



Personnel Rules & Regulations

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100 Introduction and General Information Policies

102 Effect and Applicability of Personnel Policies, Rules and Regulations

102.1 No Contract Right; City's Discretion to Modify These Policies

These Personnel Policies, Rules and Regulations do not create any contract right, or any express or implied contract of employment. The City retains the full discretion to modify these Policies at any time in accordance with applicable law, including but not limited to the Meyers-Milias-Brown Act, Government Code section 3500 *et seq.*

102.2 Applicability of Policies, Rules and Regulations

These Policies apply to all categories of employees of the City unless a specific section or provision excludes them. Independent contractors, volunteers, Councilmembers and the Mayor are not employees for the purposes of collective bargaining or the application of these Policies.

102.3 Conflict Between These Policies and a Collective Bargaining Agreement

If a provision of these Policies conflicts with any provision of a valid collective bargaining agreement between the City and a recognized employee organization, the provision of the collective bargaining agreement that is in conflict will apply to employees covered by that collective bargaining agreement.

102.4 Employee Acceptance of Policies and Revisions to Policies

As a condition of employment, all employees are required to read and request any clarification of these Policies needed by the employee. Each employee is required to sign a statement of receipt acknowledging that: a) he or she has received a copy, or has been provided access to the Policies; and b) understands that he or she is responsible to read and become familiar with the contents and any revisions to the Policies; and c) request any clarification needed.

104 Delegation of Authority

104.1 Delegation of Appointing and Personnel Authority to the City Manager

The City Council delegates to the City Manager the authority to authorize employment, establish job responsibilities, and perform other personnel actions as to all subordinate employees in accordance with Eureka City Charter Sec. 602, all federal and state laws and regulations, and these Policies. The City Manager may delegate responsibility to the Director of Human Resources to perform personnel actions in accordance with this section.

104.2 *Retention of Personnel Authority as to Certain Personnel*

As to those elected officials, or employees who directly report to the City Council, if any, the City Council retains all authority over all personnel actions as authorized by law and these Policies, except where specific authority is granted to the City Manager by the City Charter or Municipal Code.

106 *Categories of Employees and Non-Employees*

106.1 *At-Will Employee*

An at-will employee is one who serves at the pleasure of the appointing authority, has no property right in continued employment, and has no right to any pre- or post-disciplinary procedural due process or evidentiary appeal. At-will employees include any of the following:

- (a) City Manager
- (b) City Attorney
- (c) Department Directors
- (d) Employees whose positions are funded under a state or federal employment program
- (e) Employees designated as temporary / seasonal
- (f) Probationary employees

106.2 *Probationary Employee*

A probationary employee is one who is serving a probationary period at either: the outset of initial employment with the City; or at the outset of a promotion to a higher classification. During the probationary period, a probationary employee serves at the pleasure of the appointing authority, has no property right in continued employment, and has no right to any pre- or post-disciplinary procedural due process or evidentiary appeal. A probationary employee serving in the initial probationary period is an at-will employee.

106.3 *Regular Employee*

A regular employee is one who has satisfactorily completed the probationary period and cannot be disciplined except when the City has cause to do so. A regular employee has a property right in continued employment, and has the right to pre- and post-disciplinary procedural due process and an evidentiary appeal for certain types of disciplinary actions that result in the deprivation of a property interest.

106.4 *Full or Part-Time Employee*

A full-time employee is one whose position is budgeted to work at least forty (40) hours per week. Full-time employees receive all benefits provided in these Policies, unless otherwise provided in an MOU, or an employment agreement approved by the City Council. A regular part-time employee is one whose position is budgeted to work less than forty (40) hours per

week. Regular part-time employees may have different rights to leave and other benefits under the law or these Policies, depending on the number of hours they work.

106.5 *Temporary / Seasonal / Extra-Help Employee*

A temporary employee is an at-will employee who is appointed other than from an eligible list for a short term or seasonal basis, not to exceed six (6) months, or on a part time basis not to exceed nine hundred and ninety-nine (999) hours in a fiscal year. A temporary employee serves at-will and at the pleasure of the appointing authority, has no property right in continued employment, and has no right to any pre- or post-disciplinary procedural due process or evidentiary appeal. Retired annuitants may be employed as Extra Help Employees without reinstatement with CalPERS pursuant to the Public Employees Retirement Law (“PERL”), not to exceed nine hundred and sixty (960) hours in a fiscal year.

106.6 *Volunteer*

A volunteer is not an employee, but instead is an individual who provides services to the City for civic or philanthropic reasons and receives no compensation or benefits other than nominal fees and reimbursement of expenses. A volunteer serves at-will and at the pleasure of the appointing authority, has no property right in continued employment, and has no right to any pre- or post-disciplinary procedural due process or evidentiary appeal.

106.7 *Independent Contractor*

An independent contractor is not an employee, and serves solely under a contract that has been formed and approved as required by City purchasing policies and procedures.

200 *Equal Employment Opportunity*

202 *Equal Employment Opportunity Policy*

The City affords equal employment opportunity for all qualified employees and applicants as to all terms of employment, including compensation, hiring, training, promotion, transfer, discipline and termination. The City prohibits discrimination against employees or applicants for employment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (forty (40) and over), sexual orientation, military and veteran status, or any other basis protected by law. (Gov’t Code § 12940(a).) Employees, volunteers, or applicants who believe they have experienced any form of employment discrimination or abusive conduct are encouraged to report the conduct immediately by using the complaint procedures provided in these Policies, or by contacting the U.S. Equal Employment Opportunity Commission (EEOC), or the California Department of Fair Employment and Housing (DFEH).

204 Policy Against Discrimination, Harassment and Retaliation; Complaint Procedure

204.1 Purpose

The City has a strong commitment to prohibiting and preventing discrimination, harassment and retaliation in the workplace. The City has zero tolerance for any conduct that violates this Policy. Conduct need not rise to the level of a violation of state or federal law in order to violate this Policy. A single act can violate this Policy and provide grounds for discipline or other appropriate sanctions. This Policy establishes a complaint procedure for investigating and resolving internal complaints of discrimination, harassment and retaliation. The City encourages all covered individuals to report any conduct they believe violates this Policy as soon as possible. Any retaliation against an employee because they filed or supported a complaint or because they participated in the complaint resolution process is prohibited. Individuals found to have retaliated in violation of this Policy will be subject to appropriate sanction or disciplinary action, up to and including termination.

204.1.1 Covered Individuals and Scope of Policy

The individuals covered by this Policy are: applicants, employees regardless of rank or title, elected or appointed officials, interns, volunteers, and contractors. This Policy applies to all terms and conditions of employment, internships, and volunteer opportunities, including, but not limited to, selection, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

204.2 Definitions

204.2.1 Protected Classification

This Policy prohibits harassment, discrimination or retaliation because of an individual's protected classification. "Protected Classification" includes race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (forty (40) and over), sexual orientation, military and veteran status, or any other basis protected by law. (Gov't Code § 12940(a).) This Policy prohibits discrimination, harassment or retaliation because: 1) of an individual's protected classification; 2) the perception that an individual has a protected classification; or 3) the individual associates with a person who has or is perceived to have a protected classification.

204.2.2 Protected Activity

This Policy prohibits discrimination, harassment, or retaliation because of an individual's protected activity. Protected activity includes, but is not limited to, the following: making a request for an accommodation for a disability; making a request for accommodation for religious beliefs; making a complaint under this Policy; opposing violations of this Policy; or participating in an investigation under this Policy.

204.2.3 *Discrimination*

This Policy prohibits treating covered individuals differently and adversely because of the individual's protected classification, actual or perceived; because the individual associates with a person who is member of a protected classification, actual or perceived; or because the individual participates in a protected activity as defined in this Policy. (Gov't Code § 12926(o).)

204.2.4 *Harassment*

Harassment includes, but is not limited to, the following types of behavior that are taken because of a person's actual or perceived protected classification:

- (a) Speech, such as epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This includes, but is not limited to, inappropriate comments about appearance, dress, physical features, gender identification, or race-oriented stories and jokes.
- (b) Physical acts, such as assault, impeding or blocking movement, offensive touching, or physical interference with normal work or movement. This includes pinching, grabbing, patting, or making explicit or implied job threats or promises in return for submission to physical acts.
- (c) Visual acts, such as derogatory posters, cartoons, emails, pictures or drawings related to a protected classification.
- (d) Unwanted sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment. (Gov't Code §12940(j); 2 Cal. Code Regs. § 11091(b)(1).)

204.2.4.1 *Guidelines for Identifying Harassment*

Harassment includes any conduct which would be unwelcome or unwanted to an individual of the recipient's same protected classification. The following guidelines to determine if conduct is unwelcome or unwanted should be followed:

- (a) It is no defense that the recipient "appears" to have consented to the conduct at issue by failing to protest about the conduct. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized or subjected to retaliation.
- (b) Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. Small, isolated incidents might be tolerated up to a point. The fact that no one has yet

complained does not preclude someone from complaining if the conduct is repeated in the future.

- (c) Even visual, verbal, or physical conduct between two (2) people who appear to welcome the conduct can constitute harassment of a third person who witnesses the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at a particular individual.
- (d) Conduct can constitute harassment even if the individual has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual would find it offensive (e.g., gifts, over-attention, endearing nicknames, hugs).

204.2.5 *Retaliation*

Retaliation occurs when adverse conduct is taken against a covered individual because of the individual's protected activity as defined in this Policy. "Adverse conduct" may include but is not limited to: disciplinary action, counseling, taking sides because an individual has reported harassment or discrimination; spreading rumors about a complainant or about someone who supports or assists the complainant; shunning or avoiding an individual who reports harassment or discrimination; or making real or implied threats of intimidation to prevent or deter an individual from reporting harassment or discrimination.

204.3 *Complaint Procedure*

A covered individual who believes he or she has been subjected to discrimination, harassment or retaliation may make a complaint -- orally or in writing -- to any supervisor, manager, or department director, without regard to any chain of command. Any supervisory or management employee who receives a harassment complaint should immediately notify the Director of Human Resources. Upon receiving notification of a harassment complaint, the Director of Human Resources will complete and/or delegate the following steps. If the Director of Human Resources is accused, or is or may be a witness to the events at issue, an individual with higher authority, such as the City Manager or the City Attorney, will complete and/or delegate the following steps.

- a) Notify the director of the department of the complaint unless that director is accused or a witness to the events at issue.
- b) Authorize and supervise the investigation of the complaint and/or investigate the complaint. The investigation will usually include interviews with: 1) the complainant; 2) the accused; and 3) other persons who have relevant knowledge concerning the allegations in the complaint.
- c) Review the factual information gathered through the investigation to determine whether the alleged conduct violates the Policy giving consideration to all factual information, the totality of the circumstances, including the nature of the conduct, and the context in which the alleged incidents occurred.

- d) Report a summary of the determination as to whether this Policy has been violated to appropriate persons. If discipline or sanctions are imposed, the level of discipline or sanctions will not be communicated to the complainant.
- e) If conduct in violation of this Policy occurred, take or recommend to the appointing authority prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.
- f) Take reasonable steps to protect the complainant from further harassment, discrimination or retaliation.

204.3.1 *Proactive Approach*

The City takes a proactive approach to potential Policy violations and will conduct an investigation if its supervisory or management employees become aware that harassment, discrimination or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation.

204.4 *Option to Report to Outside Administrative Agencies*

An individual has the option to report harassment, discrimination or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These administrative agencies offer legal remedies and a complaint process. The nearest offices are listed on the Internet, in the government section of the telephone book or employees can check the posters that are located on City bulletin boards for office locations and telephone numbers.

204.5 *Confidentiality*

Every effort will be made to assure the confidentiality of complaints made under this Policy to the greatest extent allowed by law. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. An employee who is interviewed during the course of an investigation is prohibited from attempting to influence any potential witness while the investigation is ongoing. An employee may discuss their interview with a designated representative. The City will not disclose a completed investigation report except as it believes necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.

204.6 *Responsibilities*

- (a) Each non-manager or non-supervisor is responsible for:
 - 1) Treating all individuals in the workplace or on worksites with respect and consideration.
 - 2) Modeling behavior that conforms to this Policy.

- 3) Participating in periodic training regarding workplace discrimination, harassment, and retaliation.
 - 4) Cooperating with the City's investigations under this Policy by responding fully and truthfully to all questions posed during the investigation.
 - 5) Taking no actions to influence any potential witness while the investigation is ongoing.
 - 6) Reporting any action he or she believes in good faith constitutes harassment, discrimination or retaliation as defined in this Policy, to their immediate supervisor, or department director, or Director of Human Resources.
- (b) In addition to the responsibilities listed above, each manager and supervisor is responsible for:
- 1) Informing employees of this Policy.
 - 2) Taking all steps necessary to prevent harassment, discrimination and, retaliation from occurring, including monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.
 - 3) Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
 - 4) Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
 - 5) Informing those who complain of harassment or discrimination of their option to contact the EEOC or DFEH regarding alleged Policy violations.
 - 6) Assisting, advising, or consulting with employees and the Director of Human Resources regarding this Policy.
 - 7) Assisting in the investigation of complaints involving employee(s) in their departments and, when appropriate, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with these Policies, up to and including termination.
 - 8) Implementing appropriate disciplinary and remedial actions.
 - 9) Reporting potential violations of this Policy of which he or she becomes aware to the Director of Human Resources, regardless of whether a complaint has been submitted.

- 10) Participating in periodic training regarding workplace discrimination, harassment, and retaliation and scheduling employees for such training

206 Reasonable Accommodation and Interactive Process

206.1 Reasonable Accommodation

Absent undue hardship or direct threats to the health and safety of employee(s), the City provides employment-related reasonable accommodations to:

- (a) qualified individuals with disabilities, both applicants and employees, to enable them to perform essential job functions (Gov't Code § 12940(m)); and
- (b) employees with conditions related to pregnancy, childbirth, or a related medical condition, if she so requests, and with the advice of her health care provider (Gov't Code § 12945(3)(A)); and
- (c) employee victims of domestic violence, sexual assault, or stalking to promote the safety of the employee victim while at work (Labor Code § 230(f)(4)); and
- (d) employees who request reasonable accommodation to address a conflict between religious belief or observance and any employment requirement (Gov't Code § 12940(l)).

206.2 Supporting Documentation or Certification

206.2.1 Reasonable Medical Documentation of Disability

If the disability or the need for reasonable accommodation is not obvious, the City may require the individual to provide reasonable medical documentation confirming the existence of the disability and the need for reasonable accommodation, along with the name and credentials of the individual's health care provider. If the individual provides insufficient documentation, the City will: 1) explain the insufficiency; 2) allow the employee or applicant to supplement the documentation; and 3) pursue the interactive process only to the extent that the request for reasonable accommodation is supported by the medical documentation provided. (2 Cal. Code Regs. § 11069(c)(2) & (d).)

206.2.2 Medical Certification Indicating the Need for a Reasonable Accommodation or Transfer Due to Pregnancy or Related Conditions

If a pregnant employee, or an employee with a pregnancy-related condition, requests a reasonable accommodation or transfer due to pregnancy, the City will provide the employee with notice of the need for a medical certification within two (2) business days after the employee's request for accommodation. A medical certification confirming the need for a reasonable accommodation, including transfer, is sufficient if it contains: a description of the requested accommodation or transfer; a statement describing the medical advisability of the

accommodation or transfer due to pregnancy; and the date that the need for the accommodation or transfer will become necessary and the estimated duration of the accommodation or transfer. (2 Cal. Code Regs. § 11050(b)(3).)

206.2.3 *Certification of Victim Status*

An employee who is a victim of domestic violence, sexual assault, or stalking and who requests an accommodation to provide for their safety while at work must provide both of the following:

- (a) a written statement signed by the employee or an individual acting on the employee's behalf, to certify that the accommodation is to address victim-safety concerns while at work; and
- (b) a certification demonstrating the employee's status as a victim of domestic violence, sexual assault, or stalking, which can be in the form of: a police report indicating the employee's victim status; a court order separating the perpetrator from the employee or that the employee has appeared in court for that purpose; or documentation from a medical professional or counselor that the employee is undergoing treatment for physical or mental injuries or abuse resulting from an act of domestic violence, sexual assault, or stalking. (Labor Code § 230(f)(7).) In order to provide privacy for employees, any certification demonstrating the employee's status as a victim of domestic violence, sexual assault, or stalking may be reasonably redacted to provide only essential information to the City.

206.3 *Fitness for Duty Examinations*

206.3.1 *Applicants*

After a conditional offer of employment has been extended to an applicant, the City may require the applicant to submit to a fitness for duty examination that is job-related, necessary for efficient operations of the City, and required of all applicants for the job classification. (Gov't Code § 12940(e) & (f).) An applicant or employee who is required to pass a medical and/or psychological examination will be notified of his/her right to obtain a second opinion at his/her expense and that he/she may submit those second opinions for consideration. (2 Cal. Code Regs. § 11071(b)(2).)

206.3.2 *Current Employee*

The Director of Human Resources may require an employee to submit to a fitness for duty examination to determine if the employee has a disability and is able to perform the essential functions of their job when there is significant evidence that:

- (a) the employee's ability to perform one or more essential functions of their job has declined; or
- (b) could cause a reasonable person to question whether an employee is still capable of performing one (1) or more of their essential job duties, or is still capable of performing those duties in a manner that does not harm him or herself or others. (Gov't Code § 12940(e) & (f).)

206.3.3 *Role of Health Care Provider*

The City may request the applicant's or employee's health care provider to conduct a fitness for duty exam on the applicant or employee, or may request a City-selected health care provider to do so at the City's expense. The City will allow an employee paid time off to attend the exam. The City will provide the health care provider with a letter requesting a fitness for duty examination and a written description of the essential functions of the job. The examination will be limited to determining whether the applicant or employee can perform the essential functions of his/her position and any work restrictions and/or functional limitations that apply to the applicant or employee. The health care provider will examine the employee and provide the City with non-confidential information regarding whether:

- (a) the applicant or employee has a disability within the meaning of the California Fair Employment and Housing Act;
- (b) the applicant or employee is fit to perform essential job functions;
- (c) workplace restrictions or functional limitations apply to the applicant or employee, and the duration of the work restrictions or functional limitations;
- (d) there are any reasonable accommodations that would enable the employee to perform essential job functions; and
- (e) the employee's continued employment poses a threat to the health and safety of him or herself or others.

Should the health care provider exceed the scope of the City's request and provide confidential health information, without valid consent of the applicant or employee, the City will return the report to the health care provider and request another report that includes only the non-confidential fitness for duty information that the City has requested. (2 Cal. Code Regs. § 11069(c) & (d).)

206.3.4 *Authorization for Use of Medical Information*

During the course of a fitness for duty examination, the City will not seek or use information regarding an employee's medical history, diagnoses, or course of treatment without an employee's written authorization. Employees will be advised that such disclosure is voluntary prior to being asked to provide authorization

206.3.5 *Medical Information from the Employee or Applicant*

If an employee or applicant submits medical information to the City from their own health care provider, the Director of Human Resources will not forward that information on to the health care provider who conducted the examination for the City, without the employee or applicant's written authorization. Upon receipt of the written authorization, the Director of Human

Resources will request the City-paid health care provider to determine whether the information alters the original fitness for duty assessment.

206.4 *Interactive Process*

206.4.1 *When to Initiate the Interactive Process*

The Director of Human Resources will initiate the interactive process when:

- (a) an applicant or employee with a known physical or mental disability or medical condition requests reasonable accommodation(s) (2 Cal. Code Regs. § 11069(b)(1)); or
- (b) the City otherwise becomes aware of the need for an accommodation through a third party (e.g. a doctor's note requesting an accommodation), or by observation of the employee's work (2 Cal. Code Regs.. § 11069(b)(2)); or
- (c) the City becomes aware of the possible need for an accommodation because the employee with a disability has exhausted workers' compensation leave, Family and Medical Act leave, or other leave rights, but the employee and/or the employee's health care provider indicate that further accommodation is still necessary for recuperative leave or other accommodation (2 Cal. Code Regs.. § 11069(b)(3)); or
- (d) an employee disabled by pregnancy, childbirth or related medical conditions requests a reasonable accommodation or transfer based on the advice of her health care provider (2 Cal. Code Regs. § 11040(a)(1)); or
- (e) an employee with a physical or mental disability, regardless of cause, fails to return to work following pregnancy disability leave (2 Cal. Code Regs. § 11047); or
- (f) an employee-victim of domestic violence, sexual assault, or stalking requests a reasonable accommodation(s) for their safety at work (Labor Code § 230(f)(1)); or
- (g) an employee requests an accommodation to address a conflict between religious belief, observance, or practice and any employment requirement (Gov't Code § 12940(1)); or
- (h) an employer is aware of the need for a reasonable accommodation for an employee's or applicant's religious beliefs, observance or practices. (2 Cal. Code Regs. § 11060(b).)

206.4.2 *Interactive Communication*

After the occurrence of any of the above-stated circumstances that trigger the need to conduct an interactive process meeting, the Human Resources Department will promptly arrange for a discussion or discussions, in person or via conference telephone call, with the applicant or employee and their designated representative, (if any). The purpose of the interactive communications will be to discuss in good faith all feasible potential reasonable

accommodations. A Human Resources representative will document these communications in writing. (Gov't Code 12940(n); 2 Cal. Code Regs. § 11069(a).)

206.4.2.1 *Potential Accommodations for Applicants or Employees with Disabilities*

Depending on the facts of each case, the interactive process analysis will generally begin with a review of possible reasonable accommodations that would enable the individual to retain their current job. The process will generally then move on to possible reasonable accommodations in other vacant jobs, for which the individual is qualified, if there is no reasonable accommodation in the current job that does not cause undue hardship, or that does not present a risk of harm to the individual or others. The City will consider accommodations that the applicant or employee suggests, but has the right to select and implement any reasonable accommodation that it believes effective. The range of potential reasonable accommodations includes, but is not limited to:

- making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities, including: acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, and/or the provision of qualified readers or interpreters;
- job restructuring;
- part-time or modified work schedules (Gov't Code § 12926(p));
- paid or unpaid leave of absence of a finite duration that is likely to enable the employee to return to work at the end of the leave (2 Cal. Code Regs. § 11068(c));
- preferential consideration to reassignment to a vacant, comparable position, except when that preference would violate a bona fide seniority system (2 Cal. Code Regs. § 11068(d)(5));
- reassignment to a vacant lower-paid position if there is no funded, vacant comparable position for which the individual is qualified for (2 Cal. Code § 11068(d)(2)); or
- reassignment to a temporary position, if the individual agrees. (2 Cal. Code Regs. § 11068(d)(3).)

206.4.2.2 *Potential Accommodations for Employees Affected by Pregnancy and Related Medical Conditions*

Depending on the facts of each case, the interactive process will attempt to identify and implement a reasonable accommodation that is consistent with the medical certification applicable to the applicant or employee. Whether an accommodation is reasonable is a case-by-case analysis that takes into consideration several factors, including, but not limited to: the employee's medical needs; the duration of the needed accommodation; and the employer's legally permissible past and current practices. (2 Cal. Code Regs. § 11040(a)(2)(A).) The range of potential accommodations includes, but is not limited to:

- transfer to a less strenuous or hazardous position for the duration of the pregnancy (Gov't Code § 12945(a)(3)(C));
- change in or restructuring of work duties, such as modifying lifting requirements (2 Cal. Code Regs. § 11040(b));

- providing more frequent breaks;
- providing seating;
- time off for medical appointments;
- transfer temporarily to a job with equivalent pay and benefits that the employee is qualified to perform in order to accommodate reduced work schedule or intermittent leave. (2 Cal. Code Regs. § 11041(c).) (However, a reduction in work hours may be considered a form of pregnancy disability leave and deducted from the employee's four (4) month pregnancy disability leave entitlement.) (2 Cal. Code Regs. § 11040(b).)

206.4.2.3 *Potential Accommodations for Employee-Victims of Domestic Violence, Sexual Assault, or Stalking*

Depending on the facts of each individual case, the interactive process analysis will review all possible accommodations that would enhance the safety of the employee victim at work. In determining what accommodation is reasonable, the City will consider the exigent circumstance or danger facing the employee. The City will consider the preferences of the employee to be accommodated, but has the right to select and implement any accommodation that it believes effective. The range of potential safety measure accommodations includes, but is not limited to:

- transfer, reassignment, modified schedule;
- change in work telephone number;
- change in location of work station;
- installation of locks;
- assistance in documenting domestic violence, sexual assault, or stalking that occurs in the workplace;
- the implementation of a safety procedure(s);
- adjustment to job structure, workplace facility, or work requirement; and
- referral to a victim assistance organization. (Labor Code § 230(f)(2).)

206.4.2.4 *Potential Accommodations for Religious Creed, Religious Dress Practice, or Religious Grooming Practice*

Depending on the facts of each case, the interactive process analysis will review all possible accommodations that would resolve the conflict between the religious belief or observance and any employment requirement. The City will consider the preference of the employee or applicant, but has the right to select and implement any accommodation that it believes effective (Gov't Code § 12940).

206.4.3 *Determination*

After the interactive process communications, the Director of Human Resources will review the information received, and determine: whether all available information has been reviewed; whether all potential accommodations that the applicant or employee has suggested have been considered; whether additional discussions with the applicant or employee would be helpful; whether the applicant's or employee's preferences have been taken into account; if there is a reasonable accommodation that would enable the applicant or employee to perform essential job

functions without harming him or herself or others; and if the accommodations would pose an undue hardship on City finances or operations. The Director of Human Resources will inform the applicant or employee of their determination in writing. The Director of Human Resources will use their discretion based upon the particular facts of each case.

206.5 *Access to Medical Information Regarding Fitness for Duty*

Medical records and information regarding fitness for duty, or the need for an accommodation, will be maintained separately from non-medical records and information. Medical records and information regarding fitness for duty and the need for accommodation will be accessible only by the Director of Human Resources, the City's legal counsel, first aid and safety personnel in case of emergency, and supervisors who are responsible for identifying reasonable accommodations. Medical records and information contained therein may be released under state and federal law. (2 Cal. Code Regs. § 11069(g).)

208 Whistleblower Protection

208.1 *Policy*

The City prohibits all of the following:

- (a) taking any retaliatory adverse employment action against an employee because the employee has or is believed to have disclosed information to any government or law enforcement agency, including to the City, if the employee has reasonable cause to believe that the information discloses a violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation (Labor Code § 1102.5(b));
- (b) preventing an employee from disclosing information to a government, including to the City, if the employee has reasonable cause to believe that the information discloses a violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation (Labor Code § 1102.5(a));
- (c) retaliating against an employee for refusing to participate in any activity that would result in a violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation (Labor Code § 1102.5(c)); and
- (d) retaliating against an employee because the employee's family member has, or is perceived to have engaged in any of the protected activities listed in (a)-(c) above.

208.2 *Policy Coverage*

This Policy governs and protects City officials, officers, employees, temporary employees, or applicants for employment.

208.3 *Definitions*

(a) “Protected activity” includes any of the following:

- Filing a complaint with a federal or state enforcement or administrative agency that discloses any information that the employee has reasonable cause to believe violates state or federal law or a violation or noncompliance with a local, state, or federal rule or regulation.
- Participating in or cooperating in good faith with a local, federal or state enforcement agency that is conducting an investigation in to alleged unlawful activity.
- Testifying in good faith and with reasonable cause as a party, witness, or accused regarding alleged unlawful activity.
- Associating with another covered individual who is engaged in any of the protected activities enumerated here.
- Making or filing in good faith and with reasonable cause an internal complaint with the City regarding alleged unlawful activity.
- Providing informal notice to the City regarding alleged unlawful activity.
- Calling a governmental City’s “Whistleblower hotline” in good faith.
- Filing a written complaint under penalty of perjury that the City has engaged in gross mismanagement, a significant waste of public funds, or a substantial and specific danger to public health or safety. (Labor Code §§ 53296(c) & 53297(d).)
- Refusing to participate in any activity that the employee reasonably believes would result in a violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation. (Labor Code § 1102.5(c).)

(b) “Adverse action” may include, but is not limited to, any of the following:

- Real or implied threats of intimidation to attempt or prevent an individual from reporting alleged wrongdoing or because of actual or potential protected activity.
- Refusing to hire an individual because of actual or potential protected activity.
- Denying promotion to an individual because of actual or potential protected activity.
- Taking any form of disciplinary action because of actual or potential protected activity.
- Extending a probationary period because of actual or potential protected activity.
- Altering work schedules or work assignments because of actual or potential protected activity.
- Condoning hostility and criticism of co-workers and third parties because of actual or protected activity.
- Spreading rumors about a person because of that person’s actual or perceived protected activity.
- Shunning or unreasonably avoiding a person because of that person’s actual or perceived protected activity.

208.4 *Complaint Procedure*

An applicant, employee, or temporary employee who feels he or she has been retaliated against in violation of this Policy should immediately report the conduct according to the complaint procedure in the City’s Policy Against Discrimination, Harassment or Retaliation so that the complaint can be resolved fairly and quickly. Supervisors and Managers have the same responsibilities as defined in the Policy Against Discrimination, Harassment or Retaliation.

300 Classification Policies

302 Classification Plan

302.1 *Classification Plan*

The Director of Human Resources will ascertain and record the duties and responsibilities of all positions and, after consulting with affected department directors, will recommend a classification plan, including job descriptions, for the positions. The plan and any revisions thereof will become effective upon approval of the City Council (EMC 34.04)

Following the approval of the classification plan, the Director of Human Resources will allocate every position to one of the classifications established by the plan.

When a new position is created it may not be filled until the classification plan has been amended to provide for the new position.

302.2 *Reclassification*

The Director of Human Resources may initiate a job audit to determine whether the duties of a position have changed to such an extent that they necessitate reclassification of the position from the existing classification to a more appropriate classification. Upon completion of the job audit, the Director of Human Resources will make a recommendation regarding reclassification to the City Council.

400 Recruitment, Selection, and Appointment

402 Recruitment, Selection and Appointment Policy

402.1 *Job Announcement*

The Human Resources Department will prepare a job announcement to announce a proposed recruitment. The announcement may be posted on the City's website and other locations the Director of Human Resources believes appropriate, depending upon whether the recruitment is open to the public or current employees only. The announcement will include:

- The title and pay for the position;
- The nature of the work to be performed and essential job duties of the position;
- The minimum qualifications, including whether the job is a promotional position;
- A statement of the employment status of the position – for cause or at-will;
- The last date that the Director of Human Resources will accept applications, if any.
- The type of the examination, if known, and if a medical examination, and/or a drug screen will be required following a conditional offer of employment; and
- Any other information at the discretion of the Director of Human Resources.

402.2 *Application Forms*

Job applications will require information describing an individual's training, experience, and other pertinent information thought necessary to assess qualifications for the job. Applicants may be required to provide supplementary information, including but not limited to: answers to job-related questions; resume; licenses; certifications; diplomas; letters of recommendation; and references. All applications must be completed in full and signed, physically or electronically, by the person applying. The Director of Human Resources will not process any application which is not fully completed and signed. Should an applicant be appointed to a position, the supplemental information will become a part of the individual's permanent employment records.

402.3 *Disqualification of Applications*

The Director of Human Resources may reject any application which: is not properly completed or incomplete; received after the application deadline; or indicates that the applicant does not meet the minimum qualifications for the position. Whenever an application is rejected, notice of the rejection will be mailed or emailed to the applicant.

402.3.1 *Criminal Conviction Check*

After the City makes a conditional offer of employment, the hiring authority may then request information about criminal convictions, except for misdemeanor marijuana-related convictions that are over two (2) years old, or convictions that have been judicially sealed, eradicated, or expunged. (Labor Code §§ 432.7-432.8.) Unless required by law, the City will not deny employment to any applicant solely because he or she has been convicted of a crime. The City may, however, consider the nature, date and circumstances of the offense, evidence of rehabilitation, as well as whether the offense is relevant to the duties of the position. This Policy does not apply to applicants for public safety jobs.

402.4 *Employment Examinations*

- (a) The Director of Human Resources will determine the manner and methods of administering employment examinations. Examinations may consist of: written tests; oral tests; performance tests; evaluations of prior training and performance, experience and/or education; interviews; working style assessments; practical exercises; file review; or any combination thereof. The content of all examinations will be job-related and designed to test knowledge, skills or abilities that help predict successful completion of job duties. The City Manager will determine whether recruitment for department directors will be open to outside applicants.
- (b) The content of all examinations will be kept confidential prior to the administration of the examination. All applicants who are invited to the examination will be notified of the nature of the examination.
- (c) An applicant with a disability may request accommodation in an examination process. Following receipt of a request for accommodation, the Director of Human Resources

may require additional information, such as reasonable documentation of the existence of a disability. (2 Cal. Code Regs. § 11069(c)(2).)

- (d) Failure in one part of the examination, or the failure to meet established standards described in the job announcement, may be grounds for declaring that an applicant has failed the entire examination or is disqualified for subsequent parts of an examination. Each applicant will be notified by mail or email whether he or she will continue in the examination process.
- (e) Applicants who meet the minimum qualifications and pass all examinations may be subject to a background and/or reference check.

402.5 *Eligibility Lists*

- (a) After completion of an open or promotional examination for a classification, the Human Resources Department will prepare an eligibility list consisting of the names of candidates who passed the examination. Eligibility lists will become effective upon the certification by the Director of Human Resources.
- (b) A person appearing on an eligible list will be mailed or emailed notice of their placement on the list.
- (c) A person placed on an eligibility list will be removed from the list if he or she so requests in writing or fails to respond to notification of an opening within five (5) days after notification. It is the responsibility of the eligible person to keep the Human Resources Department informed of his/her current physical or email address, or phone number.
- (d) Where it is believed practical by the Director of Human Resources employment eligibility lists may be merged to ensure that the City has access to hiring the most qualified applicants.

402.6 *Appointments*

- (a) Whenever a vacancy occurs in the City service, the department director or appropriate official will notify the Director of Human Resources by completing a personnel requisition. Upon notification of an existing or future vacancy the Human Resources Department will commence recruiting to fill the vacancy.
- (b) The City Manager is the hiring authority and, through the Director of Human Resources, will make all appointments except for those classifications that report to the governing body. The Director of Human Resources has discretion to decide in what manner a vacancy will be filled. Vacancies may be filled by reinstatement, promotion, transfer, demotion, appointment of temporary employees, or from an appropriate eligibility list if available. No specific list has priority over other lists, unless specified in a collective bargaining agreement
- (c) The City Council will make appointments for those classifications that report to it.

- (d) When a position is to be filled from a promotional or open eligibility list, the Director of Human Resources will, upon the establishment of an employment eligibility list, transmit to the requesting department director the names of the top six (6) candidates for a single vacancy and the two (2) next succeeding candidates for each additional vacancy from the verified employment eligibility list. The department director (or designee) will interview each candidate. The department director may then recommend the appointment of any candidate submitted by the Director of Human Resources or may reject all candidates. If the department director rejected all candidates or no person among the top six (6) candidates indicates a willingness to accept the appointment, the Director of Human Resources may transmit the remaining names on the eligibility list to the department director, may request a new examination and establish a new eligibility list.
- (e) Appointment to certain positions may be made contingent upon the applicant passing a drug and/or alcohol test, and/or a job-related medical and/or psychological examination. Such an examination will only be required after a conditional offer of employment has been made.
- (f) The person accepting appointment will report to the Director of Human Resources or designee on the date designated by the Director of Human Resources. Otherwise, the applicant will be found to have declined the appointment.
- (g) In the absence of appropriate employment lists, a provisional appointment may be made by the City Manager of a person meeting the minimum training and experience qualifications for the position. An employment eligibility list will be established as soon as practicable or within three (3) months for any permanent position filled by provisional appointment. The City Manager may, with approval of a four-fifths (4/5) vote of the Council, extend the period for any provisional appointment for not more than ninety (90) days. This action will be recorded in the minutes of the meeting of the Council by the City Clerk. No provisional appointment may be extended or renewed beyond a total time of six (6) months as provided in the Eureka City Charter.

402.6.1 *Probationary Appointment for New Employees*

- (a) **At-Will Status:** The probationary period is part of the examination process and is used to determine whether work performance or work-related behavior meets the required standards of the position. A probationary employee may be rejected at any time during the probationary period with or without cause or reason, without notice or appeal or grievance, and without any rights set forth under Policy 1002, Causes for Discipline and Procedures. The probationary employee will be notified prior to the expiration of the probationary period that he or she has been rejected from probation.
- (b) **Length of Probation:** Unless otherwise specified by memorandum of understanding or these Policies, the probationary period is six (6) months of actual and continuous service for all employees except safety employees. The probationary period for safety employees will be up to eighteen (18) months of actual and continuous service. The probationary period is automatically extended by the length of any absence of one work

week or more. The probationary period can also be extended by the City at the discretion of the City Manager or his/her designee.

402.6.2 *Probationary Period for Promotional Appointments*

- (a) At-Will Status: A promotional probationary employee may be rejected at any time during the promotional probationary period with or without cause or reason, without notice or appeal or grievance, and without any rights described in Policy 1002, Causes for Discipline and Procedures. If the employee fails to satisfactorily complete the probationary period in the promotional position, the employee may return to the position held prior to promotion at the range and step held prior to promotion, if there is a vacancy in the prior position, unless he or she is terminated for cause.
- (b) Length of Probation: On accepting a promotion, an employee serves a new probationary period of six (6) months of actual and continuous service. The probationary period is automatically extended by the length of any absence of a week or more.

500 *Employment of Relatives or Spouses/ Domestic Partners*

502 *Employment of Relatives, Spouses, Domestic Partners*

502.1 *Policy*

The City regulates the employment and placement of relatives, spouses, and domestic partners so as to avoid conflicts of interest and to promote safety, security, supervision, and morale.

502.2 *Definitions*

- (a) “Relative” means child, step-child, parent, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, nephew, or in-laws of those enumerated by marriage or domestic partnership.
- (b) “Spouse” means one (1) of two (2) persons to a marriage, or two (2) people who are registered domestic partners, as those terms are defined by California law. (Fam. Code § 297 & 300.)
- (c) “Supervisory relationship” means one in which one (1) employee exercises the right or responsibility to control, direct, reward, or discipline another by virtue of the duties and responsibilities assigned to their City appointment.

502.3 *Employment of Relatives*

No person shall be employed by a department director who is the relative of the department director, and no person will be assigned to a position that would cause them to directly supervise or be directly supervised by a relative except upon approval of the

City Manager. It is expected that exceptions to this rule will only be approved when a position requires a peculiar or exceptional qualification.

600 Compensation and Payroll Practices

601 Compensation and Classification

601.1 Purpose

The Compensation Plan is intended to provide fair compensation for all City job classifications with the range of compensation of each class being relative to that of all other classes. The Compensation Plan will take into consideration rates of pay for similar employment in other governmental agencies, private business and local industry, cost of living data, the financial condition of the City, and other factors.

601.2 Preparation

The Director of Human Resources will prepare and maintain the Compensation Plan, which will cover all classes and positions within the City service. It will include a basic salary schedule providing for five (5) step ranges applicable to full-time employees and hourly rates of pay applicable to part-time employees; and a schedule of salary ranges consisting of minimum and maximum rates of pay and intermediate steps for all classes of positions within the organization as adopted by the City Council and subsequent amendments.

601.3 Adoption and Revision

The Compensation Plan will be adopted and may be amended whenever necessary by recommendation of the Director of Human Resources and by action of the City Council. Before the Director of Human Resources submits recommendations to the City Council regarding compensation, they will provide an opportunity for employees to present their views in following the Meyers-Milias-Brown Act.

601.4 Use of Salary Ranges

Salary ranges are intended to recognize individual differences among positions allocated to the same class, the purpose of which is to provide employee incentive and reward employees for meritorious service. All increase in salary within any range will be made only on the basis of fully satisfactory service. These increases are neither automatic nor a matter of right. Increases in salary will be made only upon the recommendation of a department director with approval of the Director of Human Resources. The following general provisions will govern the granting of salary increases within the range.

- a) The initial compensation to be paid for employment in any office or employment will normally be by Step One (1) of the salary schedule. Where it is found to be difficult to obtain qualified personnel for a position, or if a person of unusual qualifications is to be employed in a position, the Director of Human Resources may authorize the hiring at a

higher step. Unusual qualifications means skill and experience above the minimum employment standards as established in the position classification.

- b) After completion of six (6) months probationary period, miscellaneous employees will be eligible for regular employment status and advancement to the second step. Safety employees will be eligible for advancement to the second step after six (6) months but will not be eligible for permanent employment until the end of eighteen (18) months of probation. All benefits, except the right to appeal of dismissal, will accrue to the eligible employee at the end of six (6) months even though the probationary period may be greater than six (6) months.
- c) After advancement to the second salary step, an employee will be eligible for an increase in salary to the next higher step at any time after completion of twelve (12) months of fully satisfactory service at their current step. If, in the opinion of the department director, the employee has not satisfactorily performed their duties during the twelve (12) month period, a recommendation for retention the employee's present salary step must be made in writing to the Director of Human Resources. The reasons cited for retention will also be made in writing to the employee involved.

601.5 *Acceleration*

The Director of Human Resources may accelerate the step advancement of any employee upon the recommendation of a department director provided:

- a) The department director, in their written request for acceleration, certifies that the employee has performed their work in an outstanding and exceptionally meritorious manner. The department director must set forth in detail the reasons for their request.
- b) At least six (6) months have elapsed after the employee's appointment to the classification.
- c) The employee has had no previous step advancement acceleration during his employment in the particular classification.

602 *Work Schedules and Attendance*

602.1 *Work Schedules*

W schedules are determined at the discretion of the department director and are subject to change with or without notice according to the needs of the department or City. An overtime-eligible employee will be in attendance and at work during the hours specified by the supervisor.

602.2 *Meal Period*

A non-compensated meal period of no less than thirty (30) minutes will be provided to all full-time overtime-eligible employees who work at least an eight (8) hour work day. A thirty (30)

minute non-compensated meal period will be provided to all overtime-eligible full-time employees who work more than five (5) hours, but less than eight (8) hours during the work day. Overtime-eligible employees are responsible for taking their meal period at a time designated by the supervisor.

602.3 *Rest Period*

A fifteen (15) minute compensated rest period will be provided to all overtime-eligible employees for each four (4) hour period of service. The rest period will be taken at a time designated by the employee's supervisor. Rest periods may not be combined to shorten the workday or to extend the meal period.

602.4 *Lactation Break Time*

An overtime-eligible employee who wishes to express breast milk for her infant child during her scheduled work hours will receive a reasonable amount of additional unpaid time beyond the fifteen (15) minute compensated rest period. (Labor Code § 1030; 29 USC § 207(r).) An employee who wants to take a lactation break must notify a supervisor prior to taking such a break. Breaks may be reasonably delayed if they would seriously disrupt operations. (Labor Code § 1032.) Once a lactation break has been approved, the break should not be interrupted except for emergency or exigent circumstances.

602.4.1 *Private Location*

The City will make reasonable efforts to accommodate employees by providing an appropriate location, that is not in a bathroom, to express milk in private. The City will attempt to find a location near the employee's work area. (Labor Code § 1031; 29 USC § 207(r).) Employees occupying private areas to express milk will either secure the door or otherwise make it clear to others through signage that the area is occupied and should not be disturbed. All other employees should avoid interrupting an employee during an authorized break under this section, except to announce an emergency or other urgent circumstance. Authorized lactation breaks for employees assigned to the field may be taken at the nearest appropriate private area.

602.4.2 *Storage of Expressed Milk*

Any employee storing expressed milk in any authorized refrigerated area within the City will clearly label it as expressed milk. No expressed milk will be stored at the City beyond the employee's work day/ shift.

602.5 *Advance Request for Permission to Deviate from Regular Work Hours*

An overtime-eligible employee is required to seek advance permission from their supervisor for any foreseeable absence or deviation from regular working, break, and meal times

602.6 *Notification of Unforeseen Late Arrival or Absence*

An overtime-eligible employee who is unexpectedly unable to report for work as scheduled must notify their immediate supervisor no later than the beginning of the employee's scheduled work time and report the expected time of arrival or absence. If the immediate supervisor is not available, the employee must notify the department director.

602.7 *Unauthorized Absence is Prohibited*

Arriving late to work or leaving early in connection with scheduled work times, breaks, or meal periods is prohibited, absent authorization. An overtime-eligible employee who fails to timely notify the supervisor of any absences as required by this Policy, or who is not present and ready to work during all scheduled work times will be found to have an unauthorized tardy or absence and will not receive compensation for the period of absence.

602.8 *Excessive Tardiness/Absenteeism and Abuse of Leave*

Excessive tardiness occurs when an overtime-eligible employee who, without authorization, is late to work or late to return from breaks more than three times during any thirty (30) day period. Excessive absenteeism occurs when the number of unapproved absences for reasons that are not permitted by state or federal law, exceeds three (3) days in any three (3) month period. Excessive tardiness or absenteeism may be grounds for discipline, up to and including termination.

Abuse of leave is a claim of entitlement to leave when the employee does not meet the requirements for taking the leave, and may be grounds for discipline, up to and including termination. Should the City suspect that there is an abuse of leave by an employee, the City may require that the employee submit a physician's certificate to support the absence.

604 *Work Week, Overtime and Compensatory Time Off*

604.1 *Work Week*

The work week begins at 12:00 a.m. on Sunday and ends at 11:59 p.m. on Saturday, except for employees on a nine/eighty (9/80) work schedule, or as otherwise designated in an applicable MOU, or by a Fair Labor Standards Act (FLSA) 29 USC § 207(k) work period for public safety employees.

604.1.1 *Work Week for 9/80 Work Schedule*

Employees who have been approved to work a nine/eighty (9/80) work schedule will have a regular day off every other week as determined by the City. For employees working a nine/eighty (9/80) work schedule, each employee's designated work week will begin exactly four hours after the start of his/her eight (8) hour shift on the day of the week that corresponds to the employee's alternating regular day off.

604.1.2 *Work Period Police*

The work period for the City's sworn police employees is that regularly recurring seven/ twenty-eight (7-28) -day period that began on July 1, 2015.

604.2 *Overtime*

Overtime is all hours an overtime-eligible employee actually works over forty (40) hours in their designated work week. Only actual hours worked will be counted toward the forty (40) hour threshold for purposes of calculating Fair Labor Standards Act (FLSA) overtime pay; paid leave will not be counted. Overtime-eligible employees who are directed to work overtime must do so.

604.2.1 *No Remote Access for Overtime-Eligible Employees*

Unless the Director of Human Resources specifies otherwise in writing, overtime-eligible employees may not have remote access to City equipment, resources, or email. Overtime eligible employees may be granted access to City equipment, resources, email by obtaining written approval from their supervisor, department director, and the Director of Human Resources.

604.2.2 *Prior Approval Required for Overtime*

Overtime-eligible employees are not permitted to work overtime except as directed and authorized by their supervisor, or in case of emergency, as determined by the City. Working overtime without prior authorization or approval is grounds for discipline. In emergency situations that necessitate working overtime, the employee must notify a supervisor as soon as possible, and in no event later than the end of that day upon which the emergency occurred. If the supervisor denies the request to work overtime, the employee must obey the supervisor's directive and cease working. Failure to follow these overtime approval procedures may subject the employee to disciplinary action, up to and including termination, for violating the overtime approval procedures.

604.3 *Accurate Time Reporting*

All employees must accurately report all work time to the nearest five (5) minutes.

604.4 *No Volunteering of Work Time*

All time spent for the benefit of the City must be reported as hours worked on time records so that the employee is paid for all work. Overtime-eligible employees may not "volunteer" work time to perform duties that are the same or similar as their stated or regular job duties. Employees have no authorization to work without compensation. No supervisor has authority to request overtime-eligible employees to volunteer work time.

604.5 *Compensatory Time Off*

An overtime-eligible employee may opt to accrue compensatory time-off (CTO) in lieu of cash payment for overtime worked if their supervisor agrees prior to overtime work being performed.

- (a) **Accrual Rate:** CTO accrues at the rate of one and one half (1.5) hours for each hour, or fraction thereof, worked after forty (40) hours of actual work within the employee's designated work week. Time in paid leave status does not count toward CTO. CTO cannot be accumulated in excess of the limits set forth under the Fair Labor Standards Act (FLSA) and further established under terms set forth in the applicable MOU.
- (b) **Employee Request to Use CTO:** The City will grant an employee's request to use accumulated CTO provided that: 1) the department can accommodate the use of CTO on the day requested without undue disruption to department operations; and 2) the employee makes the request in writing to the supervisor no later than five (5) days prior to the date requested. If the employee does not provide five (5) days' notice, or if the department cannot accommodate the time off without undue disruption, the City will provide the employee the opportunity to cash out the amount of CTO requested at the end of the current pay period.
- (c) **City Cash Out:** The City reserves the right to cash out accumulated CTO at any time, unless otherwise prescribed by MOU.
- (d) **Value of CTO Cash Out:** During employment, CTO is cashed out at the employee's current FLSA regular rate of pay (including all FLSA-applicable salary differentials and special pays). Employees separating from City service will be compensated for all accrued, unused compensatory hours at their current FLSA regular rate of pay, or their average FLSA regular rate for the prior three years, whichever is higher. (29 USC § 207(o)(3)(B) & (4); 29 CFR § 553.27.)

700 Performance Evaluation Policies

702 Performance Evaluations

702.1 *Performance Evaluations*

A non-probationary employee's supervisor will prepare and sign a performance evaluation on a City form for each performance evaluation period. The Department Director will review and approve all performance evaluations of subordinates in their department. The Human Resources Department will review and approve all employee evaluations prior to final approval. The City Manager will review and approve all performance evaluations of department directors or any other employees under their direct supervision. All regular employees will receive performance evaluations every three (3) months while on probation, at six (6) months, and annually thereafter. Additional performance evaluations may be prepared at any time the Director of Human Resources or department director finds necessary.

702.2 *Probationary Employee Performance Evaluations*

Each probationary employee will have his performance evaluated at the end of every three (3) months for the entire length of his probationary period or at more frequent intervals when

believed necessary by the department director. The purpose of the probationary performance evaluation is to chart the probationer's progress toward meeting the standards of their position.

702.3 *Performance Evaluation Meeting*

The supervisor will meet with the employee to discuss the evaluation. The employee will sign the evaluation to acknowledge its contents and that he or she has met with their supervisor to discuss the evaluation. The employee's signature will not mean that he or she endorses the contents of the evaluation.

702.4 *No Appeal Right*

An employee does not have the right to appeal or submit a grievance regarding any matter relating to the content of a performance evaluation. Instead, the employee may comment on the evaluation in a written statement which will then be placed with the evaluation in the employee's personnel file. The written statement must be submitted within ten (10) days after the employee receives the evaluation, or an extension must be requested within that timeframe.

800 *Leaves of Absences*

802 *Vacation Leave and Holidays*

802.1 *Vacation Leave*

Eligible full-time and part-time employees, with the exception of temporary employees and probationary employees, earn vacation leave while in paid status until they reach the applicable vacation accrual cap. Employees accrue vacation time according to their full or part-time status and the number of consecutive years the employee has worked for the City. as follows:

(a) Full-Time General service employees

Years of service	Length of vacation
1st and 2nd	12 working days per year
3rd and 4th	13 working days per year
5th and 6th	14 working days per year
7th and 8th	16 working days per year
9th and 10th	17 working days per year
11th and 12th	18 working days per year
13th and 14th	19 working days per year
15th and 16th	20 working days per year
17th and 18th	21 working days per year
19th and over	22 working days per year

(b) Full-Time Management, Mid-Management, Police (EPOA),

Years of service	Length of vacation
1st thru 6th	12 days per year
7th and 8th	15 days per year
9th and 10th	16 days per year
11th and 12th	17 days per year
13th and 14th	18 days per year
15th and 16th	19 days per year
17th and 18th	20 days per year
19th and over	21 days per year

- (c) Regular Part-Time Employee Accrue Pro-Rated Vacation: Regular Part-time employees who are budgeted to work at least twenty (20) hours per week earn vacation leave while in paid status in a pro-rated amount based upon the accrual applicable to full time employees. Once a part-time employee reaches the pro-rated accrual cap, they stop earning vacation.
- (d) Employees still serving their probationary period will accrue vacation hours at the designated rate, but are not eligible to use vacation hours until attaining regular employment status, or completing six (6) months probationary service or one (1) year for public safety employees.

802.2 *Limitations on Vacation Leave Accrual*

No employee may accrue more than the equivalent of two (2) times the employee's annual vacation leave accrual rate, or for part-time employees, the equivalent of two (2) times the pro-rated accrual rate. When an employee reaches the equivalent of two (2) times the employee's annual vacation leave accrual rate, he/she will cease earning vacation leave until their leave balance falls below the equivalent of two (2) times the employee's annual vacation leave accrual rate. Vacation leave will not accrue during leaves of absence without pay unless required by law.

802.3 *Scheduling of Vacation Leave*

Vacation leave may not be used until it is earned. The employee and the department director will schedule the times when an employee may take vacation leave. The scheduling will be based on the employee's preference and the City's operational needs. An employee will provide a minimum of two (2) week's written advance notice, unless waived by the department director, when requesting vacation time off. The City may, at its discretion, require an employee to use accrued vacation.

802.4 *Unused Vacation Leave Upon Separation*

Any employee separating from the City who has accrued vacation leave will be paid for all accrued vacation at their rate of pay at the time of separation.

802.5 *Holidays*

Full-time employees, except temporary employees receive the holidays listed below with pay. If any of those three (3) holidays falls on a Saturday, the preceding work day will be treated as the holiday. Part-time employees whose scheduled work time falls on a holiday will receive that holiday off with pay for the hours they were scheduled to work.

- (1) January 1
- (2) Third Monday in February, known as “Washington’s Birthday
- (3) Friday before Easter, 12 noon until 5 p.m. (EPOA Members only)
- (4) Last Monday in May, known as “Memorial Day”
- (5) July 4
- (6) First Monday in September
- (7) November 11, known as “Veterans Day”,
- (8) Thanksgiving
- (9) Friday after Thanksgiving
- (10) December 25

If January 1, February 12, July 4, September 9, Veterans Day, or December 25 fall upon a Saturday or Sunday, the Friday preceding the Saturday or the Monday following the Sunday will be a holiday.

802.6 *Effect of Holiday on Vacation Leave*

If one or more holidays falls within a vacation leave that an eligible full-time employee is taking, the holiday will not be charged as vacation leave. Full time employees on a nine/eighty (9/80) work schedule, however, do not receive any holiday pay for a holiday that falls on the regular day off.

802.7 *Pay for Holidays*

Employees entitled to paid holidays will be paid for the number of hours the employee was scheduled to work had it not been a holiday. An overtime-eligible employee who is required to work on a holiday will receive holiday pay and pay for the actual time worked on the holiday. At the discretion of the Director of Human Resources employees may receive compensatory time off in lieu of holiday pay.

804 Sick Leave

804.1 *Purposes for Sick Leave*

Sick leave is paid leave from work that can be used for the following purposes:

- (a) diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or any of the following of the employee's family members: child of any age or dependency status; parent; parent-in-law; spouse; registered domestic partner; grandparent; grandchildren; or sibling (Labor Code §§ 233(b)(2); 245.5(c); 246.5(a)(1)); or
- (b) for an employee who is a victim of domestic violence, sexual assault, or stalking to: i) obtain or attempt to obtain a temporary restraining order or other court assistance to help ensure the health safety or welfare of the employee or their child; or ii) obtain medical attention or psychological counseling; services from a shelter; program or crisis center; or participate in safety planning or other actions to increase safety. (Labor Code §§ 230(c); 233(b)(3)(A); 246.5(a)(2).)

804.2 *Terms of Sick Leave*

(a) Accrual & Carryover for Different Categories of Employees:

- 1) Full time employees who are not temporary accrue eight (8) hours of sick leave for each calendar month of paid status; regular part-time employees who are not temporary accrue sick leave in an amount prorated to the lower number of hours they work each calendar month in paid status. Accrued sick leave carries over from year to year. No accrual limit applies.
- 2) A temporary employee who works thirty (30) or more days within a year from the commencement of employment with the City accrues one hour of paid sick leave for every thirty (30) hours worked. (Labor Code § 246(a).) Accrued and unused sick leave carries over to the following year of employment but a temporary employee stops earning sick leave once he or she has accrued forty- eight (48) hours or six (6) work days/ shifts, whichever is greater. (Labor Code § 246(i).)

(b) Sick Leave Use

An employee may use accrued sick leave, in a minimum increment of two (2) hours, beginning on the ninetieth (90th) day after the first day of employment with the City, subject to the limits and request provisions in this Policy. (Labor Code § 246(c) & (j).)

(c) Protected Sick Leave:

- 1) For full time employees who are not temporary, one-half (1/2) of the employee's accrued and available annual sick leave is protected and may be used for any of the purposes stated in this Policy. (Labor Code §§ 233(b)(2); 233(b)(3)(A); 246(d).)

For temporary employees, up to twenty-four (24) hours, or three (3) days, whichever is greater, of accrued and available sick leave each year is protected and may be used for any of the purposes stated in this Policy. (Labor Code § 246(d).) The year is measured beginning on July 1, 2015.

(d) Sick Leave Request:

To request to use sick leave if the need for leave is foreseeable, an employee must give the immediate supervisor reasonable advance written or oral notice. (Labor Code §§ 246(1); 246.5(a).) If the need for sick leave is not foreseeable, the employee will provide written or oral notice of the need for the leave as soon as practicable. (Labor Code § 246(1).) If the employee is required to be absent on sick leave for more than one (1) day, the employee must keep the immediate supervisor informed each day as to the date the employee expects to return to work and the purpose of the leave. Failure to request sick leave as required by this Policy without good reason, may result in the employee being treated as absent without leave.

(e) Certification

The City may require that employees who are not temporary, must provide a physician's certification to support any absence that involves the illness of the employee or family member if the City suspects that there is an abuse of sick leave by the employee. All employees, including temporary employees, who use paid leave to address issues related to domestic violence, sexual assault or stalking, and who cannot provide advance notice of their need for leave must provide certification of the need for leave within a reasonable time thereafter. (Labor Code § 230(d)(2).)

(f) Sick Leave on Separation from Employment

Unused sick leave is not cashed out upon termination, resignation, retirement, or other separation from employment. (Labor Code § 246(f)(1).) Unused sick leave may be converted to retirement service credits only as may be permitted under applicable retirement system laws and regulations.

(g) Sick Leave Reinstatement

If an employee separates and is rehired within one year from separation, accrued and unused sick leave, to a maximum of six (6) days or forty-eight (48) hours, whichever is greater, will be reinstated. (Labor Code § 246(f)(2).) An employee who worked at least ninety (90) days in the initial employment with the City may immediately use reinstated sick leave. An employee who had not worked ninety (90) days in the initial employment with the City must work the remaining amount of the ninety (90) day-qualifying period to be able to use accrued sick leave. (Labor Code § 246(c).)

806 Family and Medical Care Leaves

806.1 *Statement of Policy; Concurrent Running of FMLA and CFRA Leaves*

The City provides family and medical care leave for eligible employees as required by State and federal law. Employees who misuse or abuse family and medical care leave may be disciplined up to and including termination. Employees who fraudulently obtain or use CFRA leave are not

protected by the CFRA's job restoration or maintenance of health benefits provisions. This Policy is supplemented by the Federal Family and Medical Leave Act ("FMLA"), and the California Family Rights Act ("CFRA"). Unless otherwise stated in this Policy, "Leave" means leave under the FMLA and CFRA. Unless otherwise provided by law, the City will run each employee's FMLA and CFRA leaves concurrently.

806.2 *Definitions*

- (a) "12-Month Period" means a rolling twelve (12) month period measured backward from the date leave is taken and continuous with each additional leave day taken. (29 CFR § 825.200(b)(4); 2 Cal. Code Regs. § 11090(b).)
- (b) "Single 12 Month Period" means a twelve (12) month period which begins on the first day the eligible employee takes FMLA leave to take care of a covered servicemember and ends twelve (12) months after that date. (29 CFR § 825.200(f).)
- (c) "Child" means a child under the age of eighteen (18) years of age, or eighteen (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, or using telephones and directories. (29 CFR § 825.102; Gov't Code § 12945.2(c)(1).)
- (d) "Parent" means the biological 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 parents-in-law. (29 CFR § 825.102; Gov't Code § 12945.2(c)(7).)
- (e) "Spouse" means one (1) or two (2) persons to a marriage, regardless of the sex of the persons, and for purposes of CFRA leave, includes a registered domestic partner as defined below. (29 CFR § 825.102; Fam. Code § 300; 2 Cal. Code Regs. § 11087(r).)
- (f) "Domestic Partner" is another adult with whom the employee has chosen to share their life in an intimate and committed relationship of mutual caring and with whom the employee has filed a Declaration of Domestic Partnership with the Secretary of State, and who meets the criteria specified in California Family Code section 297. A legal union formed in another state that is substantially equivalent to the California domestic partnership is also sufficient. (Fam. Code § 299.2.)
- (g) "Serious Health Condition" means an illness, injury impairment, or physical or mental condition that involves:
 - 1) Inpatient Care in a hospital, hospice, or residential medical care facility, including any period of incapacity (e.g., inability to work or perform other regular daily

activities due to the serious health condition, treatment involved, or recovery therefrom). A person is considered “inpatient” when a health care facility admits him or her to the facility with the expectation that he or she will remain at least overnight, even if it later develops that the person can be discharged or transferred to another facility, and does not actually remain overnight; or

- 2) 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
 - b. Any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - i. Treatment two (2) or more times by a health care provider, by a nurse or physician’s assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider; or
 - ii. Treatment by a health care provider on at least one occasion which 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.
- 3) Any period of incapacity due to pregnancy or for prenatal care. (29 CFR § 825.120; Gov’t Code §12945.2(c)(8).) Note that pregnancy is a “serious health condition” only under the FMLA. Under California law, an employee disabled by pregnancy is entitled to pregnancy leave. (*See* Policy 808, Leave Because of Pregnancy, Childbirth, or Related Medical Condition.)
- 4) Any period of incapacity or period of treatment for incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - i. Requires periodic visits for treatment by a health care provider, or by a nurse or physician’s assistant under direct supervision of a health care provider;
 - ii. Continues over an extended period of time (including recurring episodes of a single underlying condition); and

iii. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for episodic incapacity qualify for leave even if the absence lasts only one day.

- 5) A period of incapacity that 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 health care provider.
- 6) 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 (3) consecutive calendar days in the absence of medical intervention or treatment. (29 CFR § 825.113; Gov't Code § 12945.2(c)(8); 2 Cal. Code Regs. § 11087(q)(1).)

(h) "Health Care Provider" means:

- 1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery in the State of California;
- 2) Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, which directly treats or supervises treatment of a serious health condition;
- 3) 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 California State law;
- 4) Nurse practitioners and nurse-midwives and clinical social workers 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;
- 5) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
- 6) 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. (29 CFR § 825.102; Gov't Code § 12945.2(c)(6).)

(i) "Covered active duty" means: 1) in the case of a member of a regular component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or 2) in the case of a member of the reserve component of the Armed Forces, duty during the deployment of members of the Armed Forces to a foreign country

under a call or order to active duty under certain specified provisions. (29 CFR § 825.102.)

- (j) “Covered Servicemember” means: 1) a current member of the 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; or 2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. (29 CFR § 825.102 & 825.122.)

- (k) “Outpatient Status” means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to either: (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. (29 CFR § 825.102.)

- (l) “Next of Kin of a Covered Servicemember” means the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as their nearest blood relative for purposes of military caregiver leave under the FMLA. (29 CFR § 825.102.)

- (m) “Serious Injury or Illness” means: 1) in the case of a member of the Armed forces, including a member of the National Guard or reserves, means an injury or illness that a covered servicemember incurred in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by the service in the line of duty on active duty in the Armed Forces) and that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating; or 2) in the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran. (29 CFR § 825.102.)

806.3 *Reasons for Leave*

Leave is only permitted for the reasons listed below.

- (a) The birth of a child or to care for a newborn of an employee; (29 CFR § 825.120; Gov't Code § 12945.2(c)(3)(A));
- (b) The placement of a child with an employee in connection with the adoption or foster care of a child; (29 CFR § 825.121; Gov't Code § 12945.2(c)(3)(A));
- (c) Leave to care for a child, parent, spouse, or domestic partner who has a serious health condition; (29 CFR § 825.113; Gov't Code § 12945.2(c)(3)(A) & (B));
- (d) Leave because of a serious health condition that makes the employee unable to perform any one (1) or more essential functions of his/her position; (29 CFR § 825.113; Gov't Code § 12945.2(c)(3)(C));
- (e) Leave for a variety of "qualifying exigencies" arising out of the fact that an employee's spouse, son, daughter, or parent is on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation (29 CFR § 825.126 -- This is a FMLA leave and not a CFRA leave); or
- (f) Leave to care for a spouse, son, daughter, parent, or "next of kin" who is a covered servicemember of the U.S. Armed Forces who has a serious injury or illness: incurred in the line of duty while on active military duty; or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces. This leave can run up to 26 weeks of unpaid leave during a single 12-month period. (29 CFR § 825.127 -- This is a FMLA leave and not a CFRA leave.)

806.4 *Employees Eligible For Leave*

An employee is eligible for leave if:

- (a) The employee has been employed by the City for at least twelve (12) months; and
- (b) The employee has been employed by the City for at least one thousand two hundred and fifty (1,250) hours during the twelve (12) month period immediately preceding the commencement of the leave; and
- (c) The City directly employs at least fifty (50) full or part-time employees within a seventy-five (75) mile radius for each working day during each of twenty (20) or more calendar workweeks in the current or preceding calendar year. The workweeks do not have to be consecutive. The phrase "current or preceding calendar year" refers to the calendar year in which the employee requests the leave or the calendar year preceding this request. (29 CFR § 825.109(d)-29 CFR § 825.111; Gov't Code § 12945.2(a) & (b); 2 Cal. Code Regs. §§ 11087(d)(1) & 11087(e).)

An employee is eligible for twelve (12) weeks of parental leave to bond with a new child within one year of the child's birth, adoption or foster care placement if:

- (a) The employee has been employed by the City for at least twelve (12) months; and
- (b) The employee has been employed by the City for at least one thousand two hundred and fifty (1,250) hours during the twelve (12) month period immediately preceding the commencement of the leave; and
- (c) The City directly employs at least twenty (20) full or part-time employees within a seventy-five (75) mile radius. (Gov't Code § 12945.6(a)(1).)

806.5 *Amount of Leave*

Eligible employees are entitled to a total of twelve (12) workweeks (or twenty-six (26) workweeks to care for a covered servicemember) of leave during any twelve (12) month period. If FMLA leave qualifies as both military care-giver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first. (29 CFR § 825.127.)

806.6 *Minimum Duration of Leave*

- (a) 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. In addition, the basic minimum duration of the leave is two (2) weeks. However, an employee is entitled to leave for one of these purposes (e.g. bonding with a newborn) for less than two (2) weeks duration on any two (2) occasions. (2 Cal. Code Regs. § 11090(d).)
- (b) If leave is requested to care for a child, parent, spouse or the employee him/herself with serious health condition, there is no minimum amount of leave that must be taken. However, compliance with the notice and medical certification provisions in this Policy is required. (29 CFR § 825.205; 2 Cal. Code Regs. § 11090(e).)

806.7 *Parents Both Employed by the City*

If both parents of a child, adoptee, or foster child are employed by the City and are entitled to bonding leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to twelve (12) workweeks during any twelve (12) month period. (29 CFR § 825.120(a)(3).) If both parents of a covered servicemember are employed by the City and are entitled to leave to care for a covered servicemember, the aggregate number of workweeks of leave to which both may be entitled is limited to twenty-six (26) work weeks during the twelve (12) month period. This limitation does not apply to any other type of leave under this Policy. (29 CFR § 825.127(f).)

806.8 *Employee Benefits While On Leave*

- (a) Group Health Insurance During Unpaid Leave: Leave under this Policy is unpaid. While on unpaid leave, employees will continue to be covered by the City's group health insurance for up to twelve (12) weeks each leave year to the same extent that coverage is provided while the employee is on the job. If the employee is disabled by

pregnancy, coverage will continue up to four months each leave year. If an employee disabled by pregnancy also uses leave under the CFRA for baby-bonding, the City will maintain her coverage while she is disabled by pregnancy (up to four (4) months or seventeen and one third (17 1/3) weeks) and during her CFRA leave (up to twelve (12) weeks). (Gov't Code §§ 12945(a)(2)(A) & 12945.2(s).)

- (b) **Benefit Plans Not Provided through the City's Group Health Plan During Unpaid Leave Do Not Continue:** The City does not pay for benefit plans that are not part of the group health plan for any employee on unpaid leave. As a result, employees will not continue to be covered under the City's benefit plans that are not provided through the City's group health plans while the employee is on unpaid leave. (2 Cal. Code Regs § 11092(e).)
- (c) **Payment of Premiums:** Employees may make the appropriate contributions for continued coverage under the health benefits plans by payroll deductions (if the employee is using their paid leave) or direct payments (if the employee is not using their paid leave). The City will inform the employee whether the direct payments for premiums should be paid to the carrier or to the City, and the deadlines for paying premiums in order to prevent coverage from being dropped. Employee contribution rates are subject to any changes in rates that occur while employee is on leave.
- (d) **Recovery of Premium if the Employee Fails to Return from Leave:** If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City will have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. (29 CFR § 825.213; Gov't Code § 12945.2(f)(1); 2 Cal. Code Regs. § 11092(c)(5).)

806.9 *Substitution of Paid Accrued Leaves*

Although family and medical care leave is unpaid the City will require an employee to concurrently use all paid accrued leaves during family and medical care leave as described below.

806.9.1 *Employee's Right to Use Paid Accrued Leave Concurrently with Family Leave*

An employee may use any earned or accrued paid leave except sick leave for all or part of any unpaid family and medical care leave. An employee is entitled to use sick leave concurrently with family and medical care leave for the employee's own serious health condition or that of the employee's parent, spouse, domestic partner or child. (Gov't Code § 129045.2(e); Labor Code §§ 233 & 246.5(a)(1).)

806.9.2 ***City's Right to Require an Employee to use Paid Leave when using FMLA/CFRA Leave***

Employees must use and exhaust their accrued leaves concurrently with family and medical care leave to the same extent that employees have the right to use their accrued leaves concurrently with family and medical care leave with two exceptions:

- (a) Employees are not required to use paid leave during leave under a disability plan that pays a portion of the employee's salary while on leave unless the employee agrees to use paid leave to cover the unpaid portion of the disability leave benefit; (29 CFR § 825.207(d); 2 Cal. Code Regs. § 11092(b)(2) & (3)); and
- (b) An employee must agree to use accrued sick leave to care for a child, parent, spouse or domestic partner. (Gov't Code § 12945.2(e); 2 Cal. Code Regs. § 11092(b).)

806.9.3 ***City's Right to Require an Employee to Exhaust FMLA/CFRA Leave Concurrently with Other Leaves***

If an employee takes a leave of absence for any purpose which also qualifies under both the FMLA and CFRA, the City will designate that leave as running concurrently with the employee's twelve (12) week FMLA/CFRA leave entitlement. The only exception is for peace officers and firefighters who are on paid industrial injury leave. (Labor Code §4850(e).

806.9.4 ***City's and Employee's Rights if an Employee Requests Accrued Leave without Mentioning FMLA or CFRA***

If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to a FMLA/CFRA qualifying purpose, the City may not ask the employee if the leave is for a FMLA/CFRA qualifying purpose. (2 Cal. Code Regs. § 11092(b)(4)(A).) However, if the City denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA qualifying purpose, the City may require the employee to exhaust accrued leave as described above. (2 Cal. Code Regs. § 11092(b)(4)(A)(1).)

806.10 ***Medical Certification/ Recertification***

Employees who request leave must provide a medical certification and/or recertification to support the need for the leave as described below:

- (a) Employee's Own Serious Health Condition: Employees who request leave for their own serious health condition must provide written certification from the health care provider that contains all of the following: the date, if known, on which the serious health condition commenced; the probable duration of the condition; and a statement that, due to the serious health condition, the employee is unable to work at all or is unable to perform any one or more of the essential functions of their position. (Gov't Code § 12945.2(j)(2); 2 Cal. Code Regs. § 11087(a)(2); 2 Cal. Code Regs. § 11091(b)(2).) Upon expiration of the time period the health care provider originally estimated that the

employee needed for his/her own serious health condition, the employee must obtain recertification if additional leave is requested. (Gov't Code § 12945.2(j)(2); 2 Cal. Code Regs. § 11091(b)(2); 29 CFR § 825.308.)

- (b) **Family Member Serious Health Condition:** Employees who request leave to care for a child, parent, domestic partner or a spouse who has serious health condition must provide written certification from the health care provider of the family member requiring care that contains all of the following: the date, if known, on which the serious health condition commenced; the probable duration of the condition; an estimate of the amount of time which the health care provider believes the employee needs to care for the child, parent, domestic partner, or spouse, and a statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision of the child, parent or spouse. The term “warrants the participation of the employee” includes, but is not limited to, providing psychological comfort, and arranging third party care for the covered family member, as well as directly providing, or participating in, the medical care. (Gov't Code § 12945.2(k)(1); 2 Cal. Code Regs. § 11087(a)(1); 2 Cal. Code Regs. § 11091(b)(1).) Upon expiration of the time period the health care provider originally estimated that the employee needed to care for a covered family member, the employer must obtain recertification if additional leave is requested. (Gov't Code § 12945.2(j)(2); 2 Cal. Code Regs. § 11091(b)(1); 29 CFR § 825.308.)

- (c) **Servicemember Serious Injury or Illness:** Employees who request FMLA 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. (29 CFR § 825.310.) The City will verify the certification as permitted by the FMLA regulations. (29 CFR § 825.310(e) &(f).)

- (d) **Qualifying Exigency:** The first time an employee requests FMLA leave because of a qualifying exigency, an employer may require the employee to provide a copy of the military member’s active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to active duty status in a foreign country, and the dates of the military member’s active duty service. A copy of the new active duty orders or similar documentation will be provided to the City 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 military member. (29 CFR § 825.309.) The City will verify the certification as permitted by the FMLA regulations. (29 CFR § 825.309(d).)

806.11 *Time to Provide a Medical Certification*

When an employee has provided at least thirty (30) days’ notice for a foreseeable leave, the employee must provide a medical certification before the leave begins. When this is not possible, the employee must provide the medical certification to the City within the time frame requested by the City (which must allow at least fifteen (15) calendar days after the employer’s request), unless it is not practicable under the particular circumstances to do so despite the employee’s diligent, good faith efforts. (2 Cal. Code Regs. § 11091(b)(3); 29 CFR § 825.305(b).)

806.12 ***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 the deficiency. (2 Cal. Code Regs. § 11091(b)(3); 29 CFR § 825.313(a) & (b).) However, if an employee fails to provide a medical certification within the time frame established in this Policy, the City may delay the taking of FMLA/CFRA leave until required certification is provided, or deny FMLA/CFRA protections following the expiration of the time period to provide an adequate certification. (2 Cal. Code Regs. § 11091(b)(3); 29 CFR § 825.313(a).)

806.13 ***Director of Human Resources' Review of the Contents of Medical Certification for Employee's Own Serious Health Condition***

- (a) Complete and Sufficient: The employee must provide a certification for their own serious health condition that is complete and sufficient to support the request for leave. A certification is incomplete if one or more of the applicable entries on the certification form have not been completed. A certification is insufficient if the information on the certification form is vague, ambiguous, or not responsive. If the certification is incomplete or insufficient, the Director of Human Resources will give the employee written notice of the deficiencies and seven days to cure, unless a longer period is necessary in light of the employee's diligent, good faith efforts to address the deficiencies. (29 CFR § 825.305(c).)

- (b) Authentication and Clarification: After giving the employee an opportunity to cure the deficiencies in a medical certification for the employee's own serious health condition, the Director of Human Resources may contact the health care provider who provided the certification to clarify and/or authenticate the certification. "Authentication" means providing the health care provider with a copy of the certification form and requesting verification that the information on the form was completed or authorized by the health care provider who signed the form. "Clarification" means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of the response. The Director of Human Resources may not ask for additional information beyond that required on the certification form. (29 CFR § 825.307(a).)

806.14 ***Second and Third Medical Opinions For Employee's Own Serious Health Condition***

If the City has a good faith, objective reason to doubt the validity of a certification for the employee's serious health condition, 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. (29 CFR § 825.307(b) & (c); 2 Cal. Code Regs. § 11091(b)(2)(A).) The City must provide the employee with a copy of the second and third medical opinions, where applicable, without cost, upon the request of the employee. (29 CFR § 825.307(d); 2 Cal. Code Regs. § 11091(b)(2)(D).)

806.15 *Intermittent Leave or Leave on a Reduced Leave Schedule*

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule for their own serious health condition, or to care for an immediate family member with serious health condition, the employee must provide medical certification that the 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. (2 Cal. Code Regs. § 11090(e); 29 CFR § 825.202(b).) The City may require an employee who certifies the need for a reduced schedule or intermittent leave to temporarily transfer to an alternate position of equivalent pay and benefits that better accommodates the leave schedule. (2 Cal. Code Regs. § 11090(e)(1); 29 CFR § 825.204.)

806.16 *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 verbal or written notice as possible of their need for leave. (29 CFR § 825.304(a).) If leave is foreseeable, at least thirty (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 day(s) (e.g. for the birth of a child or to take care of a newborn), the employee will inform his/her supervisor as soon as possible that leave will be needed. (29 CFR § 825.302(a); 2 Cal. Code Regs. § 11091(a)(2) & (3).) For foreseeable leave due to a qualifying exigency, an employee must provide verbal or written notice of the need for leave as soon as practicable, regardless of how far in advance the leave is foreseeable. (29 CFR § 825.302(a).)

806.17 *Reinstatement Upon Return From Leave*

- (a) Reinstatement to Same or Equivalent Position: 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 benefits and pay. 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. (2 Cal. Code Regs. § 11087(f) & (g); 2 Cal. Code Regs. § 11089(a); 29 CFR § 825.214-215; 29 CFR § 825.216.)
- (b) Date of Reinstatement: 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 the City, the employee will be reinstated within two (2) business days, where feasible, after the employee notifies the employer of his/her readiness to return. (2 Cal. Code Regs. § 11089(c)(1) & (2).)
- (c) Employee’s Obligation to Periodically Report on Their Condition: Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return. (29 CFR § 825.311.)
- (d) 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 their job, the employee must obtain and present a fitness-for-duty certification from the health care provider stating that the employee is able to resume work. Failure to provide this certification will result in denial of reinstatement. (Gov't Code § 12945.2(k)(4); 29 CFR § 825.312.)

806.18 *Required Forms*

Employees must complete the applicable forms to receive family and medical care leave. The forms may be found on the Human Resources page of the City Website or in the Human Resources Department.

808 Leave Because of Pregnancy, Childbirth, or Related Medical Condition

808.1 *Amount of Leave*

An employee who is disabled because of pregnancy, childbirth, or a related medical condition is entitled to an unpaid leave for up to the number of hours she would normally work within four (4) calendar months (one-third (1/3) of a year or seventeen and one third (17 1/3) weeks). (Gov't Code § 12945(a).) For a full-time employee who works forty (40) hours per week, "four months" means six hundred ninety-three (693) hours of leave entitlement, based on a forty (40) hour per week times seventeen and one third (17 1/3) weeks. (2 Cal. Code Regs § 11042(a)(1).) An employee who works less than forty (40) hours per week will receive a pro rata or proportional amount of leave. (2 Cal. Code Regs § 11042(a)(2).)

808.2 *Notice & Certification Requirements*

- (a) Notice: Requests for pregnancy disability leave must be submitted in writing with reasonable advance notice of the medical need for the leave. (2 Cal. Code Regs. § 11042(c)(1).) All leaves must be confirmed in writing, have an agreed-upon specific date of return, and be submitted to the Human Resources Department. (2 Cal. Code Regs. § 11042(a).)
- (b) Certification: The request for pregnancy disability leave must be supported by a written certification from the attending physician stating that: 1) the employee is disabled from working by pregnancy, childbirth or a related medical condition; 2) the date on which the employee became disabled by pregnancy, childbirth or a related medical condition; and 3) the estimated duration or end date of the leave. (2 Cal. Code Regs. §§11050(b)(7); 11050(e).)

808.3 *Compensation During Leave*

Pregnancy disability leaves are without pay, other than as provided for in existing Temporary Disability Leave policies, if applicable. However, the employee must first use sick leave, if any. (2 Cal. Code Regs. § 11044(b)(1).) Once sick leave is depleted, the employee may elect to use vacation leave or any other accrued paid time off during the leave. (2 Cal. Code Regs. § 11044(b)(2).)

808.4 *Benefits During Leave*

- (a) **Group Health Insurance:** An employee on pregnancy disability leave may continue to receive any group health insurance coverage that was provided before her leave, beginning on the date the pregnancy disability leave begins and continuing for up to four (4) months in a twelve (12) month period, at the same level and under the same conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. (Gov't Code § 12945(a)(2)(A); 2 Cal. Code Regs § 11044(c).) The City may recover premiums it paid to maintain health coverage if an employee does not return to work following pregnancy disability leave, unless the reason for the failure to return is a circumstance beyond her control or the use of the separate right to twelve (12) weeks of bonding leave under the California Family and Medical Leave Act. (Gov't Code § 12945(a)(2)(A); 2 Cal. Code Regs. § 11044(c)(3).)
- (b) **Sick and Vacation Leaves:** Sick and vacation leaves do not accrue while an employee is on unpaid pregnancy disability leave. (*See* 2 Cal. Code Regs § 11044(d)(1).)
- (c) **Employee Status during Leave:** The employee retains employee status during the leave. The leave is not a break in service for purposes of longevity or seniority under any collective bargaining agreement or employee benefit plan. Benefits will be resumed upon the employee's reinstatement in the same manner and at the same levels as provided when the leave began, without any new qualification period, physical exam, or other qualifying provisions. (2 Cal. Code Regs. § 11044(e).)

808.5 *Reinstatement*

- (a) Upon the expiration of pregnancy leave, the employee will be reinstated to her original or a comparable position, so long as it was not eliminated for a legitimate business reason during the leave. (2 Cal. Code Regs. § 11043(c).)
- (b) If the employee's original position is no longer available, the employee will be assigned to a comparable, open position. (2 Cal. Code Regs. § 11043(c)(2).)
- (c) 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 in accordance with these Policies. (*See* Policy 206, Reasonable Accommodation and Interactive Process.)

810 **Other Leaves**

810.1 *Executive Leave*

- (a) Department directors will be credited with nine (9) days and mid-management employees with six (6) days executive leave on July 1 of each fiscal year. Credited leave days may be used any time during the year giving due regard to the needs of the department.
- (b) On July 1 of each year, or as soon as reasonably possible thereafter, the employee will be paid in cash for any executive leave days granted and not used during the preceding fiscal year. In no instance, will executive leave days not taken in one year be carried forward to the next.
- (c) Newly hired employees will receive a prorated share of executive leave based upon the number of pay periods remaining in the fiscal year from the date of hire.
- (d) If, for any reason, an employee eligible for executive leave terminates employment, he/she will be entitled to receive a prorated payment for those leave days, based on the number of months of the fiscal year for which employed, less any leave days taken.
- (e) An employee who terminates employment will not be required to make repayment to the City if the number of executive days taken exceeds the prorated payment for unused leave days as provided in Section C.
- (f) Employees hired during the year will be credited with a prorated share of executive leave days based on the number of pay periods remaining in the fiscal year from the date of hire. The employee will be eligible to use accrued leave following completion of the probationary period.
- (g) Persons terminating within their probationary period are not eligible for executive leave remuneration.

810.2 *Jury Duty Leave/Subpoenaed or Court-Ordered Witness Leave*

Any employee, including a temporary employee, who is summoned to serve on a jury, or subpoenaed or ordered to be a witness, must notify their supervisor or department director as soon as possible. Any employee who is released from jury service prior to the end of their scheduled work hours must report to work unless otherwise authorized by their supervisor. (Gov't Code § 1230; Labor Code § 230; 28 USC § 1875(c).) The City will compensate the difference between the employee's regular pay and his compensation for jury duty, whenever their required jury service falls during their regularly scheduled work hours.

810.2.1 *Overtime-Eligible Employees*

All overtime-eligible employees will be paid for actual work hours missed because of time spent in jury service or court. The time spent on jury duty is not work time for purposes of calculating overtime compensation. The City will offset from pay the amount the employee receives from the Court for jury fees.

810.2.2 *Overtime-Exempt Employees*

All FLSA-exempt employees will continue to receive their normal salary while on jury duty or as serving as a witness only for any work week in which they perform any work duties. (29 CFR § 541.602(a) & (b)(3).)

810.3 *Other Court or Administrative Proceeding Appearances*

810.3.1 *Regarding Agency Duties*

Any employee, including a temporary employee, who is subpoenaed to appear in court in a matter regarding an event or transaction in the course of their City job duties, must give their supervisor as much advance notice as is possible. The City will determine whether the matter involves an event or transaction in the course of the employee's City job duties. If so, this leave to appear in court will be without loss of compensation, and the time spent will be considered work time. The City will offset the amount from pay the employee receives for witness fees.

810.3.2 *Regarding Employee-Initiated Proceedings*

Any employee, including a temporary employee, who is subpoenaed to appear, or appears in court because of civil or administrative proceedings that he or she initiated, is not entitled to receive compensation for time spent related to those proceedings. An employee may request to receive time off without pay, or may use any accrued leave other than sick leave for time spent related to those proceedings. The time spent in these proceedings is not considered work time. Notwithstanding the above, an employee who is testifying or appearing as the designated representative in PERB conferences or hearings, or at a personnel or merit commission is entitled to paid release time. (Gov't Code § 3505.3(a)(2) & (3).)

810.3.3 *Regarding Crime Victim/ Victim Family Member Court Attendance Leave*

Any employee, including a temporary employee, who is a victim of a crime that is a serious or violent felony, or a felony involving theft or embezzlement, may take leave from work to attend judicial proceedings related to that crime, if the employee provides the City a copy of the notice of the scheduled proceeding in advance. If advance notice is not feasible, the employee must provide the City, within a reasonable time after the leave is taken, documentation from the District Attorney, victim's rights office, or court / governing City that shows that the judicial proceeding occurred when the leave was used. An employee who is an immediate family member of such a crime victim, including: a registered domestic partner; the child of the registered domestic partner; spouse; child; stepchild; brother; stepbrother; sister; stepsister; mother; stepmother; father; or stepfather of the crime victim is also entitled to leave from work to attend judicial proceedings relating to that crime. The leave is unpaid unless the employee elects to use accrued vacation, sick, or other paid leave, or compensatory time off. (Labor Code § 230.2.)

810.3.4 *Regarding Crime Victim/ Family Member Victims' Rights Proceedings Leave*

Any employee, including a temporary employee, who is a victim of a crime listed in Labor Code section 230.5(a)(2)(A), may take leave from work to appear in court to be heard at any proceeding in which the right of the victim is at issue, if the employee provides the employer reasonable advance notice. If advance notice is not feasible, the employee must provide the City, within a reasonable time after the leave is taken, certification from a police report, a district attorney or court, or from a health care provider or victim advocate, that the employee was a victim of any of the crimes listed in Labor Code section 230.5(a)(2)(A). An employee who is a spouse, parent, child, sibling, or guardian of such a crime victim is also a victim who is entitled to this leave if the above notice or certification requirements are met. The leave is unpaid unless the employee elects to use accrued vacation or paid leave, or compensatory time off.

810.4 *Leave for Victims of Domestic Violence, Sexual Assault, or Stalking to Obtain Restraining Orders or Injunctive Relief*

Any employee, including a temporary employee, who is a victim of domestic violence, sexual assault, or stalking, may take leave from work to obtain or attempt to obtain any relief, including, but not limited to: a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety, or welfare of the employee or their child, if the employee provides advance notice of the need for leave. If advance notice is not feasible, the employee must provide any of the following certifications within a reasonable time after the leave: a police report indicating that the employee was a victim; a court order protecting the employee from the perpetrator; evidence from the district attorney or court that the employee has appeared in court; or documentation from a health care provider or counselor that the employee was undergoing treatment for physical or mental injuries or abuse. The leave is unpaid unless the employee elects to use 2014 Healthy Workplaces sick leave (Labor Code § 246.5(a)(2)), accrued vacation or paid leave, or compensatory time off. (Labor Code § 230.5(f).)

810.4.1 *Leave for Victims of Domestic Violence, Sexual Assault, or Stalking to Obtain Medical Attention or Counseling or Safety Planning*

Any employee, including a temporary employee, who is a victim of domestic violence, sexual assault, or stalking, may take leave from work to attend to any of the following: obtaining medical attention or psychological counseling; obtaining services from a shelter, program or crisis center; or participating in safety planning or other actions to increase safety, if the employee provides advance notice of the employee's intention to take time off for these purposes. If advance notice is not feasible, the employee must provide any of the following to the City within a reasonable time after the leave: a police report indicating that the employee was a victim; a court order protecting the employee from the perpetrator; evidence from the district attorney or court that the employee has appeared in court; or documentation from a health care provider or counselor that the employee was undergoing treatment for physical or mental injuries or abuse. The leave is unpaid unless the employee elects to use 2014 Healthy Workplaces sick leave (Labor Code § 246.5(a)(2)), accrued vacation or personal leave, or compensatory time off.

810.5 *Bereavement Leave*

All regular employees, may utilize paid bereavement leave to attend a funeral or memorial service, or to take care of family matters, that are related to the death of a member of immediate

family. “Immediate family” consists of the following: employee’s spouse, domestic partner, child, stepchild, parent, grandparent, grandchild, brother, sister, mother/father-in-law, son or daughter-in-law, brother or sister-in-law, legal guardian, or custodial child, or the same relatives of a domestic partner. Employees are entitled to up to forty (40) hours for each death in the immediate family. An employee who utilizes bereavement leave will notify his/her supervisor or department director of the intent to use bereavement leave.

810.6 *Military Leave*

Military leave will be granted in accordance with state and federal law. An employee requesting leave for this purpose will promptly provide the department director with a copy of the military orders specifying the dates, site and purpose of the activity or mission. Within the limits of those orders, the department director may determine when the leave is to be taken and may modify the employee’s work schedule to accommodate the request for leave.

810.7 *School-Related Leave*

810.7.1 *School or Licensed Day Care Activity Leave*

Any employee who is a parent, guardian, stepparent, foster parent, grandparent, or person who stands in loco parentis to one or more children who are in kindergarten or grades one (1) through twelve (12), or who are in a licensed child care facility, will be allowed up to forty (40) hours each school year, not to exceed eight hours in any calendar month of the school year, to: participate in activities of their child’s school or licensed child care facility; find, enroll, or reenroll a child in a school or with a licensed child care provider; or to pick up a child due to a child care provider or school emergency. The employee must provide reasonable advance notice to his/her supervisor of the planned absence. The leave is unpaid unless the employee uses vacation, personal leave or compensatory time off. The employee must provide documentation from the school or licensed child care facility as verification that the employee participated in school or child care facility activities on a specific date and at a particular time. If both parents, guardians or grandparents having custody work for the City at the same City work site, only the first parent requesting will be entitled to leave under this provision. (Labor Code § 230.8.)

810.7.2 *Child Suspension Leave*

Any employee who is the parent or guardian of a child in grades one (1) through twelve (12) may take time off to go to the child’s school in response to a request from the child’s school, if the employee gives advance notice to their supervisor. A school has the authority to request that the parent attend the child’s school if the child has: committed any obscene act; habitually used profanity or vulgarity; disrupted school activities; or otherwise willfully defied the valid authority of school personnel.

810.8 *Paid Administrative Leave*

The City has the right to place an employee on leave with full pay for non-disciplinary reasons at any time when the City Manager has determined that the employee’s and/or City’s best interests

warrant the leave. The employee does not have a right to appeal the decision to be placed on administrative leave with pay.

810.9 *Leave of Absence Without Pay Must Be Authorized By Law or These Policies*

Unless authorized by law or a City policy, an employee is not entitled to a leave of absence without pay. An authorized leave of absence without pay is not a break in service for purposes of calculating seniority. Unless required by law, vacation leave credits, sick leave credits, increases in salary, all other paid leaves, holidays and fringe benefits and other similar benefits do not accrue to an employee on unpaid leave. Unless required by law, the City will not maintain contributions toward group insurance or retirement coverage for the employee on a leave of absence without pay. During the period of authorized unpaid leave, all service and leave credits will be retained at the levels existing as of the effective date of the leave.

810.10 *Industrial Injury Leave*

810.10.1 *Employees Not Covered by Labor Code Section 4850*

Employees, other than those covered by Labor Code section 4850, who are absent from work by reason of an injury or illness covered by Workers' Compensation, will continue in pay status under the following provisions.

810.10.1.1 *Coordination of Benefits*

When the employee authorizes, the difference between the amount granted pursuant to Workers' Compensation and the employee's regular pay will be deducted from the employee's accumulated sick leave, vacation, personal holidays, and compensatory time, if any. The employee will continue in pay status and receive their pay until his/her accumulated sick leave, and authorized compensatory time, personal holidays and vacation days, have been depleted to the nearest hour.

810.10.1.2 *Accrual of Sick and Vacation Leave Continues While on Paid Leave*

During the time the employee is in fully paid status while absent from work by reason of injury or illness covered by Workers' Compensation, he or she will continue to accrue sick leave and vacation benefits as though he or she were not on leave of absence.

810.10.1.3 *Unpaid Leave and Continuation of Health Care Benefits*

Any employee subject to this Policy who depletes their accumulated sick leave, compensatory time, personal holiday time and vacation days while absent from work by reason of an injury or illness covered by Workers' Compensation may receive an unpaid leave of absence and continuation of health care benefits consistent with state and/or federal law.

810.10.2 *Employees Covered by Labor Code Section 4850*

Sworn Police employees covered by Labor Code Section 4850 *et seq.* will be allowed up to one year leave of absence for an industrial injury or illness without loss of salary in lieu of disability payments, consistent with state law. The employee will continue to accrue sick leave and vacation benefits while in paid status.

810.10.2.1 *Coordination of Benefits after 4850 Leave*

Whenever the injury or illness continues beyond the one (1) year 4850 leave period, and when the employee authorizes, the difference between the amount granted pursuant to Workers' Compensation and the employee's pay may be deducted from the employee's accumulated sick and vacation leave, personal holidays, and compensatory time, if any. Thereafter, the employee may receive an unpaid leave of absence and continuation of health care benefits consistent with state and/or federal law.

810.11 *Time Off to Vote*

Any employee, if he or she does not have sufficient time outside of working hours to vote, may request up to two (2) hours of paid leave either at the beginning or end of scheduled working hours to enable him or her to vote. The employee must request time off to vote from their supervisor at least two (2) days prior to election day.

900 Resignation, Job Abandonment, Layoff, and Separation

902 Resignation, Job Abandonment, Layoff and Separation

902.1 *Types of Separation*

All separations of employees from positions in City employment are designated as one of the following types:

- Probationary Release;
- Release of temporary employee;
- Resignation;
- Retirement;
- Job abandonment;
- Layoff;
- Non-disciplinary separation;
- Disciplinary separation.

902.2 *Probationary Release*

Probationary employees serving in their initial probationary period with the City may be released at any time during the probationary period as recommended by the department director or the Director of Human Resources, without cause or reason or notice. A released probationary employee has no right to appeal or to submit a grievance.

902.3 *Release of Temporary Employees*

A temporary employee may be separated at any time, without cause, and without right to any appeal or grievance.

902.4 *Resignation*

An employee who wishes to resign thier City employment in good standing must submit written notice of resignation to the department director at least two (2) weeks prior to the planned separation date. Failure to follow the aforementioned procedure may be cause for denying future employment with the City. A resignation becomes final when the department director or the Director of Human Resources accepts the resignation in writing. Once a resignation has been accepted, it is final and irrevocable. A resignation can be accepted by the department director or the Director of Human Resources even if it is submitted less than two (2) weeks prior to the planned resignation date.

902.5 *Retirement*

An employee planning to retire may provide a written notice to the department director or Director of Human Resources prior to the effective date of the retirement. The effective date of retirement stated in the notice becomes final when the department director or Director of Human Resources accepts the notice of retirement in writing. Once a notice of retirement has been accepted, it is final and irrevocable.

902.6 *Job Abandonment*

An employee is deemed to have resigned from his/her position if he or she is absent for two (2) consecutive scheduled work days/shifts without prior authorization and without notification during the period of the absence. The employee will be given written notice, at their address of record, of the circumstances of the job abandonment, and an opportunity to provide an explanation for the employee's unauthorized absence. An employee who promptly responds to the City's written notice, within the timeframe set forth in the written notice, can arrange for an appointment with the department director before final action is taken, to explain the unauthorized absence and failure of notification. An employee separated for job abandonment will be reinstated upon proof of justification for the absence, such as severe accident, severe illness, false arrest, or mental or physical impairment which prevented notification. No employee separated for job abandonment has the right to a post-separation appeal.

902.7 *Layoff*

Whenever, in the judgment of the City Council a reduction in personnel is necessary for economic or operational reasons, any employee may be laid off or demoted for non-disciplinary reasons.

902.7.1 *Order of Layoffs*

Unless otherwise provided for by MOU, employees will be laid off in the inverse order of their seniority in their classification in the department. Seniority is determined based on the length of employment in the affected classification in the department, or higher classifications in the department. Length of employment includes all days of employment in attendance at work and on authorized or legally-protected leaves of absence. Length of service does not include unauthorized periods of leave or suspension or layoff. Within each classification, employees will be laid off in the following order: temporary; part-time; probationary; and for-cause status. If two (2) or more employees in a classification to be laid off have the same length of employment, the employee to be laid off will be decided by lottery.

902.7.2 *Notification of Layoff*

Employees to be laid off will be given twenty-one (21) calendar days' notice of layoff.

902.7.3 *Displacement*

For-cause employees who are noticed for layoff and who have held for-cause status in a lower classification within the same classification series in the same department, may displace employees in the lower classification provided that the employee seeking to displace has greater length of employment in the lower classification than the incumbent in the lower classification. Employees in lower classifications will be displaced in inverse order of their length of employment in the classification. Any employee who seeks to displace another must provide the Director of Human Resources with written notice no later than five (5) working days after the date of the notice of layoff.

902.7.4 *Transfer*

If the Director of Human Resources determines that a for-cause employee who is subject to layoff is qualified to perform the duties in a vacant position, the employee will receive a written notice of option to transfer in lieu of layoff. An employee who does not accept a transfer within ten (10) days after the date of the written notice, forfeits the option to transfer. An employee who accepts a transfer will be paid the rate applicable to the position into which he or she transfers.

902.7.5 *Appeal*

An employee who has been noticed for layoff, and who has any questions or concerns about the layoff decision or process may make an appointment to be heard by the Director of Human Resources for an informal pre-layoff review. The employee must request this appeal in writing within five (5) work days from the date of the notice of layoff. The Director of Human Resources' decision is final.

902.8 *Non-Disciplinary Separation*

Any employee separated because of an inability to accommodate after the reasonable accommodation and interactive process is concluded, will be given a written pre-separation notice of the reasons for the separation, the evidence supporting the decision to separate for non-

disciplinary reasons, and an opportunity to respond before the separation takes effect. Any for cause employee has the opportunity for a post-separation appeal as described in Policy 1002, Causes for Discipline and Procedures.

902.9 *Disciplinary Separation*

A for-cause employee may be separated for disciplinary reasons according to the policy and procedures in Policy 1002, Causes for Discipline and Procedures.

902.10 *Return of City Property*

All City property in the employee's possession must be returned prior to separation, including keys, key fobs, identification cards, equipment, credit cards, gas cards, cell phones, laptops, tablets, and any other City equipment.

902.11 *Job References/Verification of Employment*

All reference inquiries and verifications of employment must be referred to and approved by the Director of Human Resources. Unless the Director of Human Resources receives a written waiver signed by the employee, the City will release only the employee's dates of employment, last position held, and final salary rate. Department directors 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 on a case-by-case basis.

1000 Discipline

1002 Causes for Discipline and Procedures

1002.1 *Causes for Discipline*

Employees may be disciplined for, including but not limited to, any of the following causes of discipline:

1. Violation of any department rule, City policy or City regulation, ordinance or resolution;
2. Absence without authorized leave or tardiness;
3. Excessive absenteeism and/or tardiness as defined by the employee's department director, and/or these Policies;
4. Use of leave from work in a manner not authorized or provided for under City policies;
5. Making any false representation or statement, or making any omission of a material fact;

6. Providing wrong or misleading information or other fraud in securing appointment, promotion or maintaining employment;
7. Unsatisfactory job performance;
8. Inefficiency;
9. Damaging any City property, equipment, resource, or vehicle, or the waste of City supplies through negligence or misconduct.
10. Insubordination; or 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 or unauthorized use of any City property, including, but not limited to: physical property, electronic resources, supplies, tools, equipment, City communication systems, City vehicles or intellectual property;
15. Mishandling of public funds;
16. Falsifying or tampering with any City record, including work time or financial records;
17. Discourteous or offensive treatment of the public or other employees;
18. Abusive conduct, including malicious verbal, visual or physical actions, or the gratuitous sabotage or undermining of a person's work performance.
19. Conviction, meaning any judicial determination of guilt, of a crime that has a nexus to the employee's job duties;
20. Unapproved outside employment or activity, or other enterprise that constitutes a conflict of interest with service to the City;
21. Any conduct that impairs, disrupts or causes discredit to the City, to the public service, or other employee's employment
22. Reckless or unsafe conduct;
23. Working overtime without prior authorization or refusing to work assigned overtime;
24. Carrying firearms or other dangerous weapons while on duty when not required by job duties.

25. Horseplay or fighting.

1002.2 *Types of Counseling, Reprimands and Discipline*

The following are types of counseling, reprimands and discipline which the City may impose:

- (a) **Counseling Memo:** A counseling memo will be provided to an employee to identify: a failure of appropriate conduct or performance issue; the performance the employee is to demonstrate in the future; and consequences for failure to correct the behavior or problem. A counseling memo will be retained in the supervisor's file until the completion of the evaluation year, and then documented in the performance evaluation, as the supervisor believes necessary. A counseling memo is not subject to the discipline or discipline appeal procedures described below. A counseling memo is not considered "punitive action" under the Public Safety Officers Procedural Bill of Rights Act (Government Code §3300, *et seq.*).
- (b) **Verbal Reprimand:** A verbal reprimand is a verbal direction from a supervisory employee to discontinue inappropriate conduct or to correct a performance issue. A verbal reprimand will be documented in writing and retained in the supervisor's file until the completion of the evaluation year and then documented in the performance evaluation, as the supervisor believes necessary. A verbal reprimand is not subject to the discipline or discipline appeal procedures described below.
- (c) **Written Reprimand:** A written reprimand is written direction from a supervisory employee to discontinue inappropriate conduct or to correct a performance issue. A written reprimand will be retained in the employee's personnel file and documented in the performance evaluation. Unless required by law, a written reprimand is not subject to the discipline or discipline appeal procedures described below. The employee has the right to have their written rebuttal attached to the reprimand in the employee's personnel file, if the employee submits the rebuttal to the Director of Human Resources within fourteen (14) days after the reprimand is received.
- (d) **Suspension Without Pay:** The City may suspend an employee from his/her position without pay for cause. Documents related to a suspension will become part of the employee's personnel file when the suspension is final and documented in the performance evaluation. A suspension without pay is subject to the discipline and discipline appeal procedures described below. Employees who are exempt from Fair Labor Standards Act (FLSA) overtime will only be suspended as authorized by the FLSA.
- (e) **Reduction in Pay or Paid Leave:** The City may reduce an employee's pay or paid leave for cause. A reduction in pay for disciplinary purposes may take one of three (3) forms: 1) a decrease in salary to a lower step within the salary range; 2) a decrease in salary paid to an employee for a fixed period of time; or 3) loss of accrued paid vacation or administrative leave, floating holiday, or compensatory time off. Documents related to a reduction in pay will become part of the employee's personnel

file when the reduction in pay is final and documented in the performance evaluation. A reduction in pay is subject to the discipline and discipline appeal procedures described below. Employees who are exempt from the Fair Labor Standards Act (FLSA) overtime requirements are not subject to pay reduction, except loss of accrued vacation or administrative leave.

- (f) Demotion: The City may demote an employee from their position to a lower position for cause. Documents related to a demotion will become part of the employee's personnel file when the demotion is final and documented in the performance evaluation. A demotion is subject to the discipline and discipline appeal procedures described below.
- (g) Dismissal: The City may dismiss an employee from their position for cause. Documents related to the dismissal will become a part of an employee's personnel file when the dismissal is final. A dismissed employee is entitled to the discipline and discipline appeal procedures described below.

1002.3 *Discipline Procedures*

The following discipline procedures only apply to the City's for-cause employees. All employees other than for-cause employees, namely temporary employees, may be disciplined or separated at will, with or without cause, and without the disciplinary procedures listed below. The following discipline procedures apply only to suspension without pay, reduction in pay, demotion, or dismissal.

- (a) "*Skelly*" Notice of Intended Disciplinary Action to Employee: A written notice of the intended disciplinary action will be given to the employee, which will include the following information:
 - The level of the intended discipline;
 - The specific charges that support the intended discipline;
 - A summary of the facts that show that the elements of each charge at issue in the intended discipline;
 - A copy of all materials upon which the intended discipline is based;
 - Notice of the employee's right to respond to the department director regarding the intended discipline within five (5) days from the date of the notice, either by requesting a *Skelly* conference, or by providing a written response, or both;
 - Notice of the employee's right to have a representative of their choice at the *Skelly* conference; and
 - Notice that failure to respond by the time specified constitutes a waiver of the right to respond prior to final discipline being imposed.
- (b) Response by Employee and *Skelly* Conference: If the employee requests a *Skelly* conference, the designated *Skelly* Officer, which may be the department director, will conduct an informal meeting with the employee. During the informal meeting, the employee will have the opportunity to rebut the charges against him or her and present any mitigating circumstances. The *Skelly* Officer will consider the employee's

presentation before issuing the disciplinary action. The employee's failure to attend the conference, or to deliver a written response by the date specified in the *Skelly* notice, is a waiver of the right to respond, and the intended disciplinary action will be imposed on the date specified in the *Skelly* letter.

- (c) Final Notice of Discipline: After the *Skelly* conference and/or timely receipt of the employee's written response, the *Skelly* Officer will: 1) take no disciplinary action; 2) modify the intended discipline; or 3) impose the intended disciplinary action. In any case, the *Skelly* Officer will provide the employee with a notice that contains the following:
- The level of discipline, if any, to be imposed and the effective date of the discipline;
 - The specific charges upon which the discipline is based;
 - A summary of the facts that show that the elements of each charge at issue in the intended discipline;
 - A copy of all materials upon which the discipline is based; and
 - A reference to the employee's appeal right and deadline to appeal.
- (d) Delivery of the Final Notice of Discipline: The final notice of discipline will be sent by mail method that verifies delivery to the last known address of the employee, or delivered to the employee in person. If the notice is not deliverable because the employee has moved without notifying the City or the employee refuses to accept delivery, the effective date of discipline will be the date the post office or delivery service attempted delivery.

1002.4 *Discipline Appeal Procedures*

- (a) The following appeal procedures only apply to the City's for-cause employees. All employees other than for-cause employees, namely temporary employees, may be disciplined or separated at will, with or without cause, and without the disciplinary appeal procedures listed below. The following appeal procedures apply only to suspension without pay, demotion, reduction in pay or dismissal. Any employee appointed by the City Manager with the approval of the City Council has the right to appeal to the relative to any situation affecting their employment status as described herein. Request for Appeal Hearing: An employee may submit a written request for appeal to the Director of Human Resources within fourteen (14) calendar days from: 1) receipt of the final notice of discipline; or 2) the date of attempted delivery by the post office or delivery service of the notice to the last known address of the employee. Failure to file a timely written request for an appeal waives the right to an appeal hearing and any appeal of the discipline. The Director of Human Resources will transmit the appeal to the Personnel Board for investigation of the matter and a hearing will be conducted.
- (b) Personnel Board Hearing: On an appeal the Personnel Board may make any investigations it finds necessary and must hold an evidentiary hearing at which time it must hear evidence for and against the employee. Hearings may be informally conducted and the rules of evidence need not apply. Hearings must not be unreasonably protracted.

- (c) Date and Time of the Appeal Hearing: Once Personnel Board has been notified of the need to conduct a hearing, the Director of Human Resources will set a date for an appeal hearing. The employee will be notified in writing at least twenty-one (21) calendar days prior to the hearing of the scheduled date.
- (d) Record of the Appeal Hearing: The hearing will be recorded, either electronically or by a court reporter, at the option of the City. If the City orders a transcript or makes a transcript of the recording, the City will notify the employee within three (3) calendar days of ordering or making the transcript, and will provide a copy of the transcript upon receipt of the costs of duplication.
- (e) Employee Appearance: The employee must appear personally before the Personnel Board at the time and place set for the hearing. The employee may be represented by any person he or she may select.
- (f) Conduct of the Hearing: Within fourteen (14) calendar days after concluding the personnel hearing, the Personnel Board must certify its findings and present its recommendations to the Council with copies to the Director of Human Resources, the City Manager and other officials from whose action the appeal was taken and to the employee affected and/or their representative.
- (g) Appeal to Council: The appointing power, the official from whose action the appeal was taken, and the employee affected will review the findings and recommendations of the Board and may, within seven (7) calendar days after the findings and recommendations of the Personnel Board have been certified, appeal to the Council for a review of the Board's findings and recommendations. The Council must thereupon consider the appeal and make any investigation it believes necessary and within a reasonable time affirm, revoke, or modify the action of the Personnel Board findings as in its judgment seems warranted, provided that a four-fifths (4/5) vote of the Council is required to revoke or modify the findings and recommendations of the Personnel Board.
- (h) Proof of Service of the Written Findings and Decision: The City will mail a copy of the final written findings and decision, along with a proof of service of mailing that confirms that each of the parties and each of the parties' representatives were mailed the final written findings and decision. It will be the responsibility of the employee to inform the City of his/her address. A copy of the decision will also be provided to the Director of Human Resources.

1100 Grievances

1102 Grievance Procedures

1102.1 *Definition of a Grievance*

A grievance is an alleged violation of a specific provision of these Policies that adversely affects the employee and that contains all of the information listed in the "Statement of the Grievance"

below. The following procedure applies to all City employees, unless: the employee is covered by a grievance procedure in a memorandum of understanding; another dispute resolution procedure applies to the dispute; or a discipline policy and procedure applies. The grievance procedure cannot be utilized to challenge the content of a performance evaluation.

1102.2 Statement of the Grievance

A concern is not a grievance unless the affected employee is able to state each of the following: the date of the alleged violation; the specific provision(s) of these Policies that were allegedly violated; a description of known facts regarding how the alleged violation occurred; a list of all persons who are believed to be witnesses or are involved; and the grievant's desired terms of resolution of the grievance. The grievant may use a City form to make the Statement of the Grievance. A Statement of the Grievance must be signed by the employee or association representative filing the grievance to certify that it is filed in good faith.

1102.3 Timelines

Failure of the City to comply with the time limits of the grievance procedures allows the grievant to appeal to the next level of review. Failure of the grievant to comply with the time limits of the grievance procedures constitutes settlement and resolution of the grievance on the basis of the last disposition. The parties may extend time limits by mutual written agreement in advance of a deadline.

1102.4 Procedures

- (a) Step I Informal Resolution with Supervisor: The employee must first work in good faith to resolve the grievance informally through discussion with his/her immediate supervisor no later than fourteen (14) calendar days after the grievant first became aware of the facts or circumstances resulting in the filing of the grievance.
- (b) Step II Department Director: If the employee believes that the grievance has not been resolved through Step I, the employee may submit a written Statement of the Grievance to his/her department director. The employee must submit the Statement of the Grievance within twenty-eight (28) calendar days after the grievant first became aware that a grievance has occurred. The department director will consider, discuss the grievance with the grievant, and/or investigate as he/she believes appropriate, and will, within fourteen (14) calendar days of receipt of the written Statement of the Grievance, submit his/her decision in writing to the grievant.
- (c) Step III Director of Human Resources: If the employee believes that the grievance has not been resolved through Step II, the employee may appeal the grievance decision of the department director to the Director of Human Resources. That appeal must be filed within fourteen (14) calendar days of the date of the department director's written decision. The Director of Human Resources will consider, discuss the grievance with the grievant, and/or investigate as he/she believes appropriate, and will, within fourteen (14) calendar days of receipt of the written Statement of the Grievance, submit his/her

decision in writing to the grievant. The decision of the Director of Human Resources will be final.

1200 Miscellaneous Policies

1202 Personnel Files

1202.1 Confidential City Files

The City maintains a personnel file on each employee. Files are kept for at least three (3) years after separation of employment. (Labor Code § 1198.5(c)(1).) A personnel file will contain only material that the City believes necessary and relevant or that is required by law. Personnel files are the property of the City, and access to the information they contain is restricted to protect employee privacy interests.

1202.2 Notification of Changes

Each employee is responsible to promptly notify the Human Resources Department of any changes in their contact and benefits information, including: mailing address; telephone number; persons to contact in emergency; and number and names of dependents.

1202.3 Access to Applicant or Employee Medical Information

All medical information about an employee or applicant is kept in separate medical files and is treated as confidential. Access to employee or applicant medical information will be strictly limited to only those with a legitimate need to have that information for City business reasons, or if access is required by law, subpoena or court order. In the case of an employee with a disability, managers and supervisors may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations. (2 Cal. Code Regs. § 11069(g)(1).)

1202.4 Employee Access to Personnel File

- (a) Inspection of File: A current employee may inspect their own personnel file, at reasonable times and at reasonable intervals, within thirty (30) days of a written request. A former employee is entitled to inspect their personnel records one (1) time per year. (Labor Code § 1198.5(d).) A current or former employee and/or their representative, who wishes to review their personnel file should make a written request to the Human Resources Department. (Labor Code § 1198.5(b)(2)(A).) The inspection must occur in the presence of the Director of Human Resources or designee and: at a location where the employee works and at a time other than the employee's work time (Labor Code § 1198.5(b)(1)); or 2) at another agreed upon location without loss of compensation to the employee. (Labor Code § 1198.5(c)(2).)

- (b) Copies: A current or former employee is entitled to receive a copy of their personnel records within thirty (30) days after the employer receives a written request. (Labor Code § 1198.5(b)(1).) A current or former employee who wishes to receive a copy should contact the Human Resources Department in writing. The City may charge a fee for the actual cost of copying. (Labor Code § 1198.5(b)(1); 1198.5 (b)(2)(A).)
- (c) Representative’s Inspection: If the current or former employee wishes to have another person/representative inspect their personnel file, he or she must provide the person/representative with written authorization. (Labor Code § 1198.5(e).) The Human Resources Department will notify the employee and/or representative of the date, time and place of the inspection in writing.
- (d) No Removal of File Documents: No person inspecting a personnel file is permitted to add or remove any document or other item to/from the personnel file.

1202.5 *Limitations on Access or Copying of Personnel File*

Prior to making a copy of personnel records or allowing inspection, the City may redact the names of nonsupervisory employees. (Labor Code § 1198.5(g).) Under no circumstances will the City provide access or copying of the following categories of personnel file documents: records relating to the investigation of a possible criminal offense; letters of reference; ratings, reports, or records that were obtained prior to employment, prepared by identifiable examination committee members, or obtained in connection with a promotional examination. (Labor Code § 1198.5(h).

1204 Limitations on Outside Employment

1204.1 *No Outside Employment Without Prior Approval*

An employee will not engage in any paid or self-employment, activity, or enterprise which is inconsistent, incompatible or in conflict with their City duties, functions, responsibilities, or that of the department in which he or she is employed at the City. In order to avoid perceived or actual conflicts of interest that may arise from outside employment, all employees must obtain written approval from the Director of Human Resources prior to undertaking any outside employment as described in this Policy. (Gov’t Code § 1126(a).)

1204.2 *Authorization and Appeal Process*

- (a) Written Request: Any employee who wants to undertake a paid outside employment, activity, or enterprise must submit a written request to their department director. The written request must include: the work hours and/or time required; job title or the nature of the activity; the work location; and the supervisor, manager and name of the employer or activity.
- (b) Analysis and Decision: The Director of Human Resources will determine if the outside employment, activity, or enterprise is compatible with the employee’s employment at the City. If the Director of Human Resources determines the outside employment, activity, or

enterprise is compatible, or would be if any conditions or restrictions applied, he or she will authorize the activity and specify the conditions/ restrictions in writing, give the employee the outside employment authorization, and place a copy of the written authorization in the employee's personnel file.

- (c) One (1) Year Authorization: An outside employment authorization is valid only up to one (1) year. Should the employee continue the outside employment, activity, or enterprise for a longer duration, he or she must make another request following the process in this Policy.
- (d) Appeal: If the Director of Human Resources denies an employee's outside employment request, the employee may submit a written notice of appeal to the City Manager ten (10) calendar days after the date of the denial. The decision on appeal will be put in Writing, provided within ten (10) calendar days after the receipt of the appeal, and will be final.

1204.3 *Prohibited Outside Activities*

An employee's outside employment, activity, or enterprise may be prohibited if it:

- (a) involves the use for private gain or advantage of City time, facilities, equipment, and supplies, or the badge, uniform, prestige, or influence of the City or employment at the City;
- (b) involves receipt or acceptance by the employee of any money or other consideration from anyone other than the City for the performance of an act which the employee would be required or expected to render in the regular course of his/her City employment;
- (c) involves the performance of an act in other than his/her capacity as a City employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement by the employee or the department by which he/she is employed; or
- (d) involves time demands that would render the employee's performance of their regular City employment less efficient or dangerous to the employee.

1204.4 *Changes in Outside Employment Status*

The employee must promptly report in writing to the Director of Human Resources any of the following changes that may occur during the year of an authorized outside employment: the outside employment ends; or the authorized employment changes as to the number of work hours, location, or types of duties.

1204.5 *Revocation / Suspension of Outside Employment Authorization*

Any outside employment authorization may be revoked or suspended during the year it is granted under the circumstances listed below. An employee may appeal the revocation or suspension as provided in this Policy.

- (a) The employee's work performance declines; or
- (b) An employee's conduct or outside employment conflicts with the conditions of the outside work authorization or is incompatible with the employee's work for the City.

1204.6 *Use of City Equipment Prohibited*

Under no circumstances may an employee use any City equipment, vehicles, tools, supplies, machines, or any other item that is City property while an employee is engaged in any outside employment, activity or enterprise.

1206 Limitations on Political Activity

1206.1 *No Solicitation During Work Hours or City Offices*

City employees or officers may not solicit or receive political funds or contributions to promote the passage or defeat of any ballot measure that would affect working conditions during working hours or in City offices. (Gov't Code § 3209.)

1206.2 *No Targeted Solicitation of City Officers or Employees*

Officers or employees of the City, or candidates for elective office of the City, may not directly or indirectly solicit political contributions from other officers or employees of the City unless the solicitation is part of a solicitation made to a significant segment of the public which may incidentally include officers from and employees of the City. (Gov't Code § 3205(c).)

1206.3 *No Political Activity in Uniform*

No City employee or official will participate in political activities of any kind while in a City uniform or other City-issued clothing. (Gov't Code § 3206.)

1206.4 *No Political Activity on City Property or Work Hours*

City employees and officials are prohibited from engaging in political activity during working hours or on City property. (Gov't Code § 3207.)

1208 Prohibitions on Drugs and Alcohol in the Workplace

1208.1 *Purpose and Scope*

The purpose of this Policy is to promote a drug and alcohol-free workplace and to eliminate drug and alcohol-related inefficiencies and risks. This Policy applies to all City employees, whether they are on City property, or they are performing City-related business elsewhere, except as this Policy is superseded by a memorandum of understanding or federally mandated drug and alcohol policies. Compliance with this Policy is a condition of employment. Disciplinary action will be taken against those who violate this Policy.

1208.2 *Drug- and Alcohol-Free Awareness Program*

The City's employee assistance provider offers counseling and treatment of drug- or alcohol-related problems. The employee assistance provider has information about: (a) the dangers of drug or alcohol abuse in the workplace; (b) the penalties that may be imposed for drug or alcohol abuse violations; (c) the City's Policy of maintaining a drug and alcohol-free workplace; and (d) any available drug or alcohol counseling, rehabilitation or employee assistance programs. (41 USC § 701(a)(1)(B) – federal contractors; 41 USC § 702(a)(1)(B) – federal grant recipients; Gov't Code § 8355(a)(2)

1208.3 *Prohibited Conduct*

- (a) The manufacture, distribution, sale, dispensation, possession, or use of any controlled substance, narcotic (including marijuana), or prescription drug that has not been lawfully prescribed to the employee in either City workplaces or wherever City business is performed. (41 USC §§ 701-702; Gov't Code § 8355(a)(1).)
- (b) Working or being subject to call in if impaired by alcohol or any controlled substance, narcotic (including marijuana), or prescription drug that has not been lawfully prescribed to the employee.
- (c) An employee's failure to notify his/her department director before beginning work when taking medications or drugs, including but not limited to: prescription drugs, over the counter medications, or illegal drugs or narcotics (including marijuana) which could interfere with the safe and effective performance of duties or operation of City equipment.
- (d) An employee's failure to notify the Director of Human Resources of any criminal conviction for a drug violation that occurred in the workplace within five (5) days after the conviction. (41 USC § 701-702.)
- (e) An employee's criminal conviction for a drug violation that occurred in the workplace.

1208.4 *Drug and Alcohol Testing*

The City has discretion to test applicants and employees for alcohol and drug use under the following circumstances. The City will use an outside laboratory to perform all testing.

- (a) Pre-Employment Testing for External Applicants for Certain Jobs: Those external applicants who apply for certain jobs where a special need for pre-employment drug and alcohol testing exists must take and pass a drug and alcohol test following a conditional offer of employment. The categories of jobs subject to pre-employment drug and alcohol testing include, but is not limited to:
 - 1) safety sensitive jobs that have public safety implications, such as operating heavy trucks to transport hazardous material, driving vehicles which require a

commercial driver's license, protecting national security, enforcing drug laws, and/or operating natural gas pipelines; and

- 2) jobs that involve the direct influence over children.

(b) Reasonable Suspicion Testing: The City may require a blood test, urinalysis, or other drug and/or alcohol screening of those employees who are reasonably suspected of using or being under the influence of a drug or alcohol at work, under the following circumstances.

- 1) "Reasonable suspicion" to test exists if, based on objective factors, a reasonable person would believe that the employee is under the influence of drugs or alcohol at work. Examples of objective factors, include, but are not limited to: unusual behavior, slurred or altered speech, body odor, red or watery eyes, unkempt appearance, unsteady gait, lack of coordination, sleeping on the job, a pattern of abnormal or erratic behavior, a verbal or physical altercation, puncture marks or sores on skin, runny nose, dry mouth, dilated or constricted pupils, agitation, hostility, confused or incoherent behavior, paranoia, euphoria, disorientation, inappropriate wearing of sunglasses, tremors, or other evidence of recent drug or alcohol use. If City suspects drugs or alcohol may have played a role in an accident involving City property or equipment, that will also constitute reasonable suspicion.
- 2) Document and Analysis: In order to receive authority to test, the supervisor must record the factors that support reasonable suspicion in writing and analyze the matter with the department director or Director of Human Resources. Any reasonable suspicion testing must be pre-approved by the Director of Human Resources.
- 3) Testing Protocol: If the documentation and analysis show that there is a reasonable suspicion of drug or alcohol abuse at work, and the Director of Human Resources has approved, the employee will be relieved from duty, transported to the testing facility and to their home after the test. The employee will be placed on sick or other paid leave until the test results are received.

1210 Use of City Equipment or Resources

1210.1 Policy and Applicability

City equipment and resources may only be used to conduct City business, except for incidental personal use that is consistent with this Policy. As a result, City equipment and resources are non-public forums. Every City employee is required to adhere to this Policy.

1210.2 City Equipment or Resources

City equipment or resources is any City-owned or supplied item or resource, including, but not limited to: intellectual property (e.g., photographs, plans, drawings, formulas, customer lists, designs, formulas), vehicles, telephones, cell phones, pagers, tools, machines, supplies, copy machines, facsimile machines, desks, office equipment, computers (including hardware and software), file cabinets, lockers, Wi-Fi, internet, intranet, City network, data systems, routers, voice mail, servers, and email or voice mail communications stored in or transmitted through City electronic resources or equipment.

1210.3 No Expectation of Privacy

The City periodically and without prior notice, monitors, reviews, accesses, or retrieves data from its equipment or resources, including electronic communications and content contained in or transmitted through City networks or electronic resources. City employees must provide the City with the employee's username or password for any City issued equipment or resource. The existence of passwords or delete functions does not restrict the City's access. As a result, City employees have no expectation of privacy in their use of any City equipment or resources.

1210.4 Appropriate Use Only -- No Misuse

Employees may only use City equipment or resources in compliance with City policies. Except as authorized by this Policy, employees are expected to avoid any use or communication which is unrelated to City business, destructive, wasteful, or illegal. The City has discretion to restrict or rescind employee access to City equipment or resources. The following are examples of misuse of City equipment or resources:

- (a) Any use that violates applicable law and/or City policies, rules or procedures.
- (b) Exposing others to material which is offensive, harassing, obscene or in poor taste. This includes information which could create an intimidating, offensive or hostile work environment.
- (c) Any use that may create or further a hostile attitude or give offense on the basis of race, color, religion, sex, gender, gender expression, gender identity, national origin, ancestry, citizenship, age, marital status, physical or mental disability, medical condition, genetic information, sexual orientation, veteran status or any other basis protected by law.
- (d) Communication of confidential City information to unauthorized individuals within or outside of City.
- (e) Unauthorized attempts to access or use City data or break into any City or non-City system.
- (f) Theft or unauthorized transmission or copying of paper or electronic files or data.
- (g) Initiating or sustaining chain/spam letters, e-mail or other unauthorized mass communication.

- (h) Misrepresentation of one's identity for improper or illegal purposes.
- (i) Personal commercial or business activities (e.g. "for sale" notices, personal ads, etc.).
- (j) Transmitting/accessing obscene material and/or pornography.
- (k) E-Commerce.
- (l) Online gambling.
- (m) Installing or downloading unauthorized software or equipment.
- (n) Violating terms of software licensing agreements.
- (o) Using City equipment or resources to access and/or use dating web resources, personal social media, or games of any type.
- (p) Any unauthorized access to City equipment or resources, including: using keys or key cards; using or disclosing the username or password of another person or employee to gain access to their email or other electronic resources; or making City equipment or resources available to others who would otherwise have no authorized access.
- (q) Using City equipment or resources to speak on the City's behalf without authorization.

1210.5 *City Email Address Must be Used for City Business*

The City's email system is an official communication tool for City business. The City establishes and assigns official email addresses to each employee as the City believes necessary. Employees must send all City communications that are sent via email to and from their official City email address. Employees are prohibited from using their private email address (such as Gmail, yahoo, MSN/Hotmail, etc.) when communicating City business via email. Should an email related to City business be sent to an employee's personal email account, the email should be immediately forwarded to the employee's City email account and responded to accordingly.

1210.6 *Incidental Personal Use of City Communications Equipment Permitted*

Employees may use City telephones, cell phones, internet access, and e-mail for incidental personal communications provided that the use:

- (a) Is kept to a minimum and limited to break times or non-working hours;
- (b) Does not interfere or conflict with City operations or the work performance of any City employees;
- (c) Allows the employee to more efficiently perform City work;

- (d) Is not abusive, illegal, inappropriate, or prohibited by this Policy (for example, no social media use, no electronic dating, no gaming); and
- (e) Clearly indicates it is for personal use and does not indicate or imply City sponsorship or endorsement.

1212 Policy Against Violence in the Workplace

1212.1 Safe and Secure Workplace

The City is committed to providing a safe and secure workplace and will not tolerate acts or threats of violence in the workplace. (Labor Code § 6400.) The workplace includes any location where City business is conducted, including vehicles and parking lots. Any violation of this Policy may lead to criminal prosecution, and/or disciplinary action, up to and including termination.

1212.2 Prohibited Behavior

Employees are prohibited from participating in or promoting acts of intimidation, violence, threats, coercion, assault and/or abusive behavior toward any person while in the course of City employment. The City has zero tolerance for any conduct that references workplace violence, even if it was intended to be harmless, humorous, a prank, blowing off steam, or venting.

1212.3 “Workplace Violence”

“Workplace violence” is defined as any conduct that causes an individual to reasonably fear for their personal safety or the safety of their family, friends, and/or property. Specific examples of workplace violence include, but are not limited to, the following:

- (a) Threats or acts of physical harm directed toward an individual or his/her family, friends, associates, or property.
- (b) The destruction of, or threat of destruction of City property or another employee’s property.
- (c) Fighting, challenging another person to fight, or participating in dangerous or threatening horseplay.
- (d) Striking, punching, slapping, or assaulting another person.
- (e) Grabbing, pinching, or touching another person in an unwanted way whether sexually or otherwise.
- (f) Harassing or threatening phone calls.
- (g) Surveillance.

- (h) Stalking.
- (i) Possessing a weapon(s) or displaying a weapon in a manner to threaten or cause apprehension of bodily harm during work hours unless the City issues the weapon(s) for performance of the job. “Weapon” is defined as a firearm, chemical agent, club or baton, knife, or any other device, tool, or implement that can cause bodily harm if used as a weapon.

1212.4 *Incident Reporting Procedures*

- (a) Employees must immediately report to their supervisor or department director whether they have been a victim of, or have witnessed, workplace violence. The supervisor or department director will immediately report the matter to the Director of Human Resources.
- (b) The Director of Human Resources or designee will document the incident, including the employee names(s), date/time, location, incident description, witness names and statements, description of unidentified parties, description of the act(s) and/or behavior arising from the incident, action taken, and provide any other relevant information regarding the incident.
- (c) The Director of Human Resources or designee will take appropriate steps to provide security, such as:
 - 1) Placing the employee alleged to have engaged in workplace violence on administrative leave, pending investigation;
 - 2) Asking any threatening or potentially violent person to leave the site; or
 - 3) Immediately contacting an appropriate law enforcement agency.

1212.5 *Investigation*

The Director of Human Resources will see that reported violations of this Policy are investigated as necessary.

1212.6 *Prevention*

Each department director has authority to enforce this Policy by:

- (a) Training supervisors and subordinates about their responsibilities under this Policy;
- (b) Assuring that reports of workplace violence are accurately and timely documented and addressed;
- (c) Notifying the Director of Human Resources and/or law enforcement authorities of any incidents;

- (d) Making all reasonable efforts to maintain a safe and secure workplace; and
- (e) Maintaining records and follow up actions as to reports of workplace violence

1214 Appearance Standards

1214.1 Basis for Standards

These dress code, tattoo, and body piercing appearance standards are designed to promote the City's legitimate and non-discriminatory goals to promote workplace safety and a professional image that is consistent with the employee's job duties and level of public contact.

1214.2 Dress Code

Employees are required to dress appropriately for the jobs they are performing. The following dress code regulations will apply to all City employees. If an employee has questions about how these standards apply to him or her, the matter should be immediately raised with his/her supervisor for consideration and determination.

- (a) All clothing and footwear must be neat, clean, in good repair, and appropriate for the work environment and functions performed.
- (b) Prescribed uniforms and safety equipment must be worn.
- (c) Hair must be neat, clean and well-groomed.
- (d) Beards, mustaches, and sideburns must be maintained in neat and well-groomed fashion.
- (e) Good personal hygiene is required.
- (f) Dress must be professionally appropriate to the work setting, particularly if the employee has contact with the public at work.

1214.3 Tattoos

Employees are expected to project a professional appearance while at work and must abide by the standards below. If an employee has questions about how these standards apply to him or her, the matter should be immediately raised with his/her supervisor for consideration and determination.

- (a) No tattoos are allowed anywhere on the head, face, or neck.
- (b) Any visible tattoos will not be obscene, sexually explicit, discriminatory to sex, race, religion, or national origin, extremist, and/or gang-related.

(c) Any non-conforming tattoos will be covered with clothing, bandage or makeup while at work, or removed.