources.

### c. Definitions

- i. Medical Emergency / Catastrophic Illness or Injury – An unanticipated illness or injury, either for a permanent or temporary period anticipated to exceed thirty (30) calendar days, that incapacitates an employee or the employee's dependent family member (spouse, domestic partner, child, parent), and which limits the employee's ability to perform the essential functions of his/her usual and customary job.
- ii. Medical Emergency/Catastrophic Leave (MECL) Hours – Leave hours donated to the requesting employee by the donating employee(s).
- iii. Dependent Family Member – For purposes of this policy, includes a spouse, domestic partner, child, or parent who will depend on the employee for assistance as a result of the medical emergency / catastrophic illness or injury.

### d. Employee Eligibility

The employee must meet all of the following criteria to be eligible for receipt of MECL hours:

- i. The employee must be employed as a full- or part-time regular employee for at least 30 days prior to the event requiring time off.
  - ii. The approved medical leave of absence must be for at least 30 consecutive days. In the event the leave is needed for a dependent family member, that individual must be incapacitated from work, school, or other regular daily life activities for at least 30 consecutive days.
  - iii. The employee must provide a medical certification by the applicable health care provider verifying that the illness or injury 1) meets the definition of medical emergency / catastrophic illness or injury as defined in this policy and 2) medically requires at least 30 consecutive calendar days of leave.
  - iv. The employee must have exhausted all available leave time including General Leave, Administrative Leave, and/or Compensatory Time Off.
- e. Donation Regulations
- i. All donations shall be made on an hour-for-hour basis, regardless of the hourly pay rate of either the donor or the recipient.
  - ii. Donations must be made in one (1) hour increments.
  - iii. Donations may come only from accrued General Leave banks.
  - iv. Donations will be provided to the recipient employee incrementally each pay period in the order in which the donations were received. Once approved, the donations shall be removed from the donor's leave bank. This transfer is irrevocable.
  - v. Donations are made on a voluntary basis and shall be kept confidential and not revealed to the recipient, other donors, and/or other employees.
  - vi. Employees may donate up to half their annual accrual of General Leave.
  - vii. The maximum amount of donations an employee may receive per year is 800 hours. These hours must be integrated with the employees STD/LTD or workers' compensation benefit payments if applicable. In no event shall an employee receive a combination of leave donations, STD/LTD, and/or Workers' Compensation in an amount that would exceed the employees' pre-incident earnings.
  - viii. Once a recipient has exhausted his/her accrued paid leave balances and is receiving only donated MECL hours, accrual of General Leave will cease until

such time as the employee returns to work and begins receiving regular earnings for time worked.

- ix. Under special circumstances use of intermittent use of MECL hours may be approved.

f. Procedures

i. MECL Request

- A. Eligible employees may request MECL donations by completing the Medical Emergency / Catastrophic Leave (MECL) Request Form.
- B. The accepting/requesting employee must provide medical certification(s) indicating the duration of the illness/injury will be for 30 consecutive calendar days or longer.
- C. The employee shall submit the MECL Request Form and medical certification to Human Resources for approval and processing.
- D. Upon approval and with the employee's consent, Human Resources will accept donations and (if authorized) advertise the request for MECL donations. Advertising may be in the form of e-mail, flyers, staff meeting announcements, or other authorized advertising approved by Human Resources and with the employee's consent.

ii. MECL Donation

- A. Employees who wish to donate leave time may do so by completing the Medical Emergency / Catastrophic Leave (MECL) Donation form.
- B. Employees may donate an amount up to one-half (1/2) their annual accrual of General Leave.
- C. MECL Donation Forms shall be sent to the Human Resources Department for approval. Donations will be kept strictly confidential.
- D. The Human Resources Department will monitor donations to ensure the maximum hourly donations per recipient are not exceeded.
- E. Donations will be provided to the recipient employee incrementally each pay period in the order in which the donations were received. Once approved, the donations shall be removed from the donor's General Leave bank. This transfer is irrevocable.

### 3. Military Leave

Military Leave shall be granted in accordance with the provisions of state and federal law. An employee requesting leave for this purpose shall provide the department head, whenever possible, with a copy of the military orders specifying the dates, site and purpose of the activity or mission. Within the limits of such orders, the department head may determine when the leave is to be taken and may modify the employee's work schedule to accommodate the request for leave.

#### a. Salary or Wages

Any employee who is on active duty and has been employed for at least one (1) year will receive his/her salary for the first thirty (30) days of military duty.

Any employee who is a member of the National Guard will receive his/her salary for the first thirty (30) days of active service regardless of length of service with the City.

Any employee who is on temporary military duty and has been employed for at least one year or at least one year of combined military/employment service will receive his/her salary for the first thirty (30) days of duty, provided the ordered duty does not exceed one hundred eighty (180) days. Pay shall not exceed thirty (30) days in any fiscal year.

An employee will not be compensated for weekend reserve duty, but will be compensated during annual reserve training.

#### b. Health Insurance Benefits

Any employee on Military Leave may elect to continue health care coverage for himself/herself and any eligible dependents for a maximum of twenty-four (24) months by paying the premium amount in advance.

#### c. General Leave Benefits

Employees on active duty are not entitled to accrue General Leave with the exception that a National Guard member on active duty is entitled to accrue General Leave for the first thirty (30) days of active duty.

#### d. Re-employment Rights of Employees Returning From Military Leave

Employees returning from Military Leave are entitled to re-employment to their previous position (or a position of similar seniority, status and pay) if:

- i. The employee has given advance written or verbal notice of such military service to the employer;

- ii. The cumulative length of the absence and of all previous absences from a position of employment with the City by reason of military service does not exceed five (5) years; and
- iii. The returning veteran reports to, or submits a re-employment application, to the employer in accordance with the notice provisions mandated by federal law. The amount of notice an employee must provide an employer of his/her intent to return to work depends on the amount of time the employee has been on Military Leave.

The City may refuse reinstatement if:

- i. The City's circumstances have changed so much as to make the re-employment impossible or unreasonable; or
- ii. Re-employment of the individual would impose an undue hardship on the City; or
- iii. The position from which the person left existed for a brief, non-recurrent period and there was no reasonable expectation the job would continue indefinitely or for a significant period.

#### 4. Jury Duty Leave

All employees will be encouraged to serve on jury duty when summoned. Any full-time, regular or probationary employee on jury duty will receive his/her full City salary; other employees may be provided with an unpaid leave of absence. Unless otherwise specified in a MOU or salary resolution, the time spent on jury duty is not considered work time for purposes of calculating overtime. Employees who have the option to call in for juror status should exercise that option.

For employees who work the cover shift or graveyard shift and are assigned to physically report to jury duty, the department head will evaluate whether or not the assigned jury duty conflicts with the employee's scheduled shift or negatively impacts the employee's ability to safely perform his/her job. If the department head concludes as such, the department head will make temporary modifications to the employee's schedule to accommodate these concerns.

Employees who are dismissed from jury duty within Orange County with three (3) or more hours remaining on their normal work shift must return to work for the remainder of their shift.

5. Family Sick Leave (KinCare Leave)

In accordance with state law, an employee may use accrued General Leave, up to an amount that is half of his/her annual accrual, to care for the employee's sick child, parent, spouse, or domestic partner. Such leave may run concurrently with FMLA/CFRA Leave.

6. Leave to Participate in Child's School or Child Care Activities

In accordance with state law, an employee who is a parent, guardian, or grandparent having custody of a child in kindergarten, in grades one through twelve, or in a licensed child day care facility, may take time off from work to participate in the activities of the child's school or licensed child care facility, subject to the conditions outlined below.

Such leave is limited to 40 hours per calendar year and may not exceed eight (8) hours in any calendar month. During the leave, the employee shall use accrued General Leave, Administrative Leave, and/or Compensatory Time Off. If the employee has no paid leave accrued, the employee may take unpaid leave, subject to department head approval. In order to take leave, the employee must provide his/her department head with reasonable advance notice.

Eligible activities include, but are not limited to, field trips, open houses, extracurricular activities, and suspension meetings. The City may require the employee to provide documentation from the school or licensed child care facility that verifies the employee's participation in the child's activities at a specific date and time.

If both of the child's parents are employed by the City, the employee who provided notice first is entitled to the leave requested.

7. Leave for Victims of Domestic Violence and Sexual Assault

In accordance with state law, an employee who is a victim of domestic violence or sexual assault is entitled to take time off from work to seek relief (such as a temporary restraining order) or other assistance to help safeguard the health, safety, or welfare of the employee and/or his/her child. The employee must provide reasonable advance notice of the intent to take leave for this reason, unless advance notice is not feasible.

Leave for this purpose is unpaid, though an employee may choose to use accrued paid leave.

## 8. Special Leaves with and without Pay

Special Leaves are leaves of absence that are granted in rare, unusual circumstances and are not covered under other provisions of these Rules, an MOU or salary resolution, or state or federal law.

### a. 180 Days or Less

Upon the written recommendation of the department head, the City Manager may authorize special leaves of absence without pay for one or more periods not to exceed one hundred and eighty (180) days in a calendar year for any purpose deemed by the City Manager not to be detrimental to the City.

### b. Greater than 180 Days

The City Council may, upon the recommendation of the City Manager, grant special leaves of absence with or without pay in excess of one hundred and eighty (180) days for purposes deemed by the City Manager to be beneficial to the City. Failure of the employee to return to service at the end of the leave, except in extraordinary circumstances, will constitute an automatic termination.

## 9. Time Off to Vote

In accordance with state law, employees are eligible for paid time off for the purpose of voting only if they do not have sufficient time outside of working hours to vote. The intent of the law is to provide an opportunity to vote to workers who would not be able to do so because of their jobs.

Subject to the conditions above, an employee may take up to two (2) hours off of work to vote in a statewide election, without any loss of pay, if the employee is scheduled to work during voting hours (typically 7 am to 8 pm). In general, a "statewide election" is defined as one in which all voters in the state have an opportunity to vote on at least one common race or issue. An employee is entitled to take as much time as actually needed to vote, but only up to two (2) hours of that time will be paid.

Time off for voting may be taken only at the beginning or end of the employee's regular work shift, unless other arrangements are approved in advance by the employee's department head. If the employee needs time off to vote, he/she must notify his/her department head at least two (2) working days prior to the election.

## SECTION 9. EMPLOYEE STATUS CHANGES

### A. Transfer

#### 1. Voluntary Transfer

A regular employee may initiate a request to transfer to another position in the same classification for which the employee, in the opinion of the Director of Human Resources or designee, is qualified by submitting a request to transfer to the Human Resources Department. The request will be kept on file for one year from the date of receipt. With the approval of the department head for whom the employee currently works and the department head for whom the employee wishes to work, the employee may be transferred to the new position when a vacancy becomes available.

#### 2. Involuntary Transfer

After notice to the Human Resources Department, an employee may be transferred by the City Manager at any time from one position to another position in the same or a comparable classification, in the same or a different department.

### B. Promotion

Promotions are discussed in Section 5.G.2 (Salary on Promotion) and Section 6.C.1 (Recruitment and Examination Type).

### C. Demotion

#### 1. Involuntary Demotion

A department head may demote an employee whose ability to perform his/her required duties falls below standard or for misconduct. An employee involuntarily demoted is entitled to the rights provided in Section 12 of these Rules (Discipline) or an applicable salary resolution and/or MOU.

#### 2. Voluntary Demotion

Upon request of the employee, and approval of the department head, an employee may voluntarily demote to a position in a lower classification. No employee shall be demoted to a position for which he/she does not possess the minimum qualifications.

D. Suspension

An employee may be suspended by the department head without pay for cause in compliance with Section 12 (Discipline) of these Rules or an applicable salary resolution and/or MOU.

In extreme and severe circumstances, an emergency suspension without pay not to exceed five (5) working days may be imposed to allow time for an investigation which may lead to disciplinary action against an employee. If, at the end of that time, disciplinary action is not taken, the employee shall be reinstated with full pay and benefits provided, however, that nothing in this section shall prohibit future disciplinary action, including suspension without pay, to be taken based on further investigation of the charges.

E. Reduction in Salary

A department head may reduce an employee's salary for cause. A reduction in salary for disciplinary purposes may take one of two forms: (1) a decrease in salary to a lower step within the salary range, or (2) a decrease in salary paid to an employee for a fixed period of time. An employee whose salary is reduced is entitled to the rights provided in an applicable MOU or Section 12 of these Rules (Discipline). FLSA-exempt employees are not subject to reduction in salary.

F. Reinstatement

For a period of up to one (1) year, upon recommendation of the department head and with the approval of the City Manager, a regular employee who has resigned in good standing with satisfactory performance may be reinstated to his/her former position, if vacant, or to a vacant position in the same or comparable classification. Upon reinstatement the employee, for all purposes, shall be considered a new employee, and hence will serve a new probationary period.

## SECTION 10. SEPARATION FROM SERVICE

### A. Discharge or Dismissal

#### 1. At-Will Employees

An at-will employee may be discharged by the department head at any time, with or without cause and without right of appeal.

#### 2. Regular Employees

A regular employee may be discharged for cause. An employee who is discharged for cause is entitled to the rights provided by an applicable MOU or Section 12 of these Rules (Discipline).

### B. Layoff

#### 1. Authority to Lay Off

The City Manager may lay off employees at any time for lack of work, budgetary reasons, technological changes or other City actions that necessitate a reduction in the work force.

#### 2. Definitions

- a. Original probationary period – an employee’s first probation period during continuous City employment.
- b. Promotional probationary period – the probationary period served upon promotion from one City position to another.
- c. Seniority – length of continuous service with the City from date of hire into a merit system position. For purposes of this section, time served on a military leave of absence and a leave of absence due to a workers’ compensation injury shall be considered City service. An employee shall continue to accrue seniority during any unpaid leave of absence of 30 days or less taken for any purpose; however, seniority will cease to accrue after 30 days of unpaid leave.

#### 3. Designation of Positions for Layoff

When it becomes necessary to reduce the work force, the City Manager shall designate the position(s) or classification(s), and division(s), department(s), or other organizational unit(s) in which positions are to be eliminated. Contract, provisional, and temporary employees in the same classification as the positions proposed for elimination within

the affected organizational unit shall be laid off first. Probationary promotional employees who are laid off shall be returned to the position held prior to their promotion.

#### 4. Order of Layoff

- a. The names of all original probationary employees occupying positions in the affected class shall be listed in alphabetical order. The City Manager or his/her designee shall select from this list one employee, regardless of his/her place on the list, to be laid off for each position to be abolished.
- b. If the positions to be abolished exceed the number of employees available for layoff after layoff of original probationary employees as described above, a "Subject to Layoff List" shall be prepared. The list shall be composed of all regular and promotional probationary employees in the class from which a position is to be abolished. Names of the employees shall be listed in reverse order of their lengths of City service; i.e., those having the least seniority will be listed first.
- c. In selecting employees to be laid off, those employees at the top of the list shall be laid off first. When employees have equal seniority, the City Manager will select the employee to be laid off with consideration given to the employee's past performance and in consultation with the concerned department head.
- d. The names of laid off employees shall be listed on a reemployment list in the reverse order of their dates of layoff.

#### 5. Bumping Rights

Any employee subject to layoff who has held regular status in a position in a lower classification in the class series from which he/she is to be laid off may request placement in the lower classification. The request is subject to approval by the City Manager. If approved, this request will result in the layoff of the least senior employee in the lower classification.

An employee who has been involuntarily transferred to a class from which a layoff is to be made shall have automatic bumping rights to his/her previous classification for up to one (1) year from the effective date of the transfer.

#### 6. Severance Assistance

##### a. Severance Pay

Severance pay of one (1) week per year of service, up to a maximum of four (4) weeks of pay, will be provided to an employee who is laid off and not offered employment through an agreement between a contractor and the City. This

provision only applies to employees who actually lose employment with the City, not employees who are placed in another position as a result of bumping rights.

b. Flexible Benefits Contributions

An employee who is laid off shall have his/her Flexible Benefits contribution continued for an additional two (2) months following the month in which the employee was laid off if he/she is not covered by another medical plan at the time.

c. Letters of Recommendation

Letters of recommendation will be provided for an employee whose performance was satisfactory as of the date of his/her layoff.

d. Employment Assistance

Reasonable assistance in locating alternative employment will be provided for an employee who is laid off.

7. Re-Employment List

The name of every regular employee who is laid off or demoted in lieu of layoff shall be placed on a re-employment list in reverse order of their dates of layoff.

Names may be removed from a re-employment list for any of the following reasons:

- a. The expiration of eighteen (18) months from the date of placement on the list.
- b. Re-employment in any permanent full-time position, regardless of department or classification level.
- c. Failure to respond within fourteen (14) calendar days of mailing of a letter sent via e-mail regarding availability of employment.
- d. Failure to report to work within fourteen (14) calendar days of mailing of a letter sent via e-mail containing a notice of re-employment, absent mitigating circumstances.
- e. An individual requests in writing that his/her name be removed from the list.

8. Re-employment

Vacancies to be filled within a department shall be offered first to individuals on the re-employment list who held a position in the same classification as the vacancy to be filled.

A regular employee who has been laid off and is re-employed in a permanent position within eighteen (18) months from the effective date of his/her layoff shall be entitled to:

- a. Buy back and restoration of all General Leave credited to the employee's account on the effective date of layoff at the same rate as it was paid off. This restoration must be requested in writing within 30 days of returning to work and must be fully paid back within six (6) months of the return to work.
- b. Restoration of seniority accrued prior to layoff and during layoff.
- c. The same accrual rate that was in effect prior to layoff.
- d. Placement in the salary range as if the employee had been on a leave of absence without pay if he/she is reinstated to the same job classification from which he/she was laid off. Placement in the salary range at the same step held prior to layoff if the employee is reinstated to the same job classification from which he/she was laid off.

If the person who is re-employed had not satisfactorily completed the required probationary period in the department of appointment prior to layoff, he/she shall serve a probationary period upon re-employment.

#### 9. Notices

At least two (2) weeks' notice (14 calendar days) shall be given to any employee who is to be laid off. All notices and requested actions referenced in this section shall be in writing and sent by Certified Mail or delivered personally to the addressee. All notices to the City shall be addressed to the City Manager. Employee shall be responsible for notifying the City of any address change and any such notice shall be served in accordance with this paragraph.

#### 10. Displacement of Part-Time Employee

In the event a reduction in force is necessary, a part-time employee may not displace a full-time employee. However, a full-time employee may displace a less senior part-time employee provided he/she is otherwise eligible to displace the less senior employee.

#### 11. No Appeal

Employees do not have any right to appeal their layoff from employment.

C. Resignation

An employee wishing to leave City service in good standing shall file with the department head or Director of Human Resources, at least ten (10) working days before leaving City service, a written letter of resignation. The letter shall be forwarded to the Human Resources Department. Failure to comply with this rule shall be entered on the service record of the employee and may be cause for denying future employment by the City. The resignation of an employee who fails to give notice shall be reported immediately by the department head to the Human Resources Department. A resignation becomes final once accepted by the department head. Once a resignation has been accepted, it cannot be withdrawn.

D. Disability

1. Policy

An employee may be transferred, demoted, or separated from service for disability only when he/she cannot perform the essential functions of the job because of a physical and/or mental impairment and the City has engaged in an interactive dialogue with the employee and considered possible reasonable accommodations, in accordance with the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA). An accommodation will not be provided if it would present a direct and imminent threat to the health and safety of the employee or others or would otherwise cause an undue hardship to the City based on all of the facts and circumstances.

2. Procedure

a. Request for Accommodation

An employee who desires a reasonable accommodation in order to perform essential job functions should make such a request in writing to the Human Resources Department. The request must identify: (a) the job-related functions at issue; and (b) the desired accommodation(s).

b. Reasonable Documentation of Disability

Following receipt of the request, the Human Resources Department may require additional information, such as reasonable documentation of the existence of a disability.

c. Fitness for Duty Examination

The City may require an employee to undergo a fitness for duty examination to determine whether the employee can perform the essential functions of the job

with or without reasonable accommodation. The City may also require that a City-approved physician conduct the examination.

d. Interactive Process Discussion

After receipt of reasonable documentation of disability and/or a fitness for duty report, the City will arrange for a discussion, in person or via telephone conference call, with the employee, and his/her representative(s), if any. The purpose of the discussion is to work in good faith to fully discuss all feasible potential reasonable accommodations.

e. Case-by-Case Determination

The City determines, in its sole discretion, whether reasonable accommodation(s) can be made, and the type of accommodation(s) to provide. The City will not provide accommodation(s) that would pose an undue hardship upon City finances or operations, or that would endanger the health or safety of the employee or others. The City will inform the employee of its decision as to reasonable accommodation(s) in writing.

E. Retirement

When an employee meets the conditions set forth in these Rules and the California Public Employees' Retirement Law (PERL) , the employee may elect to retire and receive all benefits earned under the retirement plan.

F. Disability Retirement

1. Local Miscellaneous Retirement Plan

For an employee enrolled in the Local Miscellaneous retirement plan (i.e., a civilian employee), disability status and entitlement to a disability retirement shall be established by the California Public Employees' Retirement System (CalPERS).

2. Local Safety Retirement Plan

For a sworn police employee who is enrolled in the CalPERS Local Safety retirement plan, the determinations as to whether (1) that employee is disabled, and (2) such disability was industrially caused, shall be made by the City Council. The Director of Human Resources, or his/her designee, shall submit recommendations regarding the employee's disability retirement to the City Council for adoption and certification to the CalPERS board. Once adopted by the City Council, all decisions shall be final.

## SECTION 11. GRIEVANCES

### A. Policy

Any employee shall have the right to file a grievance as provided in these Rules without fear of reprisal. The goal of this procedure is to resolve complaints as soon as possible.

#### 1. Eligibility

A grievant is a regular employee who is personally affected by an act or omission that occurred no more than thirty (30) calendar days prior to the initiation of the grievance, provided that the act or omission comes within the definition of “grievance” as described herein.

#### 2. Definition

Subject to the exclusions listed in this policy, a “grievance” is defined as any dispute that:

- a. Is job-related;
- b. Is wholly or partially within the province of the City to rectify or remedy;
- c. Concerns terms and conditions of employment;
- d. Involves the interpretation, application, or alleged violation of these Personnel Rules or a current memorandum of understanding (MOU) between the City and a recognized employee organization representing City employees; and
- e. Is not subject to any other City dispute resolution process or procedure that is provided by statute, ordinance, resolution or agreement.

#### 3. Exclusions from the Grievance Procedure

The following matters are excluded from the definition of “grievance”:

- a. Issues that are subject to meeting and conferring, such as requests for changes in wages, hours, or working conditions, including any impasse or dispute in the meet and confer process or matter within the scope of representation;
- b. Requests for changes in the content of employee evaluations or performance reviews, verbal or written warnings, reprimands or counseling memos;

- c. Challenges to a reclassification, layoff, transfer, denial of reinstatement, or denial of a step or merit increase;
- d. Challenges to any disciplinary action; and
- e. Challenges to examinations or appointment to positions.

B. Procedure

The steps of the grievance procedure are as follows:

1. The employee concerned shall first make efforts to resolve a grievance with his/her immediate supervisor.
2. The employee may next request a personal conference with the department head to resolve the matter.
3. If not satisfied, within thirty (30) days of the occurrence of the act(s) that constitute the grievance, the employee may reduce the grievance to writing. The complaint shall set forth all facts necessary to understanding the issues involved and shall be free of any charge or language not pertinent to the real issue involved. The written grievance should include the following:
  - a. How the grievant is/was adversely affected by a specific act or omission which gave rise to the alleged violation, misinterpretation, or misapplication;
  - b. The specific provision of these Rules or an applicable MOU that was allegedly violated, misinterpreted, or misapplied;
  - c. The date or dates on which the violation, misinterpretation, or misapplication allegedly occurred;
  - d. The documents, witnesses, or other evidence that support the grievance;
  - e. The desired solution or remedy;
  - f. The signature and identification of the grievant; and
  - g. The person, if any, the grievant has chosen to be his/her representative.

The grievance complaint, containing all of the information listed above, shall be submitted to the employee's department head.

4. The department head shall investigate the facts and issues and reply in writing to the employee within ten (10) working days of receipt of the written grievance, stating the

department's conclusion and view of the issues involved, and any corrective action deemed appropriate.

5. If the employee is not satisfied and wishes to pursue the grievance further, he/she shall appeal to the City Manager within ten (10) working days of receipt of the department head's written response by providing two copies of the original complaint and two copies of the reply to the City Manager with a request for review by the City Manager.
6. The City Manager shall meet with the employee and department head within ten (10) working days of receipt of the employee's request for review in an earnest effort to arrive at a satisfactory conclusion of the issue. The City Manager may allow the employee (or the employee's representative) and the department head to call witnesses and present evidence.
7. Within ten (10) working days of the meeting, the City Manager shall respond to the employee and the department head with his/her conclusions, findings and decisions or provide notification of extension with an expected date of decision provided, however, that this period may be extended as circumstances require.  
The City Manager's decision will be final and binding.

C. Settlement

Any grievance will be deemed settled when it is not appealed to the next step within the specified time limit, unless an extension of time to a definite date has been mutually agreed upon in writing. Any grievance that the grievant fails to timely move to the next step shall be deemed resolved on the basis of the last disposition.

D. Representation

An employee may have a representative of his/her choice present at all stages of the grievance procedure, except that no one may be represented by an employee he/she supervises, and no employee may be represented by his/her supervisor or department head. If the employee's representative is a fellow employee, that employee will receive time off from his/her work assignment for the time of the grievance meeting plus reasonable travel time. Forty-eight (48) hours prior to the grievance meeting, the employee shall inform the immediate supervisor, department head or City Manager whether he/she will be represented at the grievance meeting and identify the representative.

E. Delegation

The City Manager may delegate non-involved department heads or other management employees to act on his/her behalf in this process. The findings and recommendations rendered by the designee(s) will be advisory to the City Manager, whose ultimate decision will be final and binding.

## **SECTION 12. DISCIPLINE**

Unless otherwise specified by a memorandum of understanding, this section of the Personnel Rules constitutes the City's policy regarding disciplinary actions.

### **A. Policy Coverage**

The following categories of persons can be terminated at-will and have no rights to any of the pre- or post-disciplinary processes or procedures in this policy:

1. Temporary or emergency employees;
2. Part-time non-benefitted employees;
3. Original probationary employees;
4. Any person who serves pursuant to a contract; and
5. Any person who is designated "at-will" in any City policy, document, acknowledgement, resolution or ordinance.

### **B. Causes for Discipline**

Regular employees may be counseled, admonished, reprimanded, suspended, demoted, discharged or incur a reduction in salary for a number of reasons including, but not limited to, any of the following causes of discipline:

1. Violation of any City or department rule, policy, regulation, ordinance or resolution;
2. Absence without authorized leave;
3. Excessive absenteeism and/or tardiness;
4. Making any false statement, omission or misrepresentation of a material fact;
5. Providing wrong or misleading information or other fraud in securing appointment, promotion or maintaining employment;
6. Unsatisfactory job performance;
7. Inefficiency;
8. Malfeasance or misconduct, which shall be deemed to include, but shall not be limited to the following acts or omissions:

- a. Conviction of a felony. "Conviction" shall be construed to be a determination of guilt of the accused by a court, including a plea of guilty or nolo contendere (no contest), regardless of sentence, grant of probation, or otherwise.
  - b. The damaging of City property, equipment, or vehicles, or the waste of City supplies through negligence or misconduct.
9. Insubordination, defined as failing to follow the direct lawful order of a supervisor;
  10. Insulting or demeaning the authority of a supervisor or manager;
  11. Dishonesty;
  12. Theft;
  13. Violation of the City's or a department's confidentiality policies, or disclosure of confidential City information to any unauthorized person or entity;
  14. Misuse of any City property, including, but not limited to: physical property, tools, equipment, communication systems, or Intellectual Property;
  15. Mishandling of public funds, including improper use of City purchasing cards;
  16. Falsifying any City record;
  17. Discourteous treatment of the public or other employees;
  18. Failure to cooperate with employee's supervisor or fellow employees;
  19. Unapproved outside employment or activity that violates the City's Outside Employment policy, or other enterprise that constitutes a conflict of interest with service to the City;
  20. Any conduct that impairs, disrupts or causes discredit to the City, the employee's City employment, to the public service, or other employee's employment;
  21. Failure to comply with OSHA Safety Standards and City safety policies;
  22. Failure to report to his/her supervisor any contact with criminal authorities (such as police) which may affect employment with the City;
  23. Altering, falsifying, and tampering with time records, or recording time on another employee's time records; or
  24. Working overtime without prior authorization.

25. Any other misconduct not specifically covered by the above grounds for discipline.

C. Disciplinary Administrative Leave

A department head, with the approval of the Director of Human Resources, may place an employee on an administrative leave with pay pending a potential disciplinary action. Disciplinary Administrative Leave with pay is authorized: (1) when the department head believes that the employee's continued presence at the work site could have detrimental consequences for City operations, or (2) pending investigation into charges of misconduct. If the charges against the employee are substantiated by the investigation, appropriate disciplinary action may be taken in accordance with these procedures.

Disciplinary Administrative Leave is provided to ensure an employee is not deprived of due process rights pending the outcome of a potential disciplinary action. While on Disciplinary Administrative Leave, an employee will continue to be compensated as if he/she were actively at work.

D. Types of Discipline

Discipline can range from informal discussions with an employee to discharge. The goal of discipline is to correct poor behavior or performance rather than to punish the employee. In general, an employee should be disciplined progressively with discipline becoming more severe if the employee continues to violate the City's rules. However, each step need not be used or followed progressively in every case. In some circumstances progressive discipline is not feasible and there are violations which justify implementing more severe disciplinary action immediately, without first initiating less severe disciplinary actions.

The types of discipline are described below in the typical progressive sequence of disciplinary action:

1. Counseling

Counseling includes any informal discussion with an employee that is designed to assist the employee with developing his/her skills, abilities, or conduct. The purpose of counseling may be to clarify City/department rules, solve a problem, or discuss particular weaknesses. Ideally, counseling will achieve the goal of remedying problems quickly before they require more severe discipline.

A counseling memo shall be retained in the supervisor's file for documentation. Counseling may not be appealed under this policy. For employees covered by the Public Safety Officers' Procedural Bill of Rights Act, if the counseling memo may lead to future discipline, it may be appealed as provided for by the law.

## 2. Verbal Admonishment or Reprimand

A verbal admonishment or reprimand is a spoken notification to the employee that his/her performance or behavior must be improved or else more severe disciplinary action will be taken. The reprimand identifies the areas in which the employee must improve, establishes goals for improving, and informs the employee that failure to improve will result in more serious discipline.

A verbal admonishment or reprimand shall be memorialized in writing and retained in the supervisor's file for documentation. A verbal reprimand may not be appealed under this policy. For employees covered by the Public Safety Officers' Procedural Bill of Rights Act, if the verbal reprimand is memorialized in writing and may lead to future discipline, it may be appealed as provided for by the law.

## 3. Written Admonishment or Reprimand

A department head, or supervisor with the department head's approval, may admonish or reprimand an employee by furnishing him/her with a written statement that describes the specific reasons for the reprimand and provides formal notice to the employee that further disciplinary action will be taken unless the behavior or performance improves. A copy of the reprimand will be retained in the employee's personnel file, and may not be appealed. The employee has the right to have a written rebuttal attached to the reprimand in the employee's personnel file if the rebuttal is submitted to the Human Resources Department within ten (10) working days of the date the reprimand was received.

## 4. Suspension

A department head may suspend an employee from his/her position for cause. Suspension is the temporary removal of an employee from his/her position. Documents related to a suspension shall become part of the employee's personnel file when the discipline is final. An employee subject to suspension will receive prior written notice and appeal rights as provided herein. FLSA-exempt employees are not subject to suspension of less than one (1) week, except for violation of a workplace conduct rule.

## 5. Reduction in Salary

A department head may reduce an employee's salary for cause. A reduction in salary for disciplinary purposes may take one of two forms: (1) a decrease in salary to a lower step within the salary range, or (2) a decrease in salary paid to an employee for a fixed period of time. Documents related to a reduction in pay shall become part of the employee's personnel file when the discipline becomes final. An employee subject to a reduction in pay shall be entitled to prior written notice and appeal as provided herein. FLSA-exempt employees are not subject to reduction in pay.

## 6. Demotion

A department head may demote an employee from his/her position for cause. Demotion is the reduction of an employee's position to a lower-paying classification. Documents related to a demotion shall become part of the employee's personnel file when the discipline is final. An employee subject to demotion shall be entitled to prior written notice and appeal as provided herein.

## 7. Discharge

A department head may discharge an employee from his/her position for cause. Discharge is the removal of the employee from City service. Documents related to discharge shall become a part of any employee's personnel file when the discipline becomes final. A discharged employee is entitled to prior written notice and appeal rights based upon the terms described herein.

## E. Skelly Process

The Skelly process is a pre-disciplinary procedure for suspension, demotion, reduction in pay, or discharge. Only regular, for-cause employees have the right to the conference and appeal processes outlined in this section.

### 1. Notice of Intent to Discipline

The employee will be provided a written notice of intent to discipline that contains the following:

- a. The level of discipline intended to be imposed;
- b. The specific charges upon which the intended discipline is based;
- c. A summary of the facts upon which the charges are based;
- d. A copy of all written materials, reports, or documents upon which the intended discipline is based;
- e. Notice of the employee's right to respond to the department head regarding the charges within ten (10) working days from the date of the Notice, either by requesting an informal conference, or by providing a written response, or both;
- f. Notice of the employee's right to have a representative of his/her choice at the conference, should he/she choose to respond verbally; and
- g. Notice that the failure to respond at the time specified shall constitute a waiver of the right to respond prior to the imposition of discipline.

## 2. Employee's Response and the Skelly Conference

- a. If the employee requests an informal conference to respond verbally to the charge(s), the conference must be scheduled at least seven (7) working days after the date the employee requests the conference. The conference will be an informal meeting with the department head, at which the employee has an opportunity to rebut the charges against him/her and present any mitigating circumstances. The department head will consider the employee's presentation before any final disciplinary action.
- b. The employee's failure to make a verbal response at the arranged conference time, or the employee's failure to cause his/her written response to be delivered by the date and time specified in the notice, constitutes a waiver of the employee's right to respond prior to the imposition of the discipline. In that case, the proposed disciplinary action will be imposed on the date specified.

## 3. Final Notice of Discipline

- a. At the conclusion of the Skelly process, the department head will (1) dismiss the notice of intent and take no disciplinary action against the employee, (2) modify the intended disciplinary action, or (3) impose the intended disciplinary action. In any event, the department head will prepare and provide the employee with a notice that contains the following:
  - i. The level of discipline, if any, to be imposed and the effective date of the discipline;
  - ii. The specific charges upon which the discipline is based;
  - iii. A summary of the facts upon which the charges are based;
  - iv. A copy of all written materials, reports, or documents upon which the discipline is based; and
  - v. A statement of the nature of the employee's right to appeal.

## F. Evidentiary Appeal to the City Manager

### 1. Request for Appeal Hearing

A regular, for-cause employee may appeal a final notice of discipline in the form of suspension, demotion, reduction in salary, or termination by delivering a written response to the charges and a request for appeal to the Director of Human Resources or designee, who will forward the appeal to the City Manager. The written response and

request for appeal must be received no later than ten (10) calendar days from the date of the department head's decision.

2. Hearing Officer

The City Manager will determine whether he/she will serve as the Hearing Officer during the appeal hearing or will designate another individual to be the Hearing Officer.

3. Date and Time of the Appeal Hearing

The Human Resources Department will set a date for an appeal hearing within a reasonable time after receipt of a timely written response and request for appeal. An employee who, having filed a timely written response and request for appeal, has been notified of the time and place of the appeal hearing, and who fails to appear personally at the hearing, may be deemed to have abandoned his/her appeal. In such a case, the City Manager may dismiss the appeal.

4. Identification of Issues, Witnesses and Evidence

No later than ten (10) days prior to the appeal hearing, each party will provide each other and the Director of Human Resources with a list of all witnesses to be called (except rebuttal witnesses) and a copy of all evidence (except rebuttal evidence) to be submitted at the hearing. The City will use numbers to identify its evidence; the employee shall use alphabet letters. Neither party will be permitted to call any witness during the hearing who has not been identified pursuant to this section, nor use any exhibit not provided pursuant to this section, unless that party can show that they could not have reasonably anticipated the need for the witness or exhibit. The Hearing Officer will state at the beginning of the hearing the decision as to the precise issue(s) to be decided.

G. Conduct of the Appeal Hearing

1. Subpoenas

The City Manager and the City Attorney's Office have the authority to issue subpoenas in the name of the City prior to the commencement of the hearing. Each party is responsible for serving his/her/its own subpoenas. City employees who are subpoenaed to testify during working hours will be released with pay to appear at the hearing. Non-exempt City employees who are subpoenaed to testify during non-working hours will be compensated for the time they actually testify unless the City agrees to a different arrangement.

## 2. Record of the Proceedings

All disciplinary hearings will have a record. At the discretion of the parties, the hearing may be either transcribed by a court reporter or tape recorded. Any party who requests a transcript of the proceedings must pay for his/her/its own copy of a transcript.

## 3. The Hearing Officer's Authority During the Hearing

The Hearing Officer has the authority to control the conduct of the hearing. Only the City Manager has the ability to affirm, modify, or revoke the discipline.

## 4. Conduct of the Hearing

- a. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner the Hearing Officer decides is the most conducive to determining the truth.
- b. Any relevant evidence may be admitted if it is the type of evidence upon which responsible persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions.
- c. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but over timely objection shall not be sufficient in itself to support a finding, unless such evidence would be admissible over objection in civil actions. An objection is timely if made before submission of the case.
- d. The rules dealing with privileges shall be effective to the same extent that they are now or hereafter may be recognized in civil actions.
- e. Irrelevant and unduly repetitious evidence may be excluded by the Hearing Officer during the hearing.
- f. The Hearing Officer shall evaluate relevancy, weight and credibility of testimony and evidence and present his/her recommendations to the City Manager. The City Manager is responsible for ultimate determination regarding relevancy, weight and credibility of testimony and evidence.
- g. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon the request of either party.
- h. All witnesses shall be sworn in for the record prior to testifying at the hearing.

5. Burden of Proof at the Hearing

The City has the burden of proof by a preponderance of the evidence.

6. Right to Due Process

The employee shall have the following due process rights during the hearing:

- a. The right to be represented by legal counsel or another chosen representative, at his/her own expense;
- b. The right to call and examine witnesses on his/her behalf;
- c. The right to introduce evidence;
- d. The right to cross-examine opposing witnesses on any matter relevant to the issues;
- e. The right to impeach any witness regardless of which party first called him/her to testify; and
- f. The right to rebut evidence against him/her.

7. Presentation of Case

The parties will address their remarks, evidence, and objections, to the Hearing Officer. All parties and their counsel or representatives shall not disparage the intelligence, morals, or ethics of their adversaries or of the Hearing Officer. The Hearing Officer may terminate argument at any time and issue a ruling regarding an objection or any other matter. The Hearing Officer may alter the order of witnesses, limit redundant or irrelevant testimony, or directly question the witness. The hearing shall proceed in the following order unless the Hearing Officer directs otherwise:

- a. The City shall be permitted to make an opening statement.
- b. The employee shall be permitted to make an opening statement.
- c. The City shall produce its evidence.
- d. The employee shall produce his/her evidence.
- e. The City, followed by the employee, may offer rebuttal evidence.
- f. Closing arguments of no more than thirty (30) minutes shall be permitted. The City shall have the right to argue first, the employee may argue second, and the City may reserve a portion of its argument time for rebuttal.

8. Written Briefs by the Parties

The Hearing Officer or the parties may request the submission of written briefs. The Hearing Officer will determine the deadline for submitting briefs and the page limit for briefs.

9. Written Findings and Decision

a. Hearing Officer other than City Manager

If the City Manager designates another individual as the Hearing Officer, the Hearing Officer shall render a written statement of findings and recommended decision within fourteen (14) days after the hearing has been completed and the briefs, if any, have been submitted. The City Manager will review the Hearing Officer's written findings and recommendations and issue a decision within thirty (30) days of receipt. The City Manager's decision is final and binding.

b. Hearing Officer is the City Manager

If the City Manager is the Hearing Officer, he/she shall render a statement of written findings and decision within fourteen (14) days after the hearing has been completed and the briefs, if any, have been submitted. The City Manager's decision is final and binding.

10. Proof of Service of the Written Findings and Decision

The City Manager shall send the written findings and decision, along with a proof of service of mailing, to each of the parties and to each of the parties' representatives.

11. Statute of Limitations

The City Manager's written findings and decision are final. There is no process for reconsideration. Pursuant to Code of Civil Procedure section 1094.6, the parties have ninety (90) days from the date of the proof of service of mailing of the written findings and decision to appeal the decision to the Superior Court in and for the County of Orange.

## **SECTION 13. TRAINING AND EDUCATION REIMBURSEMENT**

### **A. Training**

The City may provide employees with training and continuing education opportunities as appropriate. Such opportunities may include lecture courses, demonstrations, conferences, seminars, assignment of reading matter or such other devices as may be available for the purpose of improving the effectiveness and broadening the knowledge of municipal employees in the performance of their respective duties.

Participation in and successful completion of special training courses may be considered in employee advancements and promotions. Evidence of such activity shall be filed by the employee with the Human Resources Department for inclusion in the employee's personnel file.

### **B. Textbook and Tuition Reimbursement**

#### **1. Policy**

Employees shall be encouraged to further their academic education and training in those areas of benefit both to the employee and to the City. All regular employees will be eligible for reimbursement by the City of tuition and specific related textbooks and fees for professional and/or technical courses subject to the following section and conditions or limits prescribed in the appropriate salary resolution and/or MOU. Part-time benefitted employees are eligible for a pro-rata share of reimbursement based on position allocation of one-half (1/2) or three-quarters (3/4) time.

#### **2. Procedure**

Reimbursement may be provided for tuition fees, textbooks, lab fees, parking or other required supplies. An employee is required to have completed his/her original probationary period to be eligible for textbook and tuition reimbursement.

The employee must obtain advance approval from his/her department head and the Human Resources Department before enrolling in a course. To request approval, an employee must complete the applicable portion of the Class Authorization and Reimbursement Request form and send it to the Human Resources Department for review. The Human Resources Department will approve or deny the request and return the form to the employee. Requests to enroll in courses may be granted prior to the completion of probation, however payment will not be made until the employee has completed the probationary period and attained regular status.

Reimbursement can be requested by completing the applicable portion of the pre-approved Class Authorization and Reimbursement Request Form, attaching supporting

documentation and submitting the form and documentation to Human Resources. The employee must provide proof of successful completion of the course(s) with a satisfactory grade (C or better) and proof that payment of fees has been made. The employee may be required to provide detailed class or per unit fees. Reimbursement shall not be provided if the employee is drawing veteran's education benefits or is eligible to receive any other reimbursement for the same course.

Employees are eligible for reimbursement up to a maximum amount per calendar year, as specified in the applicable salary resolution and/or MOU. Part-time benefitted employees are eligible for a pro-rata share of the listed amount.

The City has set up procedures that allow for expedient reimbursement for classes taken and fees paid. Employees may request reimbursement in the calendar year that the class is taken and completed. Failure to request reimbursement in a timely manner and/or classes taken in excess of the allowable reimbursement level cannot be carried over to a future year reimbursement period.

## **SECTION 14. PERSONNEL RECORDS**

### **A. Personnel Files**

#### **1. Maintenance of Personnel File**

The Human Resources Department shall maintain a personnel file for each City employee showing the employee's name, title of position, department assigned, salary, changes in employment status, and other pertinent information. Personnel files are the property of the City and access to the information they contain is restricted. Personnel files may be maintained in electronic and/or paper format.

#### **2. Employee Access to Personnel Files**

##### **a. Inspection of Personnel File**

An employee or former employee may inspect his/her own personnel file, at reasonable times and at reasonable intervals. An employee who wishes to review his/her file should contact the Human Resources Department to arrange an appointment. The review must be done in the presence of the Director of Human Resources or his/her designee.

##### **b. Copies**

On request, an employee is entitled to receive a copy of any employment-related document he/she has signed. An employee who wishes to receive such a copy should contact the Human Resources Department. The City may charge a reasonable fee for the copies.

##### **c. Limitations**

The employee does not have the right to inspect letters of reference or ratings, records or reports obtained by a representation of confidentiality.

### **B. Additional Employee Files**

Separate files are maintained by the Human Resources Department for records of each employee's medical, workers' compensation, and/or confidential disciplinary matters. Access to these records is limited and subject to more stringent guidelines.

C. Changes in Employee Status

Every temporary or permanent change in the status of an employee requires the completion of a Personnel Action Form (PAF) with all required signatures, including those of the department head and the Director of Human Resources.

D. Changes in Personal Information

Each employee is responsible to promptly notify the Human Resources Department of any changes in relevant personal information, including:

1. Mailing address.
2. Telephone number.
3. Persons to contact in emergency.
4. Names of dependents.
5. Marriage or domestic partnership.

E. Destruction of Records

All records relating to employment and personnel may be destroyed in accordance with existing legal guidelines and/or adopted City Council resolutions.

F. Release of Personnel Information

1. Public Information

Upon request, the City will release to the public information about its employees as required by the Public Records Act. The City will not disclose personnel information if it believes doing so would constitute an unwarranted invasion of personal privacy or pose a unique and specific threat to the employee's safety.

2. Reference Checks and Employment Verification

Employers may be held liable for information, including phone conversations and letters of recommendation, which are determined to misrepresent facts describing the qualifications and character of a current or former employee. In an effort to minimize liability risk to the City, all requests from outside the City for reference checks or verification of employment concerning any current or former employee must first be referred to the Director of Human Resources.

Information should be released only if the employee signs an Authorization for Release of Employment Information form, except that without such authorization, the following limited information will be provided: job title, dates of employment, and current or final salary.

Department heads may provide reference information regarding the employee's job responsibilities, evaluations of the employee's job performance, and job qualifications. Other managers and supervisors should not provide information in response to requests for reference checks or verification of employment unless specifically approved by the Director of Human Resources.

## **SECTION 15. ADDITIONAL BENEFITS**

### **A. Retirement**

The City has contracted with the California Public Employees' Retirement System (CalPERS) in order to provide retirement benefits to employees and is subject to the benefits and regulations as prescribed by CalPERS.

### **B. Flexible Benefits Plan**

The City has a Flexible Benefits Plan for all eligible employees that provides designated contributions towards the purchase of medical insurance, dental insurance, and other optional benefit plans. The amount of the City's Flexible Benefits contribution is set forth in the applicable MOU and/or salary resolution.

### **C. Life Insurance**

The City provides a life insurance policy for regular employees. The City's contribution to the employee's plan is set forth in the applicable MOU and/or salary resolution.

### **D. Retiree Medical Insurance**

The City will provide contributions towards medical insurance premiums for eligible retirees as set forth in the applicable MOU and/or salary resolution.

### **E. Other Benefits**

Other additional benefits, if any, will be provided in accordance with the appropriate salary resolution and/or MOU.

### **F. Part-Time Benefitted Employees**

Part-time regular employees are eligible for benefits on a pro-rata share based upon position allocation (e.g. ½ time or ¾ time). Benefits that are pro-rated include Flexible Benefits contributions, General Leave, Holidays, Bereavement Leave, Life Insurance, Tuition Reimbursement, and CalPERS retirement (pro-rated by CalPERS based on hours worked).

Employees temporarily working a part-time schedule after returning from a leave of absence and not supplementing the remaining hours with paid leave are eligible for benefits on a pro-rata share based upon regularly scheduled hours.

## SECTION 16. STANDARDS OF CONDUCT

This section applies to all officials and employees of the City, regardless of whether they are in the merit system. This includes contractors, temporary employees, volunteers, and all thirteen (13) groups of individuals excluded from other sections of these Rules as specified in Section 1.H (Application of Personnel Rules).

### A. Code of Ethics

1. Each official and employee has an obligation to the citizens, to the people's elected representatives and to fellow employees to meet the highest ethical and professional standards and to enhance the public's respect and trust for the City and its operations.
2. Employees of the City have responsibilities unique from their counterparts in private industry. Employment with the City carries an obligation of personal integrity and conduct that serves to establish public respect, confidence, and trust.
3. Employees represent the City and the quality of City service is judged through their performance and conduct. The citizens of the City of Tustin have the right to expect that City employees will provide services in an efficient, thorough and courteous manner. It is intended that the rules and procedures which follow will assist employees in maintaining high ethical standards and proper job performance, and in avoiding potential conflicts of interest both in fact and appearance.
4. The City, as a condition of employment, expects to receive from the employee:
  - a. Initiative and a conscientious effort to perform productive work.
  - b. Cooperative, positive, responsive, and courteous relations with fellow employees, supervisors, subordinates, and the public.
  - c. A continuous effort to strive for greater knowledge and skill on the job in order to maintain performance at a high level.
  - d. Compliance with all policies, regulations, rules of conduct and ordinances established by the City.
  - e. Responsible work habits demonstrated by:
    - i. Dependability, promptness, reliable attendance, and performing required duties competently.
    - ii. Keeping informed of developments and matters affecting job performance,

- iii. Being flexible and adaptable to change.
- iv. Accepting constructive suggestions and criticism.
- v. Neat and clean grooming and attire appropriate to the job assignment. Prescribed uniforms and safety equipment must be worn where applicable.
- vi. Effectively implementing the official policies of the City when serving in their official capacity with customers, clients, and the public and/or when identifying themselves as City employees in the course of their work.

**B. Gifts and Gratuities**

No official or employee shall accept a fee, compensation, gift, payment of expenses or any other thing of monetary value in any circumstances in which acceptance may result in or create the appearance of any one or more of the following:

1. Use of public office and/or employment for personal or private gain.
2. Preferential treatment of any person.
3. Loss of complete independence or impartiality.
4. Making a City decision outside of official channels.
5. Reduction of public confidence in the integrity of City government and/or its employees.
6. Impeding government efficiency or economy.

Employees who are designated in the City's conflict of interest code shall follow all guidelines in accordance with applicable state law.

**C. Political Activity**

While on duty no City employee shall use his/her position to influence any vote or other political activity within the City. An employee who is engaged in political activity while off-duty shall not knowingly solicit political contributions from other City employees unless done incidentally to a solicitation of a larger segment of the public which may happen to include City employees. No City employee shall participate in political activities of any kind while on duty, in uniform, or while using City equipment or property.

No City employee shall engage in political activity during working hours. Political activities are prohibited on all City premises with the exception that political activities may take place at the Clifton Miller Community Center, the City Council Chambers, or any other City facility when the facility has been rented out for the occasion.

#### D. Outside Employment

No employee shall engage in outside employment which is inconsistent, incompatible, in conflict with or which will lessen his/her effectiveness as a City employee.

##### 1. Approval Process

To gain approval for outside employment, an employee must first file an Outside Employment Authorization Request form with his/her department head. Outside employment is not permitted until the employee receives authorization from the department head and Director of Human Resources.

##### 2. Restrictions

No City-owned equipment, vehicles, tools or supplies shall be used by any employee while the employee is engaged in any outside employment or activity. No work related to outside employment shall be performed while an employee is being compensated by the City for performing work.

Employees shall not use the influence of City employment for personal gain nor perform work subject to City inspection.

An employee will not engage in outside employment while on Industrial Disability Leave (workers' compensation leave) status with the City. Under special circumstances of undue hardship, the City Manager may consider authorizing outside employment upon request.

##### 3. Revocation

Approval may be rescinded at any time if, in the judgment of the department head, the outside employment is inconsistent with, incompatible with, in conflict with, or harmful or unfavorable to the employee's duties as a City employee.

#### E. Alcohol and Drug Abuse

##### 1. Purpose

This provision provides guidelines for the detection and deterrence of alcohol and drug abuse. It is the policy of the City to maintain a safe, healthful and productive environment for all employees. To that end, the City will prohibit any substance abuse (alcohol, illegal drugs, prescription drugs, or other substance which could impair an employee's ability to safely and effectively perform the functions of the particular job), which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or damage to the City's and/or its employees' reputation.

Violations of the Alcohol and Drug Abuse policy by an employee may result in discipline up to and including termination. Job applicants may be denied employment for violations of this policy.

This provision recognizes the serious duty entrusted to the employees of the City and the knowledge that drugs and alcohol hinder a person's ability to perform duties safely and effectively.

## 2. Policy

Employees shall not:

- a. Report to work under the influence of alcohol or drugs;
- b. Possess alcohol or drugs while on duty or assigned standby or utilize such substances while they are subject to City duty or assigned standby;
- c. Sell or provide drugs or alcohol to any other employee or to any person while such employee is on duty or assigned standby; or
- d. Have their ability or work impaired as a result of the use of alcohol or drugs.

While use of medically prescribed medications and drugs is not per se a violation of this section, when there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from a qualified physician will be required. While it is not the City's intention to know of every prescription drug an employee uses, it is the City's policy that the employee is responsible for notifying his/her supervisor before beginning work when taking prescription medications which the employee has been cautioned may interfere with the safe and effective performance of duties or operation of City equipment.

As a condition of employment, employees are required to notify the City of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction.

The City has established a voluntary employee assistance program to assist those employees who voluntarily seek help for alcohol and drug problems. Employees should contact the Human Resources Department for additional information.

The City reserves the right to search, without employee consent, all areas and property of which the City maintains joint control with the employee or full control. The City may only search an area or property of joint control or full City control as long as one of the following occurs: 1) the area/property is searched in the employee's presence, 2) the

area/property is searched with the employee's consent, 3) a valid search warrant has been obtained, or 4) the employee has been notified that a search will be conducted.

Violations of this section shall be grounds for disciplinary action. Disciplinary action can include, but is not limited to, supervisor counseling, professional counseling, and discharge from City service. A manager and/or supervisor may direct an employee to submit to a drug and/or alcohol analysis when a manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol. Refusal to submit immediately to an alcohol and/or drug analysis when directed by City management may constitute insubordination and may be grounds for discipline up to and including termination.

Employees reasonably believed to be under the influence of alcohol or drugs shall be prevented from engaging in further work. If an employee is unable to drive safely or is in need of medical assistance, an authorized City representative will transport the employee to a medical facility or home, as appropriate.

### 3. Application

This section applies to all City employees and all applicants for positions with the City. The policy applies to alcohol and to all substances, drugs, or medications, legal or illegal which could impair an employee's ability to effectively and safely perform the functions of the job.

### 4. Management Responsibilities and Guidelines

Managers and supervisors are responsible for consistent enforcement of this policy.

Managers and supervisors may direct an employee to submit to a drug and /or alcohol analysis when a manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol. "Reasonable suspicion" is a belief based on objective and articulated facts sufficient to lead a reasonable person to suspect that an employee is under the influence of drugs or alcohol to the extent that the employee's ability to perform the functions of the job is impaired or to the extent that the employee's ability to perform his/her job safely is reduced.

For example, any of the following, alone or in combination, may constitute reasonable suspicion:

- a. Slurred speech;
- b. Alcohol on breath;
- c. Inability to walk a straight line;

- d. An accident involving City property;
- e. Physical altercation;
- f. Verbal altercation;
- g. Behavior which is so unusual that it warrants summoning a supervisor or anyone else with authority;
- h. Possession of alcohol or drugs;
- i. Information obtained from a reliable person with personal knowledge.

Any manager or supervisor directing an employee to submit to a drug and or alcohol analysis should immediately 1) document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs and 2) contact the Human Resources Department and the employee's department head.

Any manager or supervisor encountering an employee who refuses to submit to a drug and/or alcohol analysis shall remind the employee of the requirements and consequences of this policy.

Any employee refusing to submit to a drug and/or alcohol test shall not be forced to submit to such testing. However, a refusal will be treated as a positive test for purposes of this policy. The manager or supervisor should detain the employee for a reasonable time until an authorized City representative or law enforcement representative can transport the employee to a medical facility or home, as appropriate.

Managers and supervisors shall not physically search employees. Managers and supervisors shall notify the appropriate law enforcement agency when they have reasonable suspicion to believe that an employee may have illegal drugs in his/her possession or in an area not jointly or fully controlled by the City. Should the responding law enforcement agency be the City's Police Department, a member of the Police Department who is also a manager or supervisor may perform any type of physical search that is legally permissible as part of his/her official capacity as a sworn peace officer.

Managers and supervisors shall not confiscate, without consent, prescription drugs or medications from an employee who has a prescription.

Any manager or supervisor who abuses this provision shall be subject to disciplinary action.

## 5. Employee Responsibilities

An employee must:

- a. Not report to work or be subject to duty while his/her ability to perform job duties is impaired due to alcohol or drug use, on or off duty;
- b. Not possess or use alcohol or drugs (illegal drugs and legal drugs without a prescription) during working hours or while subject to duty, or at any time while on City property;
- c. Not directly or through a third party sell or provide drugs or alcohol to any person or to any other employee while either the employee or both employees are on duty or subject to being called;
- d. Submit immediately to an alcohol and drug analysis when directed by a responsible City representative(s);
- e. Notify his/her supervisor, before beginning work, when taking any medications or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of City equipment; and
- f. Provide within 24 hours of request a current valid prescription for any drug or medication identified when a drug screen/analysis is positive. The prescription must be in the employee's name.

## 6. Drug and/or Alcohol Analysis Process

The drug and/or alcohol analysis may test for any substance which could impair an applicant or employee's ability to effectively and safely perform the functions of his/her job, including, but not limited to prescription medications, heroin, cocaine, morphine and its derivatives, PCP, methadone, barbiturates, amphetamines, marijuana, and other cannabinoids.

Generally, a urine sample is obtained in accordance with the third party testing agency's procedures. Alternatively, a blood sample may be obtained at the request of the applicant/employee. Typical procedures are outlined below, though actual procedures may vary based on the testing agency's protocol:

- a. At the designated medical facility, the applicant/employee (donor) shall provide proper photo identification and complete and execute all forms provided by the facility, including a medical records release form, drug and alcohol consent form, and an acknowledgement of receipt of notice of privacy practices.
- b. The custody and control form is filled out by the testing agency and the donor.

- c. The donor prepares for specimen collection by removing any hat, coat, and/or contents of pockets and washing his/her hands in full view of the testing agency representative.
- d. The donor proceeds to the restroom where the testing agency representative places bluing agent into the toilet bowl and secures all water sources to prevent donor access.
- e. The donor is given a bottle to provide a urine sample of at least 30 ml. The donor is instructed to not flush the toilet or wash his/her hands until after the specimen is given to testing agency representative.
- f. The testing agency representative checks the specimen for color, odor, contamination, temperature, and quantity, and documents the relevant information on the custody and control form.
- g. In full view of the donor, the specimen is secured in a container and sealed with tamper-evident tape. The donor certifies the sample on the custody and control form.
- h. The specimen is delivered by courier to the designated laboratory.
- i. The sample container will always be refrigerated or frozen, maintained in a secure location, and the chain of custody will be maintained.
- j. Specimens that are screened “none detected”, are placed in a tray for disposal after two (2) weeks.
- k. Positive samples are kept refrigerated until confirmatory analysis. If the result of the conforming test is “none detected”, the sample is discarded as specified above.
- l. Positively confirmed samples are maintained in a locked freezer for one (1) year.
- m. A sample of the positive specimen in a quantity suitable for laboratory testing will be provided to an employee who has submitted written request to the Human Resources Department within 90 days of specimen submission.
- n. A confirmatory analysis after an initial positive result will be conducted with gas chromatography/mass spectrometry.

## 7. Results of Drug and/or Alcohol Analysis

### a. Pre-Employment Physicals

- i. A positive result from a drug and/or alcohol analysis may result in denial of employment of the applicant.
- ii. If a drug screen is positive at the pre-employment physical, the applicant must provide within 24 hours of request, a valid prescription of the drug identified in the drug screen. If the prescription is not in the applicant's name or the applicant does not provide a prescription, or if the drug is one that impairs the applicant's ability to perform the job duties, the applicant may not be hired.

### b. Drug and/or Alcohol Testing For Cause During Employment

- i. A positive result from a drug and/or alcohol analysis may result in disciplinary action, including, but not limited to, counseling, referral, diversion, reprimand, suspension, and discharge.
- ii. If the drug screen is positive at any testing, the employee must provide within 24 hours of request a valid current prescription for the drug identified in the drug screen. The prescriptions must be in the employee's name. The employee will be subject to disciplinary action if 1) the employee does not have a valid prescription, or 2) the prescription is not in the employee's name, or 3) the employee has not previously notified his/her supervisor of the need for the identified drug.
- iii. If an alcohol or drug analysis is positive for alcohol or drugs, the City shall conduct an investigation to gather facts. Should this investigation indicate disciplinary action is required, it could include but is not limited to, counseling, referral to qualified health care professionals and or programs, substance abuse diversion, reprimand, suspension, and dismissal. Depending upon the issues identified in the investigation any of these actions may be taken; progressive discipline may not be appropriate. The decision to discipline or discharge will be carried out in conformance with these Rules.

## 8. Confidentiality

Laboratory reports or test results shall not appear in an employee's personnel file. Information of this nature, however, will be included in a separate confidential medical folder. The employee's reports or test results may be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information is compelled by law or judicial or administrative process; (2) the information has been placed at issue in a formal dispute between the employer and the employee; (3) the information is to be

used in administering an employee benefit plan; (4) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

9. Department of Transportation Anti-Drug and Alcohol Misuse Prevention Program

Employees covered by the Department of Transportation (DOT) Anti-Drug and Alcohol Misuse Prevention Program should review the City's policy available in the Human Resources Department.

F. Harassment, Discrimination and Retaliation

1. Purpose

It is the policy of the City to provide an environment for all applicants, employees, officials, and contractors which is free of discriminatory harassment, discrimination and retaliation whether based on actual or perceived age, ancestry, citizenship status, color, creed, disability (mental or physical), exercise of rights relating to Family Care and Medical Leave, gender expression, gender identity, genetic information, marital status, medical condition, national origin, political affiliation (or political beliefs), pregnancy, race, religion, sex, sexual identity, sexual orientation, veteran status, or any other legally protected status.

All City employees are expected to support and comply with this policy. Any supervisor or manager observing or knowing of a situation which constitutes discriminatory harassment, discrimination or retaliation shall take immediate action to stop it. Supervisory and management personnel who receive reports of harassment are expected to consider all such complaints seriously and take immediate steps to implement this policy in accordance with the provisions contained herein. Harassing behavior, sexual or otherwise, as defined herein, is not within the course and scope of employment at the City.

2. Policy

The City will not tolerate any form of discriminatory harassment, discrimination or retaliation. Conduct need not rise to the level of a violation of law to violate this policy. Instead, a single act can violate this policy and provide grounds for disciplinary action.

The City will take allegations of harassment seriously and will respond promptly to complaints of harassment. Where it is determined that inappropriate conduct has occurred, the City will act immediately to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

### 3. Policy Coverage

This policy prohibits officials, employees and contractors from harassing or discriminating against applicants, officials, employees and contractors: (1) because of an individual's protected status, (2) because of the perception of an individual's protected status, or (3) because the individual associates with a person who has or is perceived to have a protected status.

### 4. Definitions

- a. Discrimination – treating individuals differently because of the individual's protected status as defined by this policy.
- b. Harassment – unsolicited words or conduct, based on an individual's protected class, which subjectively and objectively offend another person. Harassment includes, but is not limited to, the following examples of behavior undertaken because of an individual's protected status:
  - i. Physical harassment, such as assault, touching, impeding or blocking movement, grabbing, patting, leering, making express or implied job-related threats in return for submission to physical acts, mimicking, taunting, or any physical interference with normal work or movement.
  - ii. Sexual harassment may involve the behavior of a person of either sex against a person of the opposite or same sex, and occurs when such behavior constitutes unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, physical, or visual behavior of a sexual nature where:
    - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
    - b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual's welfare; or
    - c. Such conduct has the purpose or effect of substantially interfering with an individual's welfare or work performance, or creates an intimidating, hostile, offensive, or demeaning work environment.
  - iii. Verbal harassment, such as epithets (nicknames and slang terms), derogatory or suggestive comments, propositioning, jokes or slurs, intimidation, threats, gestures, flirtations, or graphic verbal commentaries about an individual's body or that identify a person on the basis of his/her protected status. Verbal harassment includes patronizing or ridiculing statements that tend to disparage those of a protected status.

- iv. Visual forms of harassment, such as derogatory posters, notices, bulletins, cartoons, drawings, sexually suggestive objects, or e-mails on the basis of protected status.
  - c. Protected Classifications – any classification that is protected by law (whether actual or perceived) including age, ancestry, citizenship status, color, creed, disability (mental or physical), exercise of rights relating to Family Care and Medical Leave, gender expression, gender identity, genetic information, marital status, medical condition, national origin, political affiliation (or political beliefs), pregnancy, race, religion, sex, sexual identity, sexual orientation, and veteran status.
5. Romantic and/or Sexual Relationships between Supervisors and Subordinates

Romantic or sexual relationships between supervisors and subordinate employees are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. The relationship may create an appearance of impropriety and lead to charges of favoritism by other employees. A welcome sexual relationship may change with the result that sexual conduct which was once welcome becomes unwelcome and harassing.

6. Reporting Procedure

Any applicant, employee, official or contractor who believes that he/she has been the victim of harassment, discrimination or retaliation prohibited by this policy must immediately report the matter, verbally or in writing, to his/her supervisor, manager or department head, or to any other supervisor, manager, or department head including the City Manager, or to the Human Resources Department.

Any employee who receives information regarding an incident possibly involving harassment, discrimination or retaliation prohibited by this policy must immediately report the matter to the Human Resources Department.

Upon receipt of the complaint, the City, through the Human Resources Department, will promptly investigate the allegation in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances and permissible under the law. At the conclusion of the investigation, the Director of Human Resources will notify the complainant of general terms of the outcome of the investigation. The complainant will not receive a copy of the investigation report. If it is determined that harassment, discrimination or retaliation has occurred, appropriate remedial and/or disciplinary action will be taken.

Under the California Fair Employment and Housing Act (FEHA), employees may be held personally liable for any acts of unlawful harassment.

## 7. Exceptions

Any employee who knowingly files a false and malicious report of harassment, as opposed to a complaint which, even if erroneous, is made in good faith; or anyone who fails to report an actual or perceived form of harassment as outlined in this policy, may be the subject of appropriate disciplinary action, up to and including termination.

## 8. Retaliation Prohibited

City employees are specifically prohibited from retaliating against or discouraging employees from using this complaint procedure. The City will not retaliate against any person for filing a complaint or for cooperating in an investigation into complaints of harassment and/or discrimination.

## G. Dress Code

Employees of the City are required to dress appropriately for the jobs they are performing. Therefore, failure to follow the dress regulations contained in this section shall be grounds for discipline.

### 1. General Guidelines

The general dress code guidelines are as follows:

- a. All clothing must be neat, clean, and in good repair.
- b. Prescribed uniforms and safety equipment must be worn.
- c. Footwear must be appropriate for the work environment and functions performed.
- d. Hair must be neat, clean and well-groomed.
- e. Beards, mustaches, and sideburns must be maintained in neat and well-groomed fashion.
- f. Jewelry is acceptable except where it constitutes a health or safety hazard.
- g. Good personal hygiene is required.
- h. Dress must be appropriate to the work setting particularly if the employee has public contact.
- i. Any visible tattoos shall not be obscene, sexually explicit, discriminatory to any legally protected category (including, but not limited to, national origin, race, religion, sex, and sexual orientation), extremist, and/or gang-related. Any non-

conforming tattoos will be covered with clothing or a bandage while at work or removed.

- j. For employees working with the public, no objects, articles, jewelry or ornamentation of any kind shall be attached to or through the skin if visible on any body part including the tongue or any part of the mouth, with the exception of earrings. Any non-conforming piercing shall be removed, covered with a bandage, or replaced with a clear, plastic spacer.
- k. Jeans, shorts, sweats, and t-shirts are prohibited, unless part of a required uniform or specifically authorized by the City Manager or the department head.

If an employee has a question about how any provision of this policy applies to him/her, the employee should immediately raise the matter with his/her supervisor for consideration and determination.

## 2. Departmental Standards

Each department head has the right to set more detailed and stringent dress code guidelines for employees in his/her department. The department head may also make exceptions for individual employees based on a specific job function or special requirements.

## H. Workplace Violence and Weapons

### 1. Purpose

The purpose of this policy is to (1) promote a safe work environment for all employees; (2) establish and maintain a workplace that is free from violence, threats of violence, harassment, intimidation, and other disruptive behavior; and (3) encourage and foster a workplace that is characterized by respect and the use of acceptable conflict resolution techniques.

### 2. Affected Individuals

This policy applies to all City employees whether on City property or off site if engaged in City business or if there is a nexus to the workplace. Additionally, all persons who perform any services for the City, regardless of their employment status, are covered by this policy.

### 3. Policy

It is the City's policy to provide a safe work environment for its employees. The City expects its employees to maintain a workplace free from violence, threats of violence,

harassment, intimidation, and other disruptive behavior. All employees are responsible for maintaining a safe work environment.

Violence, threats, harassment, intimidation, and other disruptive behavior in the City's workplace will not be tolerated.

Available conflict resolution techniques, such as problem solving, grievance procedures and appeals processes, will be used to appropriately resolve conflicts that arise in our workplace.

The City strictly prohibits persons from possessing weapons including, but not limited to, firearms, explosives, knives, chemical sprays (e.g., mace, pepper spray), clubs and incendiary devices on City premises, in City vehicles, in private vehicles parked on City property (except as otherwise permitted by law), and in the possession of City employees while on duty performing City related business assignments, unless required for performance of the job. An employee who wishes to carry a legal chemical spray for purposes of self-defense must gain prior written authorization from the department head.

#### 4. Prohibited Conduct

Persons who engage in prohibited conduct will be subject to disciplinary action, up to and including termination, and may also be subject to legal action by law enforcement authorities. A non-inclusive list of behaviors that are considered unacceptable is set forth below:

- a. Causing physical injury to another person.
- b. Making threatening remarks, whether with intent to harm or in jest.
- c. Aggressive, hostile or harassing behavior that creates a reasonable fear of injury to another person or subjects another individual to emotional distress.
- d. Intentionally damaging City property or property of another individual.
- e. Possession of a weapon while on City property or while on City business, unless required by the job. (Knives used as work tools and having a blade length of three and one-half (3½) inches or less are only considered weapons when used or displayed in a threatening manner).
- f. Committing acts motivated by, or related to, sexual harassment or domestic violence.
- g. Harassing or threatening phone calls, e-mails, text messages, or notes.

h. Stalking.

5. Reporting Procedures

Any person observing an emergency incident that requires the direct intervention of public safety personnel (i.e. law enforcement or emergency medical services) should immediately call 911.

Any situation involving the commission or threat of violence, harassment, intimidation, other disruptive behavior, possession of a weapon or any other potentially dangerous situation must be promptly reported to a supervisor and/or the Human Resources Department. Supervisors are required to report all such incidents to Human Resources.

6. Risk Reduction Measures

a. Employees at Risk

Employees are expected to exercise good judgment and to notify their supervisor and/or the Human Resources Department if a co-worker, or other person on City property or business, exhibits behavior that could be a sign of potentially dangerous situations. Such behavior includes, but is not limited to, the following:

- i. Discussing the use of weapons as a means to perpetrate violence against another person.
- ii. Bringing weapons to the workplace.
- iii. Displaying overt signs of extreme stress, resentment, hostility, anger, or depression.
- iv. Making threatening statements or remarks.
- v. Sudden or significant deterioration in performance.
- vi. Displaying irrational or inappropriate behavior.

b. Hiring

The Human Resources Department takes reasonable measures to conduct background investigations in order to review candidates' backgrounds and to reduce the risk of hiring individuals with a history of violent behavior.

c. Enforcement

Reports of threats, threatening conduct, harassment, or any other act of aggression or violence will be appropriately resolved. In general, this policy will be enforced as follows:

- i. Any employee determined to have committed such acts will be subject to disciplinary action, up to and including termination, and may also be subject to legal action by law enforcement authorities.
- ii. Non-employees engaged in violent acts on City premises will be reported to the proper authorities and fully prosecuted.

I. Information System

1. Purpose

To ensure that City departments have ready access to all relevant data stored in the City's information system and that the information system is used for authorized City business.

2. Definition

The "information system" includes all City information systems, standalone or networked, including, but not limited to, desktop and laptop computers, personal digital assistants, electronic mail, landline and wireless telephones, smartphones, voice mail, compact discs, memory cards, computer tapes and diskettes, audio and video equipment, servers, networks, and any other peripheral information equipment or medium of information storage. The information system also includes all data and software applications or programs created or developed by City employees, which shall be considered City property.

3. Policy

It is the City's policy that the information system shall be used for City business only, unless otherwise approved by the City Manager, the department head or his/her designee.

a. No Expectation of Privacy

The information system is City property and employees shall have no privacy rights related to the system and the information stored therein. The contents of all communications may be reviewed in the course of business by the City Manager, the employee's department head, Human Resources management staff, the Information

Technology Supervisor, or the employee's supervisor without the consent of the sender or recipient.

b. Network Passwords

In order to ensure each user's security, the City has established rules for selecting a network password. Passwords selected by users must meet the following requirements:

- i. The password must be a minimum of eight (8) characters in length.
- ii. The password must contain at least three (3) of the following four (4) types of characters:
  - a. Uppercase letters.
  - b. Lowercase letters.
  - c. Numbers.
  - d. Special characters (e.g., @, \$, !).
- iii. The password must be different than the previous two (2) passwords selected by the user.
- iv. The password must be changed every six (6) months.

An employee shall not share his/her network password with anyone, including management staff. Every effort should be made to keep an employee's network password secure (e.g., passwords should not be written on a piece of paper, sent in an e-mail, or saved in a non-encrypted file).

Information system equipment is provided to assist an employee in the performance of his/her job and is not personal to the employee. Accordingly, management may be granted access to the equipment being used by the employee or the information stored therein. Management also has the right to disable an employee's access to the City's network, or any other component of the City's information system.

c. Duplication

The City's software and software manuals shall not be duplicated or reproduced in any manner unless authorized in writing by the Director of Finance or Information Technology Supervisor. Manuals shall remain on-site to prevent unintentional unauthorized access.

d. Return of Property

Upon termination of employment, all computer hardware, software, data and manuals must be immediately returned to the employee's department head or the Human Resources Department.

e. Personal Equipment and Software

Employees may not bring their own personal information equipment or related peripheral equipment or any medium of information storage to work for work-related purposes without permission of the department head. In the event such personal equipment is at work and is being used for work-related purposes, this entire policy shall apply to the employee's personal information equipment, as if it were City property.

Employees are prohibited from downloading and/or installing any software programs or applications unless authorized in writing by the Director of Finance.

f. Violations of Policy

Disciplinary action, up to and including termination, may be imposed for violation of any provision of this policy.

J. Internet Use

1. Purpose

The purpose of this policy is to define who is authorized to use City resources for access to the Internet and to define the acceptable use of the City's network and associated software and equipment. Any restriction on use contained in this policy is intended to protect the City and its resources.

2. Scope and Applicability

a. Covered Employees

This policy applies to all employees and all persons retained by the City to provide it with services (e.g., contractors). As required to perform City business, the City Manager and department heads may authorize employees or contractors to access the Internet via City systems and/or equipment.

b. City Property

Associated security, communications, networking, and computer systems and components used to access the Internet are owned or operated by the City.

c. City Rights

The City, as the provider of access to the Internet and associated resources, reserves the right to specify how those resources will be used and administered. Specifically, the City reserves the right to:

- i. Remove a user's access to the Internet to prevent further unauthorized activity.
- ii. Monitor Internet access for any purpose including, but not limited to, review, audit, and disclosure of all matters transmitted through the City's network or placed in its storage.
- iii. Access and retrieve deleted electronic mail (e-mail) and any messages and communications that are stored in the system.

d. No Expectation of Privacy

Internet use should not be considered personal to the employee. No employee should have the expectation of privacy in any e-mail he/she creates, receives, sends or deletes, in any website he/she visits, or in any electronic communication sent through the City's network. Internet use is subject to review by City management and members of the public upon request.

In response to information requested under the California Public Records Act, it may be necessary for the City to examine electronic communications records that users may consider to be personal to determine whether they are public records that are subject to disclosure. All communications transmitted via the City's information systems are subject to monitoring, at the City's discretion. The City may be required to produce information transmitted through or stored on its information systems pursuant to a court order, subpoena, or statute.

3. Acceptable Use

The City provides designated employees with access to the Internet to share and obtain information and facilitate the performance of official City business.

City employees must use the official City e-mail system when sending business communications via e-mail, rather than using a personal e-mail account. Electronic communications should conform to the same standards of propriety and respect as any other verbal or written communication at the City. Employees are expected to use

common sense and judgment to avoid any communication which is disrespectful, offensive, or illegal.

Authorized reasons for using the Internet include:

- a. Communication with professional associations, governments, universities, businesses and/or individuals associated with the facilitation of City business, research and education efforts as authorized by the applicable department head.
- b. Distribution of information to the general public whereby such information is made available under any City guidelines and policies for the release of information and the California Public Records Act.
- c. Incidental communications among authorized users and professional colleagues which facilitates work assignments and professional development.
- d. Visiting websites to gather information and perform research as required for the employee's duties.
- e. Nominal personal use during authorized breaks and lunch periods, provided that such use does not interfere with the employee's job duties and does not violate any provision of this policy. Examples may include checking and sending personal e-mail and viewing news-related websites.
- f. Nominal use for employee association activity during authorized breaks and lunch periods, provided that such use does not interfere with the employee's job duties and does not violate any provision of this policy.

#### 4. Unacceptable Use

The information sources accessible via the Internet are worldwide and are constantly growing in kind and number. It is not possible for any Internet access provider to fully manage the types of information accessible by its systems and users, especially with regard to content limitations. Nevertheless, the City, at its sole discretion, reserves the right to restrict access to any data source. These restrictions do not constitute an implication of approval of other non-restricted sources.

Without exhausting all possibilities, the prohibited uses of the Internet include, but are not limited to, the following:

- a. Use of the Internet without authorization of the City Manager or applicable department head.
- b. Illegal, fraudulent or malicious activity.

- c. Political activity.
- d. Religious promotion.
- e. Activity on behalf of or with organizations or individuals who have no business with the City.
- f. Transmission of material in violation of applicable copyright laws or patents.
- g. The generation, storage, transmission or other use of data or other matter which is abusive, profane, or offensive to a reasonable person.
- h. Personal social activity or personal business that is likely to significantly impact the employee's time or the City's resources or reflect poorly on the City. Examples may include, but are not limited to, visiting social networking websites or blogs; performing extensive or frequent financial transactions; performing work related to the employee's outside employment; viewing pornographic material; downloading or uploading software, games, or shareware; or visiting websites that contain content that is abusive, profane, or offensive to a reasonable person.
- i. Unauthorized employee association activity, including coordinating job actions and any activity that that is likely to significantly impact the employee's time or the City's resources.
- j. Any intentional actions that could cause interference to the City's electronic network or otherwise interfere with the work of others, such as:
  - i. Introduction of, or experimentation with, malicious computer code such as computer worms or viruses.
  - ii. The sending of messages that are likely to result in the loss of recipients' work or system.
  - iii. Posting items on the Internet that do not reflect the policies of the City.
  - iv. Operating a business through any City Internet link.
  - v. Sending communications, files or programs containing abusive, offensive or harassing statements, including comments based on age, ancestry, citizenship status, color, creed, disability (mental or physical), exercise of rights relating to Family Care and Medical Leave, gender expression, gender identity, genetic information, marital status, medical condition, national origin, political affiliation (or political beliefs), pregnancy, race, religion, sex, sexual identity, sexual orientation , veteran status, or any other classification protected by law, whether actual or perceived.

- vi. Creating, sending, receiving or retaining lewd, obscene or sexually-oriented messages or images or defamatory comments.

## 5. Social Media

Communicating with the citizens of Tustin and the public is a priority for the City. The use of social media provides an effective and efficient way to reach out to a diverse audience and is a reasonable business use of communicating information.

The City Manager will designate an individual (or individuals) to be responsible for creating, maintaining, updating, and monitoring social media resources on behalf of the City. The Police Chief will designate an individual (or individuals) to be responsible for creating, maintaining, updating, and monitoring social media resources on behalf of the Police Department.

The City Manager may authorize access to social media websites for designated employees for business use only.

## 6. Violations and Enforcement

The use of the Internet is a privilege, not a right, which may be revoked at any time for any reason. Users may be subject to random internal audits of Internet use.

Violations of this policy will be evaluated on a case-by-case basis by the applicable department head, Director of Human Resources, or City Manager. A violation may result in disciplinary action, up to and including dismissal, and may include referral of a case to appropriate authorities for civil or criminal prosecution.

## K. Communication Equipment

### 1. Purpose

The City recognizes the need for telephones, cell phones and smartphones in the workplace and has established the following policy for their use. The policy is to be used to establish procedures for their authorization and use in order to contain costs, ensure departmental and personal accountability/responsibility, comply with Internal Revenue Service (IRS) regulations and prevent improper use of these items.

### 2. General Provisions

Technology can significantly enhance local service delivery. Cell phones and smartphones are often practical and economical and can enhance productivity. For those employees who are assigned radios, issuance of cell phones and smartphones can help reduce radio traffic and ensure that adequate radio capacity is available when

needed. Issuance of a City cell phone and/or smartphone is at the sole discretion of Management. Failure to comply with procedures set forth in this policy may result in the loss of use of the equipment and/or disciplinary action.

Prohibited uses of telephones, cell phones and smartphones include, but are not limited to, the following:

- a. Any illegal use or activity.
- b. Threats.
- c. Defamation.
- d. Obscene, suggestive or offensive messages or communication.
- e. Commercial promotional purpose.
- f. Personal business related to outside employment.
- g. Violating any City policy.
- h. Political or religious endorsements or activities.
- i. Recording of conversation unless allowed by law.

Telephone, cell phone, and smartphone records and logs are a matter of public record and may be subject to public records requests/review.

### 3. General Telephone Usage

Landline telephones in City facilities are for City business. Personal telephone calls are to be kept to an absolute minimum. Occasionally, personal calls may be necessary. Every effort must be made to limit personal calls to five (5) minutes or less. Frequent and/or repeated personal calls may result in disciplinary action. Long distance charges for personal use of office phones must be reimbursed to the City. Department heads may institute a more stringent policy if appropriate.

### 4. Cell phones and Smartphones

#### a. Authorization for City-Issued Equipment

Employees are eligible for a City-issued cell phone or smartphone if a valid business need exists. Each department head shall authorize/designate the employee(s) in his/her department who should be issued city-owned cell phones or smartphones due to business need in the course of their regular job duties. Issuance of equipment

is at the sole discretion of the City and may be revoked at any time. A Cell Phone/Smartphone Authorization form must be completed, submitted and approved by the employee's department head and sent to Human Resources prior to issuance of equipment.

The following criteria are among those that may be considered before authorization for City equipment is granted:

- i. Management – the employee is in a managerial role and a critical component of his/her job responsibilities, regardless of location and work schedule, is contact with staff, citizens and other agencies.
- ii. Work Location – the requirements of the job regularly take the employee away from his/her primary work location, either to serve the public or to complete work assignments, and the department head believes a pager, cellular telephone, or smartphone is a critical tool for performing the job. Employees who are regularly assigned to a desk with a landline phone and who do not meet the other criteria will ordinarily not be assigned a cell phone or smartphone.
- iii. On Call or Standby – the employee is either regularly or occasionally scheduled to be on call or on standby, or is frequently expected to respond to City matters during non-business hours.

b. Off Duty Use of Cell Phones and Smartphones

Use of a cellphone or smartphone for work-related purposes, such as checking and responding to e-mail and engaging in phone conversations, may be considered hours worked under the Fair Labor Standards Act (FLSA). Employees who are not exempt from the overtime provisions of the FLSA should obtain advance approval from a supervisor prior to using a cell phone or smartphone for business purposes while off duty unless the use is considered "de minimis".

For non-exempt employees, all hours worked must be reported on the employee's timesheet. If off-duty time spent on work activities is considered de minimis under the FLSA, the hours should not be reported on the employee timesheet. Since the City's increment of time for timesheet reporting is fifteen (15) minutes, hours worked of less than seven and one-half (7.5) minutes per day is considered de minimis.

c. Cell Phone / Smartphone Programs

- i. City-Issued Smartphone
  - a. Eligibility

1. Exempt employees (Executive Management employees, Management employees, and Police Lieutenants) and Information Technology employees are eligible to participate in one of the Smartphone programs.
2. Employees must submit a Cell Phone/Smartphone Authorization form to their supervisor and department head for approval.

b. Guidelines

1. Employees may be provided with a City-issued smartphone to be used primarily for business purposes. In compliance with IRS regulations, an employee's use of the smartphone will be treated as non-taxable. Per IRS guidelines, substantiation of business use by the employee is not required.
2. A nominal amount of personal use will be permitted. No reimbursement is required for personal calls made and/or received unless such calls result in additional charges beyond the standard monthly rate.

ii. City Cell Phone Issued to Individual Employee

a. Eligibility

1. A department head may request that a City cell phone be issued to an individual employee for use during the course of his/her workday.
2. The department must submit a Cell Phone/Smartphone Authorization form.
3. An employee in a non-exempt classification may only take the City-issued cell phone home during non-work hours if he/she is on official Stand-by Duty or has received permission from his/her supervisor in response to a specific need.

b. Guidelines

1. Employees may be provided with a City-issued cell phone to be used primarily for business purposes. In compliance with IRS regulations, an employee's use of the cell phone will be treated as non-taxable. Per IRS guidelines, substantiation of business use by the employee is not required.

2. A nominal amount of personal use will be permitted. No reimbursement is required for personal calls made and/or received unless such calls result in additional charges beyond the standard monthly rate.

iii. City Cell Phone Used in a “Pool”

a. Eligibility

1. Department heads may request City-issued cell phones to be used as a “pool” phone. A pool phone is one that is used by multiple employees to serve a business need. Examples of a pool phone include a cell phone used for Stand-by purposes, during the course of intermittent or infrequent work assignments, or on an emergency basis.
2. Pool phones must have a designated supervisor identified on the Cell Phone/Smartphone Authorization form.

b. Guidelines

1. Department pool cell phones will be the responsibility of a designated supervisor.
2. A User/Call Log will be maintained to identify who has been issued the pool phone and to log the check-out/check-in days and times for the phone.

iv. Personal Cell Phone / Smartphone Used to Conduct City Business

a. Reimbursement

1. An employee who receives permission from his/her supervisor to use his/her personal cell phone or smartphone to conduct City business may request reimbursement for charges incurred due to the business use of the cell phone.
2. An employee is eligible for reimbursement for work-related calls made on his/her personal cell phone / smartphone provided other options (e.g. home phone, landline phone) are not readily available.
3. An employee requesting reimbursement must complete a Cell Phone / Smartphone Reimbursement Request form and attach a copy of the personal cell phone / smartphone bill that highlights work-related calls and the charges that the employee incurred.

4. Reimbursement will be issued when actual charges are incurred due to a phone call. The City will not reimburse portions of the monthly charge that the employee would pay for their personal phone regardless of any business call.

b. Stipend

1. Smartphone Stipend

- A. Available to FLSA exempt employees (Executive Management employees, Management employees, and Police Lieutenants) and Information Technology employees only.
- B. The stipend is designed to contribute to an employee's own data and voice plan. It is not designed to fully pay for the plan. Any additional charge an employee incurs is his/her own responsibility and those additional charges are not eligible for reimbursement. With the stipend, it is expected that in some months the employee will get a greater benefit and in other months the stipend will not cover the full cost of the business use of the smartphone.
- C. The stipend is \$21 per pay period (\$45.50 per month), which is taxable income.

2. Cell Phone Stipend Eligibility

- A. Available to an employee with a clearly identified business need, as determined by the department head.
- B. The stipend is designed to contribute to an employee's cell phone plan. It is not designed to fully pay for the plan. Any additional charges an employee incurs is his/her own responsibility and those additional charges are not eligible for reimbursement. With the stipend, it is expected that in some months the employee will get a greater benefit and in other months the stipend will not cover the full cost of the business use of the cell phone.
- C. The stipend is \$12 per pay period (\$26 per month), which is taxable income.

5. Damage, Theft, or Loss of City-Issued Equipment

Employees are responsible for maintaining adequate physical protection of the equipment issued to them by the City. Employees shall immediately notify their department head and Human Resources if any City-owned cell phone or smartphone is damaged, lost or stolen.

Human Resources will review the circumstances surrounding the damage or loss of City equipment and determine if any repair/replacement cost will be charged to the employee. Employee negligence, carelessness or recklessness will result in the employee being held responsible for repair/replacement of damaged, lost or stolen equipment.

6. No Expectation of Privacy

Employees should have no expectation of privacy in any correspondence using the City's communication equipment or in any message or communication they create, receive, send or delete when communication occurs during the course of their job or through City-owned equipment. This includes phone conversations, voicemail, e-mail, calendars, and documents. Employees should not communicate their private, privileged, or confidential information via the City's communication equipment. Employees who do communicate their private, privileged, or confidential information via the City's communication equipment will be deemed to have waived any privilege or privacy rights in those communications.

All communications transmitted via the City's communication systems are subject to monitoring, at the City's discretion. In response to information requested under the California Public Records Act, it may be necessary for the City to examine electronic communications records that users may consider to be personal to determine whether they are public records that are subject to disclosure. The City may be required to produce information transmitted through or stored on its information systems pursuant to a court order, subpoena, or statute.

In accordance with California law, employees and any other individuals on a phone call will be provided with notice if the call may be recorded. Employees will be notified if their live phone calls will be monitored for training or quality assurance purposes.

7. Personal Phones in the Workplace

During work hours, employees are required to turn off their personal cell phones / smartphones or switch them to silent/vibrate mode. Employees who need to use their personal phone to attend to personal matters should do so during designated breaks or while at lunch. Use of a personal phone for personal business must not interfere with work performance.

8. Hands-Free Phone Use While Driving

All employees who drive either a City vehicle or personal vehicle during work hours must comply with the State of California's hands-free driving and no texting laws. These laws prohibit individuals from using a handheld wireless telephone or writing, sending, or reading text-based communication while operating a motor vehicle. The City expects employees to use their cell phones / smartphones hands-free while driving or after they have pulled off the road and parked their vehicle. Failure to comply with this law will result in disciplinary action.

9. Return of City-Issued Equipment

Employees who leave City service are required to return all City-issued equipment. Employees who have authorization for City-issued equipment rescinded are required to return all City-issued equipment.

## **SECTION 17. EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS**

### **A. Purpose**

The purpose of this section is to implement Government Code Sections 3500 at seq., captioned “Public Employee Organizations,” by providing orderly procedures for the administration of employer—employee relations between the City and its employee organizations and for resolving disputes regarding wages, hours, and other terms and conditions of employment.

### **B. Employee Rights**

Employees of the City shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation of all matters of employer—employee relations, including but not limited to, wages, hours and other terms and conditions of employment. Employees of the City also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the City. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of exercise of these rights.

### **C. Management Rights**

The City has the exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards of service; determine the procedures and standards of selection for employment; hire; direct its employees; take disciplinary action for cause; transfer; promote; lay off its employees from duty; determine the content of job classifications; contract and subcontract work; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies, including suspension of any existing memorandum of understanding in effect; and exercise complete control and discretion over its organization and the technology of performing its work.

### **D. Meet and Confer in Good Faith**

The City, through its representatives, shall meet and confer in good faith with representatives of employee organizations having recognized majority representation rights regarding matters within the scope of representation including wages, hours and other terms and conditions of employment within the appropriate unit. The City shall not be required to meet and confer in good faith on employee or City rights as defined in Sections 17.B (Employee Rights) and 17.C (Management Rights) above. Proposed amendments to this Section are excluded from the scope of meeting and conferring.

E. Consult or Consultation in Good Faith

The City, through its representatives, shall consult in good faith with representatives of all recognized employee organizations on employer-employee relations matters which affect them. "Consult" means to communicate verbally or in writing with recognized employee organizations for the purpose of presenting and obtaining views or advising of proposed actions, in a good faith effort to reach a consensus. Unlike meeting and conferring, consulting does not involve an exchange of proposals nor is it subject to the impasse procedure.

F. Advance Notice

Reasonable advance written notice shall be given to each recognized employee organization affected by any ordinance, rule, resolution or regulation directly relating to matters within the scope of representation proposed to be adopted by the City Council.

G. Filing of Recognition Petition

An employee organization that seeks to register for purposes of being formally acknowledged as the exclusively recognized employee organization representing employees in an appropriate bargaining unit, shall file a petition with the City Manager containing the following information and documentation:

1. Name and address of the employee organization.
2. Names and titles of its officers.
3. The job classifications of employees in the unit claimed to be appropriate and the approximate number of employees therein.
4. Names of employee organization representatives who are authorized to speak on behalf of its members.
5. A statement that the employee organization has, as one of its primary purposes, the representation of employees in their employment relations with the City.
6. A statement whether the employee organization is a charter or local of, or affiliated directly or indirectly in any manner with, a regional or state or national or international organization, and, if so, the name and address of each such regional, state, national, or international organization.
7. The employee organization's constitution and by-laws.

8. A designation of those persons, not exceeding two (2) in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.
9. A statement that the employee organization recognizes that the provisions of Section 923 of the Labor Code are not applicable to City employees.
10. A statement that the employee organization has no restriction on membership based on age, ancestry, citizenship status, color, creed, disability (mental or physical), exercise of rights relating to Family Care and Medical Leave, gender expression, gender identity, genetic information, marital status, medical condition, national origin, political affiliation (or political beliefs), pregnancy, race, religion, sex, sexual identity, sexual orientation, veteran status, or any other category protected by law.
11. A statement that the employee organization has in its possession written proof, dated within sixty (60) days of the date upon which the petition is filed, to establish that employees have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the City Manager or to a mutually agreed upon disinterested third party.
12. A request that the City Manager acknowledge the employee organization for the purpose of meeting and conferring in good faith as the exclusively recognized employee organization appropriate for meeting and conferring in good faith.

The petition, including all accompanying documents, shall be verified under oath by the Executive Officer and Secretary of the organization that the statements are true. All changes in such information shall be filed forthwith in like manner. No employee may be represented by more than one exclusively recognized employee organization for the purposes of this section.

#### H. City Response to Recognition Petition

Upon receipt of the Petition, the City Manager shall determine whether:

1. There has been compliance with the requirements for the Petition; and
2. The proposed representation unit is an appropriate unit in accordance with Section 17.L (Appropriate Unit).

If an affirmative determination is made by the City Manager on the foregoing two matters, he/she shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit and shall take no action on said request for thirty (30) days thereafter. If either of the foregoing matters are not affirmatively determined, the City Manager shall offer to consult thereon with such

petitioning employee organization and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefore in writing.

I. Open Period for Filing Challenging Petition

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the exclusively recognized employee organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some, but not all the classifications or positions set forth in the recognition petition being challenged), by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth herein. If such challenging petition seeks establishment of an overlapping unit, the City Manager shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the City Manager shall determine the appropriate unit or units in accordance with the standards in Section 17.L (Appropriate Unit). The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the City Manager to amend their petitions to conform to such determination or to appeal such determination to the City Council.

J. Recognition of Organizations

The City Manager shall recognize the organization as the exclusive employee organization if the proof of support shows that a majority of the employees have designated the petitioning employee organization to represent them, and if no other employee organization filed a challenging petition, and if a neutral third party has verified the count, form, accuracy and propriety of the proof of support.

1. The employee organization found to represent a majority of all eligible employees in an appropriate unit shall be granted exclusive recognition in writing designating them as the only employee organization entitled to meet and confer in good faith on matters within the scope of representation for employees in such unit. This shall not preclude other registered employee organizations, or individual employees, from consulting with management representatives on employer-employee relations matters of concern to them.
2. The recognition rights of the exclusively recognized representative designated in accordance with this subsection shall not be subject to challenge for a period of one calendar year following the date of such recognition.
3. After one calendar year, if an exclusively recognized representative is found to no longer represent the required majority of eligible employees in an appropriate unit, the City Manager may revoke recognition of the organization as a majority representative.

#### K. Election Procedure

If the conditions set forth in Section 17.J (Recognition of Organizations) above do not occur, the City Manager shall arrange for a secret ballot election to be conducted by a party agreed to by the City Manager and the concerned employee organization(s), in accordance with such party's rules and procedures subject to the provisions of this section. All employee organizations who have duly submitted petitions which have been determined to be in conformance with this section shall be included on the ballot. The ballot shall also reserve to employees the choice of representing themselves individually in their employment relations with the City. Employees entitled to vote in such election shall be those persons employed in the designated appropriate unit who were employed during the pay period immediately prior to that date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election. An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of valid votes cast in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.

There shall be no more than one valid election under this section pursuant to any petition in a 12-month period affecting the same unit.

In the event that the parties are unable to agree on a third party to conduct an election, the election shall be conducted by the California State Mediation and Conciliation Service.

Costs of conducting elections shall be borne in equal shares by the City and by each employee organization appearing on the ballot.

#### L. Appropriate Unit

The City Manager shall have the right to designate appropriate units.

The policy objectives in determining the appropriateness of units shall be the effect of a proposed unit on (1) the efficient operations of the City and its compatibility with the primary responsibility of the City and its employees to effectively and economically serve the public, and (2) providing employees with effective representation based on recognized community of interest considerations. These policy objectives require that the appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest. Factors to be considered shall be:

1. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
2. History of representation in the City and similar employment; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.
3. Consistency with the organizational patterns of the City.
4. Effect of differing legally mandated impasse resolution procedures.
5. Number of employees and classifications and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.
6. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classification among two or more units.

Notwithstanding the foregoing provisions of this section, managerial, supervisory and confidential responsibilities, as defined herein, are determining factors in establishing appropriate units hereunder, and therefore managerial, supervisory and confidential employees may only be included in a unit consisting solely of managerial, supervisory or confidential employees respectively. Managerial, supervisory and confidential employees may not represent any employee organization which represents other employees.

M. Procedure for Modification of Established Appropriate Units

Requests by employee organizations for modifications of established appropriate units may be considered by the City Manager only during a thirty (30) day period commencing one hundred twenty (120) days before the expiration of the MOU. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Section 17.G (Filing of Recognition Petition), shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Section 17.L (Appropriate Unit). The City Manager shall process such petitions as other Recognition Petitions under this section.

The City Manager may by his/her own motion propose that an established unit be modified. The City Manager shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter the City Manager shall determine the composition of the appropriate unit or units in accordance with Section 17.L (Appropriate Unit), and shall give written notice of such determination to the affected employee organizations. The City Manager's determination may be appealed to the City Council.

N. Procedure for Processing Severance Requests

An employee organization may file a request to become the recognized employee organization of a unit alleged to be appropriate that consists of a group of employees who are already a part of a larger established unit represented by another recognized employee organization. The timing, form and processing of such request shall be as specified in Section 17.M (Procedure for Modification of Established Appropriate Units) for modification requests.

O. Appeals

An employee organization aggrieved by an appropriate unit determination of the City Manager; or an employee organization aggrieved by a determination that a Recognition Petition, Challenging Petition, Decertification Petition, or Unit Modification Petition is not proper, may, within ten (10) days of notice of the City Manager's final decision, request to submit the matter to the City Council for final decision within fifteen (15) days of notice of the City's Manager's determination.

Appeals to the City Council shall be filed in writing with the Director of Human Resources, and a copy thereof served on the City Manager. The City Council shall commence to consider the matter within thirty (30) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a third party hearing process. Any decision of the City Council on the use of such procedure, and/or any decision of the City Council determining the substance of the dispute shall be final and binding.

P. Designation of City's Principal Representative

The City Manager shall be the City's principal representative in all matters of employer-employee relations, with authority to meet and confer in good faith on matters within the scope of representation, including wages, hours and other terms and conditions of employment. The City Manager may delegate these duties and responsibilities.

Q. Resolution of Impasse

1. Definition

"Impasse" means that the representatives of the City and a recognized employee organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a memorandum of understanding, and concerning matters on which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

## 2. Procedure

Impasse procedures may be invoked only after impasse has been reached. Subject to the conditions described below in Section 17.Q.3 (Initiation of Impasse Procedure), the impasse procedure(s) may consist of the following:

### a. Mediation or Conciliation

If the parties agree to participate in mediation, an impartial third party functions as an intermediary to assist the parties in reaching a voluntary resolution to an impasse through interpretation, suggestion and advice. All mediation proceedings shall be private. The mediator shall make no public recommendations nor take any public position concerning the issue.

### b. Factfinding

An employee association may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate. If the dispute was not submitted to mediation, an employee association may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. The factfinding process, including all of its requirements, are governed by California Government Code section 3505.4.

If the impasse is not resolved at factfinding and the factfinding panel issues findings of fact and recommended terms of a settlement, that document shall be publicly available within ten (10) days of their receipt by the City. The City Council will then hold a hearing and will issue a final decision on the impasse.

## 3. Initiation of Impasse Procedure

Any party may initiate the impasse procedure by filing with the other party affected a written declaration of impasse and a request for an impasse meeting together with a statement of its position on all disputed issues. An impasse meeting shall then be scheduled by the City Manager forthwith after the filing of the written request for such meeting with written notice to all parties affected. The purpose of such impasse meeting is twofold: (1) to permit a review of the positions of all parties in a final effort to reach agreement on the disputed issues, and (2) if agreement is not concluded, to determine whether the parties wish to voluntarily participate in mediation.

4. Fees and Expenses

The fees and expenses, if any, of mediators shall be payable one-half (1/2) by the City and one-half (1/2) by the employee organization(s) involved. As for factfinding, the costs will be paid in accordance with the law.

5. City Council Action

In accordance with the law, the City Council may take such action regarding the impasse as it, in its discretion, deems appropriate and in the public interest. Any action taken by the City Council is final and binding.

R. Memorandum of Understanding

When the meeting and conferring process is concluded between the City and a recognized employee organization, all agreed upon matters shall be incorporated in a written memorandum of understanding signed by the duly authorized City and employee organization representatives. After ratification by the employee organization, the memorandum of understanding shall be submitted to the City Council for determination.

S. Rules and Regulations

The City Council may adopt such rules and regulations necessary or convenient to implement the provisions of this Section 17 (Employer-Employee Organization Relations).

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