

**CITY OF CYPRESS**  
**AND**  
**CYPRESS RECREATION AND PARK DISTRICT**



**PERSONNEL RULES**  
**AND**  
**REGULATIONS**

**CITY OF CYPRESS AND CYPRESS RECREATION AND PARK DISTRICT**

**PERSONNEL RULES AND REGULATIONS**

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**CITY OF CYPRESS AND CYPRESS RECREATION AND PARK DISTRICT**  
**PERSONNEL RULES AND REGULATIONS**

**CHAPTER 1. GENERAL**

Section 1.01 Adoption of Rules and Regulations

Whereas, the City Council is authorized and directed under the provisions of the Personnel Ordinance No. 556 to adopt and, from time to time, to amend City Rules and Regulations for the administration of the personnel system; therefore, the following Rules and Regulations have been approved by Resolution No. 6867 of the City of Cypress and the Cypress Recreation and Park District. These Rules and Regulations shall become effective November 22, 2021.

Section 1.02 Authority of the City Manager

The City Manager, as appointing power, has general control and supervision over the affairs of the City; the authority to establish, when not in conflict with these Rules and Regulations, such other policies and procedures as he/she deems necessary for the control and supervision of the affairs of the City; the power to appoint all officers, department directors and employees of all City departments, and to remove same subject to these Rules and Regulations.

The City Manager may delegate to the department directors the power to appoint individuals to the City service.

The City Manager may delegate to a Personnel Officer the authority to administer the Classification and Salary Plan; prepare and maintain an individual employment personnel file for each employee containing all papers and records pertinent to an employee's work history; implement the examination programs and such other aspects of the overall personnel program as he/she deems necessary.

Section 1.03 Purpose

The objective of these Rules and Regulations is to facilitate efficient, effective and economical services to the public and to provide for fair and equitable systems of personnel management in the municipal service. These Rules set forth in detail those procedures which ensure similar treatment for applicants and employees, and define the obligations, rights, privileges, benefits and prohibitions which are placed upon all employees in the competitive service of the City. These Rules and Regulations shall also apply to all Cypress Recreation and Park District employees; and, whenever the word "City" appears, it should be construed to also mean "District" unless specifically excluded.

Section 1.04 Personnel Policy

1. Employment and promotion in the competitive service of the City shall be based on merit and fitness, and in no way shall be affected or influenced by race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age or genetic information.

2. Tenure of employees covered by these Rules shall be subject to good behavior,

satisfactory work performance, necessity for the performance of work and availability of funds.

3. Department directors may create rules and regulations more specific to the department's operation. None of the department rules, regulations or directives shall conflict with or supersede any provisions of the Personnel Rules and Regulations, and in the event of any conflict, the same shall be resolved in favor of these Rules and Regulations. All departmental rules established by the department director shall be approved by the City Manager.

4. In accepting employment with the City, each employee agrees to be governed by and to comply with these Rules and Regulations, administrative rules and procedures established by the City Manager pursuant thereto, and rules, regulations and directives of the department in which employed.

#### Section 1.05 Exceptions to the Applications of the Rules and Regulations

The Rules and Regulations shall apply to all offices, positions and employments in the service of the City, except the following:

1. Elective officers;
2. Members of appointing boards, commissions and committees;
3. Persons engaged under contract to supply expert, professional and technical services;
4. Volunteer personnel;
5. The City Manager;
6. The City Attorney;
7. Department directors;
8. Persons whose appointments to positions are temporary, emergency or provisional.

The City Manager may, by written administrative policy, apply the provision or provisions of these Rules and Regulations to any person or position exempted from these Rules and Regulations.

## **CHAPTER 2. DEFINITION OF TERMS**

### Section 2.01 Definitions

The following terms, whenever used in these Rules and Regulations, shall be defined as follows:

1. Advancement shall mean a salary increase within the limits of the pay range established for a class.
2. Allocation shall mean the official assignment of an individual position to its appropriate class in accordance with the duties performed and the authority and responsibilities

exercised.

3. Appeal Procedure shall mean the right of an employee to appeal for a hearing as a result of disciplinary action taken against him/her.
4. Applicant shall mean a person who has filed an application for employment.
5. Appointing Authority shall mean the City Manager and/or any official or group of officials to whom he/she has delegated the authority to make appointments for the position to be filled. Throughout these rules appointing authority may refer to department directors.
6. Candidate shall mean an applicant who is participating in an examination.
7. City shall mean the City of Cypress.
8. City Council shall mean the City Council of the City of Cypress.
9. City Manager shall mean the City Manager or his/her designee.
10. Class shall mean a group of positions sufficiently similar in duties, authority, responsibility and work conditions to permit grouping under a common title and the application to said group of common standards of selection, transfer, promotion and salary.
11. Classification Plan shall mean maintenance of class specifications of positions in the competitive service of the City of Cypress.
12. Compensation shall mean the salary, wage, allowances and all other forms of valuable consideration earned by or paid to any employee in remuneration for services in any City position.
13. Competitive Examination shall mean an examination established by the Personnel Officer in which candidates compete.
14. Competitive Service shall mean all probationary and regular positions to which these Rules and Regulations apply. Those employees excluded by Section 1.05 are not part of the competitive service.
15. Demotion shall mean a change in status of an employee from a position in one class to a position in a lower class having lesser duties, responsibilities, lower qualifications and a lower range of compensation.
16. Department director shall mean an employee who administers the operation of a City Department and who is directly responsible to the City Manager.
17. Discharge or Dismissal shall mean termination from employment for disciplinary cause.
18. Disciplinary Action shall mean to take action against an employee for cause and shall

include discharge (dismissal), demotion, suspension, official reprimand or a combination of the aforementioned actions.

19. Eligible shall mean a candidate whose name appears on a certified employment list.
20. Employment List shall mean the report of names of all persons who have been found qualified, through appropriate examination processes (as designated by the Personnel Officer), for employment in a specific position in the competitive service.
21. Employee Evaluation Ratings shall have reference to an evaluation of the quality and quantity of work performed and other characteristics which shall be considered in rating and reporting the ability, performance, effectiveness, and efficiency of the respective employee and his/her value to the City service.
22. Immediate Family shall include the employee's spouse or registered domestic partner, children, mother, father, mother-in-law, father-in-law, brother, sister, grandparents and grandchildren.
23. Management Employee shall mean specific appointed officials and department directors of the City who are designated as key personnel to City operation and are not part of the competitive service and are not covered by these Rules and Regulations.
24. Official Reprimand shall mean a written notice to an employee, with a copy for his/her personnel file, informing the employee of an action which is cause for disciplinary action.
25. Open Competitive Examination shall mean an examination open to all qualified persons, including City employees.
26. Oral Board shall mean an interviewing and evaluating board composed of a person or persons knowledgeable in a field of work compatible to the position being examined in a selection process.
27. Pay Status shall mean the status of an employee during any given period in which he/she is at work, on vacation, sick leave, injury leave as the result of an industrial accident, leave of absence with pay, compensatory time off, military leave, jury duty or any other approved leave of absence with pay.
28. Personnel shall mean all persons employed within the operation of the City.
29. Personnel Officer shall be the City Manager or his/her designee.
30. Personnel Ordinance shall refer to Ordinance 556, as may be amended from time to time, creating the personnel system of the City.
31. Policy shall mean a settled course of action or direction established by the Cypress City Council or an appropriate authority.
32. Position shall mean the combination of duties and responsibilities assigned to an

employee and performed on either a full or part-time basis.

33. Probationary Period shall mean a working test period during which an employee is required to demonstrate fitness for the duties of the position to which appointed by actual performance of those duties.
34. Promotion shall mean the change in employee status to a position in a higher class with a higher rate of pay and more responsible duties.
35. Promotional Examination shall mean an examination open only to City employees.
36. Reclassification shall mean the reassignment of a position by raising it to a higher class, reducing it to a lower class, or moving it to another class of the same level on the basis of significant changes in the kind or difficulty of duties and responsibilities in such position.
37. Regular Employee shall mean an employee in the competitive service who has successfully passed the probationary period.
38. Reinstatement shall mean the re-employment of a former regular employee without examination, if within two years following said individual's resignation in "good standing," or layoff due to lack of work or inadequate funds. Such action shall be approved by the department director and the City Manager.
39. Resignation shall mean the voluntary separation of an employee from the competitive service.
40. Salary Schedule shall mean a set of basic salary rates established for specific classes of positions in the City employment. Salary rates are designated in hourly, bi-weekly and monthly computations, each having a specified salary range number.
41. Salary Range shall mean a schedule of salaries within specified minimum and maximum amounts.
42. Shall and May as used in these Rules and Regulations have the following meanings: Shall is mandatory and May is permissive.
43. Suspension shall mean the temporary separation of an employee from his/her position with the City, without pay, for just cause and for a definite period of time pursuant to these Rules.
44. Termination shall mean the separation of an employee from his/her position with the City. Termination may be for such reasons as: death, discharge, resignation, retirement, conclusion of temporary work and/or layoff.
45. Transfer shall mean a change of an employee from one position to another position in the same class or another class having the same minimum and maximum salary limits, involving the performance of similar duties and requiring substantially the same basic qualifications.

46. Work Day shall mean a designated portion of a twenty-four hour period as determined administratively and without regard to the calendar day. For the purpose of computing benefits (i.e. sick leave, vacation, holidays, etc.), the standard work day shall be interpreted as eight hours, unless the applicable MOU indicates otherwise.
47. Work Week shall mean a designated number of hours during a seven-day period as determined administratively and without regard to the calendar week. For purposes of computing benefits (i.e. sick leave, vacation, holidays, etc.), the standard work week shall be interpreted as 40 hours, unless the applicable MOU indicates otherwise.
48. Working Day shall mean Monday through Friday except legal holidays recognized by the City.

### **CHAPTER 3. CLASSIFICATION PLAN**

#### **Section 3.01 Preparation and Adoption**

The Personnel Officer shall prepare and maintain the Classification Plan. The Classification Plan shall consist of those classes of positions in the City service as approved by the City Council in adopting, amending or revising the Plan.

#### **Section 3.02 Class Titles**

The class title shall be the official designation of an individual position or group of positions sufficiently similar to be grouped together as a class. Class titles shall be utilized in all official records when necessary to identify the position an employee occupies.

#### **Section 3.03 Class Specifications**

A class specification shall be a written record providing the title and definition of a class, a listing of illustrative examples of the duties to be performed, and the qualifications necessary for consideration for appointment. Qualifications may be stated as minimum or as desirable and shall be revised as the need arises. A class specification may include other pertinent information as deemed necessary by the Personnel Officer. Class specifications shall be descriptive and are not to be interpreted as restrictive.

#### **Section 3.04 Classification of Positions**

All positions in the City service shall be reviewed and assigned to a class. A class may include a single position or a grouping of positions which are sufficiently similar in duties, functions and responsibilities so as to be identified by the same class title, use the same class specification and be equitably assigned to the same salary range.

#### **Section 3.05 Position Classification Plan**

The Personnel Officer shall have the right to initiate and conduct studies of any position in the competitive service to determine such position's proper classification. Said right shall include access to department records considered pertinent to such study, consultation with employees and/or supervisors regarding duties, functions and responsibilities of the position, and the collection of such other information believed necessary for making a decision.

### Section 3.06 Request for New Classification

A department director, when requesting a new classification to be created, shall, upon the request of the Personnel Officer, provide information pertinent to class specifications.

### Section 3.07 Request for Reclassification

When a department director believes a position is not properly classified due to a significant change over time in the duties, functions and responsibilities, the department director may request that a Position Classification Study be initiated by the Personnel Officer for the position in question.

### Section 3.08 Reclassification

The Personnel Officer shall recommend to the City Manager the reclassification of any position(s) he/she determines to be improperly classified. Upon the approval of the City Manager and City Council of such reclassification, the Personnel Officer shall allocate the position to the proper class. Such reclassification shall not be used for the purpose of effecting demotions or promotions.

### Section 3.09 Class Allocation

When recommending the creation of a new class, the Personnel Officer shall submit for the department director's review and comment, the class specification for the new class. The new class specification shall be submitted to the City Manager for approval. Upon approval of the City Manager, the Personnel Officer shall allocate such position(s) as required to the new class.

No position shall be allocated to a new class until said class has been approved, by appropriate amendment to the Classification Plan, by the City Council, and assigned to a salary range.

## **CHAPTER 4. APPLICATIONS, APPLICANTS AND EMPLOYMENT**

### Section 4.01 Application

All candidates for employment shall file a completed application with Human Resources. The form and content of such form shall be as prescribed by said Human Resources Office.

### Section 4.02 Selection Process

The selection procedure may consist of such recognized techniques as achievement tests, aptitude tests, evaluation of personality and background through personal interviews, performance tests, evaluation of work performance, work samples, physical agility tests, other written tests, review and investigation of personal background and references, post offer medical and psychological examinations, or any combination thereof.

Selection techniques shall be impartial and shall relate to those areas which, in the opinion of the Personnel Officer, will adequately and fairly indicate the relative ability and quality of candidates under consideration to execute the duties and responsibilities of the position to which they seek to be appointed.

Upon completion of the selection process, the appointing authority may make appointments from those candidates who, on the basis of their performance in the selection process, appear most qualified for the position under consideration and notify the Human Resources Office immediately of the appointment. The appointment shall become effective when the selected applicant has signed all official papers required by the City, and those papers bear the appropriate signatures confirming the appointment.

Prior to or immediately following the appointment of any person to a regular position with the City, and any other persons appointed to a position other than regular in the City, as the Personnel Officer deems necessary, the hiring authority or Human Resources shall conduct a reference check on said person.

#### Section 4.03 Disqualification

The Personnel Officer may reject any application which indicates on its face that the applicant does not possess the qualifications necessary for the position and/or that appointment of such applicant would be deemed contrary to the best interests of the City. Reasons for disqualification may include, but shall not be limited to, the following deficiencies:

1. Physical or mental disability so as to render the applicant with or without reasonable accommodation unfit to perform the essential duties of the position.
2. Lacking in any of the requirements for the position.
3. Addiction to the habitual use of drugs.
4. Conviction of a crime involving moral turpitude.
5. Deception, fraud or incompleteness in completion of the application.
6. Request by applicant to remove his name from consideration.
7. Failure to reply within a reasonable time, as specified by the Personnel Officer to communications concerning availability for employment.
8. For any material cause which in the judgment of the Personnel Officer or designee would render the applicant unsuitable for the position, including a prior resignation, termination or significant disciplinary action.

Whenever an application is rejected, notice of such rejection, with statement of reason, shall be mailed to the applicant by the Personnel Officer.

#### Section 4.04 Examinations

1. Conduct of Examinations: The Personnel Officer shall be responsible for preparation and administration of all examinations for City positions. The Personnel Officer may delegate to any qualified employee of the City responsibility to provide this service. The City may contract with any competent agency or individual(s) to conduct and score the examinations.

2. Nature and Type of Examinations: The type of examination shall be decided by the



Personnel Officer. The examination may be assembled, unassembled, written, oral or by demonstration, evaluation of education, experience, skills or any test of manual skills or physical fitness which fairly evaluates the relative capacities of the candidate.

3. Oral Board Examination: The oral board examination may be given for the purpose of judging and rating each candidate to ascertain whether or not and to what degree his/her qualifications and personal fitness meet those required by the position for which he/she is being considered. Each candidate must have met the minimum requirements and, if necessary, have passed a written examination designed to test the knowledge and aptitudes required for the job. (Written tests scores shall not be available to the interviewers.) The oral board may include a person or persons who are experienced in the field of work being considered. Each interviewer is to make an independent rating of the candidate. Names of persons serving on the oral board shall not be given out in advance of the oral interview.

4. Promotional Examinations: Promotional examinations shall be those competitive examinations in which only current employees of the City, who are appointed to a regular position and who meet the requirements set forth in the examination announcement, shall be allowed to compete. It shall be the determination of the Personnel Officer as to when a promotional examination will be conducted.

5. Open Competitive Examinations: Open competitive examinations shall be those examinations in which any individual meeting the requirements as outlined in the employment opportunity announcement will be allowed to compete. Open examinations shall be required for all positions in the competitive service, except those designated by the Personnel Officer. Open competitive examinations for entry-level classes may be a competition among candidates or the competition of a candidate or candidates against a standard established by the Personnel Officer.

In order to attract highly qualified candidates, and to timely fill vacant City positions due to high turnover rate, the closing date for the selection of sworn and pre-sworn Police positions may be indefinite and applicants may be tested continuously in such manner and at such times and places as determined by Personnel Officer.

Applicants who fail to achieve a passing score in such an open continuous examination may not compete again for the same position until the lapse of 180 days between the first and second testing, and 12 months between the second and third testing, unless stipulated to the contrary on the job announcement. The Personnel Officer, at his/her discretion, may exclude unsuccessful applicants from further testing. Those applicants who fail a background investigation may reapply after 12 months.

6. Employment Opportunity Announcements: The Personnel Officer shall have prepared an employment opportunity announcement for each position opening scheduled for examination. Such announcements shall be available upon request to the Personnel Officer, and further distribution of announcements shall be determined by the Personnel Officer. The employment opportunity announcement shall be of general nature and content to adequately inform prospective applicants of the typical duties of the class being examined; the qualification requirements; the examining process or listing of examination parts; the manner of making application; salary range for class; and final filing date.

#### Section 4.05 Rating Examinations and Qualifying Scores

The minimum rating for which eligibility may be achieved on an examination or any part of an examination will be established by the Personnel Officer. A candidate's final rating in a given examination shall be the score or combination of scores attained on each competitive part of the examination, as prescribed in the examination announcement. Failure in one part of the examination may be grounds for declaring an applicant's failure to qualify or his disqualification from competing in subsequent parts of the examination. The Personnel Officer may specify, as parts of an examination, tests which are qualifying only.

#### Section 4.06 Notification of Examination Results

Each candidate in an examination shall be given notice of passage or failure. An employee shall have the right to inspect his/her own examination papers within ten days after the notices of examination results are provided.

#### Section 4.07 Establishment of Employment List

After completion of an examination, the Personnel Officer shall prepare, certify and keep available an employment list consisting of the names of candidates who qualified in the examination. Upon certification, the list shall become effective and shall remain in effect for six months, unless exhausted sooner, and may be extended prior to expiration date by the Personnel Officer for an additional six-month period, but shall not remain in effect for more than one year.

#### Section 4.08 Kinds of Employment Lists

Employment lists shall be of three kinds:

1. Open competitive employment lists, consisting of candidates who have qualified through open competitive examinations and from which appointments shall be made.
2. Promotional employment lists, consisting of employees who have qualified through promotional examinations and from which appointments shall be made.
3. Re-employment lists, consisting of employees who have been laid off. Such employees shall be placed on appropriate re-employment lists in the order of their competency, from highest to lowest, and will remain on such list for a period of two years, unless such persons are reemployed sooner.

#### Section 4.09 Removal of Names from Employment Lists

The Personnel Officer may remove the name(s) of any eligible person from an employment list for any of the following reasons:

1. Upon written notice from an eligible applicant requesting removal of his/her name.
2. Upon notice from an eligible applicant declining appointment.
3. If a report of a background investigation is unsatisfactory.

4. Upon the recommendation of an appointing authority and approval of the City Manager after the eligible applicant has been considered for employment and his/her employment would not be in the best interest of the City.

5. If less than three eligible applicants remain on the employment list, the appointing authority may request that the employment list be cancelled and a new employment list established.

The person(s) affected shall be notified of the removal of his/her name. The names of persons on a promotional list who resign from the classified service shall automatically be dropped from such list.

#### Section 4.10 Method of Filling Vacancies

All vacancies in the competitive service shall be filled by reinstatement, transfer, demotion, promotion, or appointment from established employment lists certified by the Personnel Officer. Temporary, provisional appointments may be made under the provisions of these Rules and Regulations. The appointing authority may appoint any eligible applicant on the list regardless of rank or final score. If the applicants are identically qualified preference shall be given to the applicant who is a veteran as defined in Government Code Section 18973.

Whenever a vacancy in the competitive service is to be filled, the department director shall notify the Personnel Officer. The Personnel Officer shall advise the department director as to the availability of employees for reinstatement, requests for transfers, demotions and of eligible candidates on employment or promotional lists for the class.

To meet the immediate requirements of an emergency condition, such as extraordinary fire, flood or earthquake, which threatens public life or property, any legally competent officer or employee may employ such persons as may be needed for the duration of the emergency without regard to the personnel ordinance or rules affecting appointments. As soon as possible, such appointments shall be reported to the Personnel Officer.

#### Section 4.11 Types of Appointment

Employment in the City service is divided into the following categories:

1. Regular full time: shall be the appointment of a person who works a minimum of 40 hours per week on a continuing and regularly scheduled basis, who has passed the probationary period. Positions in this category are fully eligible for certain City benefits including the Public Employees' Retirement System (PERS) as defined by current law and contract.

2. Regular part-time: shall be the appointment of a person who works less than 40 hours but more than 19 hours per week on a continuing and regularly scheduled basis, who has passed the probationary period. Positions in this category are eligible for certain City benefits on an accrued basis given the number of hours worked, and are eligible to participate in PERS as defined by current law and contract.

3. Probationary: shall be the appointment in which the employee must serve a probationary period of a certain designated time span to demonstrate fitness for the position.

4. Provisional: shall be the appointment of a person with the minimum requirements for the position in the class, in the absence of a current employment list. Such appointments shall be for a limited period of time not to exceed six months or until an employment list is established, whichever is shorter.

5. Emergency: shall be the appointment of a person to a position to meet the immediate needs of an emergency condition such as a major fire, flood, earthquake, or crime, which threatens life or property.

6. Temporary: shall be the appointment of a person to any of the following positions:

A. A seasonal work position;

B. A temporary position appointed for a period of less than one year;

C. A temporary appointment may be extended beyond one year, given the approval of the City Manager. A temporary position will not change to another status by working beyond the period originally expected, designated or extended;

D. A position in any of the following classifications shall be considered temporary regardless of the length of employment:

Administrative Intern (Any Department)

Customer Service Specialist

Investigative Assistant I/II

Maintenance Attendant

Police Aide

Police Officer Trainee

Recreation Facilities Attendant

Recreation Leader I - IV

E. Any of the above positions may be designated as regular positions by the City Manager with the approval of the City Council. The City Manager shall have the authority to add or delete classifications from this list;

F. Any of the above positions may be eligible to participate in the Public Employees' Retirement System (PERS) upon the completion of 1,000 work hours in a fiscal year as defined under current law and by the City's PERS contract, except as noted in "G" below;

G. The following temporary job classifications are exempt from participation in PERS regardless of the number of hours worked in a temporary status:

Administrative Intern

Engineering Intern

Police Aide

Employees whose appointments are temporary, provisional or emergency shall not be covered by the City's health, life, dental, disability or retirement programs, except as required by the City's Public Employees' Retirement System (PERS) contract. Temporary, provisional or emergency employees do not accrue vacation, sick leave, or other leave benefits.

Probationary, temporary, provisional or emergency employees shall not have any express or implied rights of employment and can be terminated at any time, without cause or prior notice and have no right of appeal.

#### Section 4.12 Employment of Relatives Effective January 1, 1994

Members of the immediate family of City employees, Council Members, Commissioners, or other City officials are not eligible for City positions where a potential conflict of interest or the potential for creating an adverse impact on supervision, safety, security or morale exists; provided that this section shall not be interpreted to prevent the promotion of an otherwise qualified City employee.

If two City employees marry, the City Manager will review the working relationship of the two employees and determine if the relationship creates a potential conflict of interest or an adverse impact on supervision, safety, security or morale. If the City Manager determines that the relationship creates a potential conflict of interest, or an adverse impact on supervision, safety, security or morale, every reasonable effort will be made to transfer, reassign, or otherwise resolve the situation such that the least senior employee is in a position where such a conflict or adverse impact does not exist. Such transfer reassignment, or other resolution may be to a different work group within a division where the least senior employee will not be reporting to or evaluated by a member of their immediate family. Transfer, reassignment, or other resolution may also be between divisions within a department, between shifts in departments where shift work is utilized, or between departments.

If resolution of a situation involving an existing or potential conflict of interest or adverse impact on supervision, safety, security or morale cannot be resolved through a transfer, reassignment or other action, the affected City employees will be given 30 calendar days to decide amongst themselves which one will be terminated. If neither employee elects to be terminated, the employee with the least seniority will be terminated. The affected employee may request a review of such a decision under the grievance procedures of the Personnel Rules.

In the event that spouses are required to work in the same department or office, either spouse may request a transfer, reassignment, or other resolution which shall be accommodated if possible, or a transfer of the supervisory relationship to avoid having to work under the direction of a spouse. In the event that two City employees currently are married or otherwise related, and neither is in the same department or exercises supervisory control over the other, and one of the employees is transferred or promoted into a position wherein the employee will exercise supervisory control over the related employee, then the provisions of this policy shall take effect and appropriate transfers, reassignments, or other resolution of the situation shall be exercised by the City Manager.

#### Section 4.13 Continued Employment

Continued employment of employees in the competitive service shall be subject to satisfactory work performance, necessity for the performance of work and the availability of funds.

Each regular employee shall have his/her performance evaluated every 12 months from the last evaluation date, special performance advancement or promotion by his/her supervisor or at more frequent intervals as deemed necessary by the department director. If an employee

takes a leave of absence, paid or unpaid, of any kind (i.e. sick, vacation, FMLA) for 30 consecutive days or more, the 12-month evaluation period will be extended by the length of the leave of absence. Such evaluations shall be reported on a performance evaluation form as prescribed by the Personnel Officer. The original is to be placed in the employee's personnel file, one copy to be retained by the department and one copy to be given to the employee.

#### Section 4.14 Layoff Policy

Whenever there shall be need for layoffs, employees within the class(es) of position(s) involved shall be terminated in the following order: emergency, provisional, temporary, probationary, regular.

The order of layoff of regular employees shall be based upon recommendation of the department director. The department director shall take into consideration such things as tenure and job performance.

Regular employees subsequently laid off, shall be given ten working days' notice and written notice of the reasons for such action. Regular employees in good standing (those deemed to have produced satisfactory service) shall be placed on appropriate employment lists and will have precedence for employment over persons whose names appear on employment lists for the same class of positions.

An employee may be terminated by the department director when deemed necessary or convenient as a result of changes in duties or organization, abolition of position, shortages of work or funds, or completion of work for which employment was made. Such termination shall not be subject to appeal. Regular employees not certified as having provided satisfactory services and hence denied placement on the re-employment list may interpret such layoff action as discharge and may request "appeal proceedings" as provided for in the Personnel Rules and Regulations.

#### Section 4.15 Reinstatement

Regular employees who have been laid off shall be entitled to reinstatement to positions in the same class from which they were laid off if those positions are to be refilled during the period of their eligibility on the layoff re-employment list. Any employees so reinstated shall retain all benefits accrued in prior service with the City.

Any regular employee who has resigned from the City service in good standing may, upon his/her written request and approval of the appointing authority, be reinstated to a position in the same or similar class in the classified service within two years of such termination. Such reinstatement may be made without benefit of additional examination, and may take precedence over employment lists; but in no way shall it be mandatory for any appointing authority to reappoint a former employee. Appointment shall otherwise be made in the same manner as for original appointment.

Upon reinstatement, any employee so appointed shall be considered a new appointee and shall have no vested interest in or be entitled to any benefits accrued during any previous employment with the City. Reinstated employees serve a one-year probation period.

#### Section 4.16 Transfer

An employee may be transferred at any time from one position to another position in the same or comparable class having the same salary range and reasonably similar qualifications. Transfers shall not be used to effectuate a promotion, demotion, advancement or reduction, each of which may be accomplished only as provided in these Rules. No person may be transferred to a position for which he/she does not possess the minimum qualifications. The City Manager may require a transferring employee to serve a new probationary period.

For purposes of these Rules and Regulations, a transfer shall not include the reassignment of personnel within the internal operation of the department as may be made from time to time by the department director.

#### Section 4.17 Promotion

Insofar as practicable and consistent with the best interests of the service, all vacancies in the competitive service shall be filled by promotion from within the competitive service, after a promotional examination has been given and a promotional list established. To be eligible to compete in a promotional examination, an employee must have City experience in a lower classification in the same occupational field performing work that is sufficiently preparatory for the work of the promotional classification. The City Manager shall determine the appropriate positions from which employees may be drawn to compete in a promotional examination.

If, in the opinion of the department director or City Manager, a vacancy in the position could be filled better by an open, competitive examination instead of a closed, promotional examination, then the department director may request the appointing authority to instruct the Personnel Officer to call for applications for the vacancy and arrange for an open, competitive examination and for the preparation and certification of an employment list. Regular employees who meet the requirements of the position will be considered eligible to compete in the open competitive examination.

#### Section 4.18 Demotion

The appointing authority, with the approval of the City Manager, may demote an employee for any of the following reasons or conditions:

1. For disciplinary reasons set forth in Chapter 17.03 of these Rules and Regulations.
2. When the need for a position which an employee fills no longer exists.
3. When an employee requests such demotion and has the consent of the prospective supervising official.
4. For any other reasonable grounds as approved by the City Manager.

No employee shall be demoted to a classification for which he/she does not possess the minimum qualifications. Written notice shall be given an employee at least three working days before the effective date of the demotion and complete information regarding such change shall be reported to the Personnel Officer. If a demotion is made for disciplinary reasons the procedures set forth in Chapter 11 will be followed.

#### Section 4.19 Temporary Assignment & Appointment

When in the best interest of the City, the City Manager may approve a temporary assignment of a probationary or regular employee to a higher-level classification.

The City may work employees in a temporary assignment for up to 20 consecutive working days without additional compensation.

Temporary assignments shall not be compensated at increased compensation where the temporary assignment is a replacement of an employee on vacation leave.

An employee shall receive temporary assignment pay at the "A" or beginning Step of the higher classification, but shall receive not less than 5% above the employee's regular salary, for work performed within the scope and responsibilities of the higher classification on the twenty-first (21st) consecutive working day out of class, and for each consecutive working day thereafter an employee works out of class.

During the 20 consecutive working day eligibility period before an employee is entitled to receive temporary assignment pay, an employee may only be absent from work for 16 cumulative hours. Any absence in excess of 16 hours shall cause an employee to be ineligible to receive temporary assignment pay. Should an employee be absent in excess of 16 hours, the 20 consecutive working day eligibility period shall begin the day after the employee returns to work.

A temporary assignment shall not exceed one year.

#### Section 4.20 Pertinent Documents or Evidence

Each person appointed to any class of work in the City service shall be required to complete the pre-employment process (i.e. live scan, review of driving record, and medical examination) and sign and/or provide certain necessary documents such as: loyalty oath, I-9 documents, high school diploma, college transcripts, military discharge papers.

### **CHAPTER 5. COMPENSATION AND HOURS**

#### Section 5.01 Preparation of Pay Plan

The Personnel Officer shall prepare a Pay Plan showing the salary rate for each position. In arriving at such rate, attention shall be given to such considerations as:

1. Prevailing rates for comparable positions and employment in other public employment and private business.
2. Current cost of living.
3. Difficulty and responsibilities of the work.
4. Internal relations between classes within the City service.
5. Suggestions of department directors.



6. City's financial condition and policy.
7. Such other conditions which are applicable.

#### Section 5.02 Adoption of Pay Plan

The Personnel Officer shall submit to the City Council a proposed Pay Plan for consideration and adoption. Thereafter, such modification to the salary schedule as deemed necessary shall result in amendments approved by the City Council.

#### Section 5.03 Pay Administration

The City Manager shall administer the Pay Plan for all employees with the exception of Council appointed positions (i.e. City Manager, City Clerk, City Attorney, City Treasurer, all Commissioners).

1. All new employees appointed to a position in the competitive service shall be paid a salary or wage within the established range for that position. The initial employment shall generally be at the minimum rate for the position. However, the appointing authority may, with the approval of the City Manager, when circumstances warrant it, appoint at other than the minimum step.

2. Anniversary dates shall be established as follows:

- A. Employees appointed or reinstated on or between the first and the fifteenth day of the month inclusive shall have the first day of that month as their anniversary date.
- B. Employees appointed or reinstated on or between the sixteenth and the last day of the month inclusive have the first day of that month immediately following as their anniversary date.
- C. Anniversary dates shall not change following promotions, demotions or transfers.

#### Section 5.04 Advancement Within Salary Range

In order to properly compensate an employee, advancement in salary shall be based on merit.

Advancements in salary shall not be automatic, but shall depend upon increased service value of the employee to the City. Each department director and/or supervisor shall be responsible to evaluate his/her employee for the determination of job performance. Advancements shall be made only upon recommendation of the department director with the approval of the City Manager.

A regular full-time or regular part-time employee will be reviewed for performance advancement prior to completion of six months' service from the date of the appointment. A temporary or provisional employee will be reviewed following the completion of 1,040 work hours from the date of appointment. Thereafter, an employee will be reviewed at least once every 12 months from the last evaluation date, special performance advancement or promotion. If an

employee takes a leave of absence, paid or unpaid, of any kind (i.e. sick, vacation, FMLA) for 30 consecutive days or more, the 12-month evaluation period, and any corresponding adjustment to salary, will be extended by the length of the absence.

Nothing shall restrict a department director from denying the advancement after evaluation or from recommending a special performance advancement in salary at any time when unusual or outstanding achievement has been demonstrated. Nothing shall restrict a department director from conducting performance evaluations more frequently.

Should an employee take a leave of absence of any kind (i.e. sick leave, vacation) for 30 consecutive days or more, the evaluation period and subsequent merit increase will be delayed by the length of the absence. Future evaluations for the employee will be completed using the new evaluation date.

It shall be the responsibility of each supervisor to establish realistic achievement levels for each step increase within a salary range. Achievement levels may be formal or informal and shall be reviewed by the department director for the purpose of maintaining uniformity of standards throughout the department.

#### Section 5.05 Salary Increases Following Promotion

When an employee in the City is promoted to a position with a higher salary range, such employee shall automatically be entitled to the lowest step in the higher salary range that would represent a salary increase of approximately 5% over the base salary received immediately prior to the promotion.

#### Section 5.06 Salary Decreases Following Demotions

In the case of the demotion of any employee in the City service to a class with a lower maximum salary, such employee shall be assigned to the appropriate salary step in the new class as recommended by the department director and approved by the City Manager.

#### Section 5.07 Salary Following Transfers

In the case of the transfer of any employee from one position to another in the same class to which the same salary range is applicable, the employee shall remain at the same pay step.

#### Section 5.08 Adjustment of Salary Ranges

When a salary range for a given class is revised upward or downward, the incumbents of positions in classes affected shall have their existing salary adjusted to the same relative step in the new salary range and their anniversary date shall not be changed.

#### Section 5.09 Standard Work Period

The standard work day shall be eight hours and the standard work week shall be 40 hours for regular and probationary full-time employees, unless the applicable MOU indicates otherwise. Regular and probationary full-time and part-time employees having different hours for work days and/or work weeks shall accumulate benefits based on the standard day and/or week. Other employees may be assigned variable and lesser work hours, work days and work weeks. Those

employees working between 20 and 40 hours per week will be entitled to one-half of the benefits normally paid to regular full-time employees.

#### Section 5.10 Exceptions to Standard Work Periods

Upon the request of a department director, or by his own action, the City Manager is hereby authorized to designate other working hours for employees when, in his/her judgment, it is in the best interest of the City to do so.

#### Section 5.11 Attendance

Employees shall be in attendance at their work or assigned duties in accordance with these Rules and Regulations and as prescribed by the department director to which they are assigned. Failure to comply with these assignments shall make an employee subject to disciplinary action.

Each department shall prepare attendance records of all employees, and make reports of the same to the Personnel Officer in the form and on the date he/she shall prescribe.

#### Section 5.12 Pay Periods

Paydays for all City employees shall be bi-weekly (every other Friday), for 26 pay periods per year. In the event of a holiday falling on the payday, arrangements shall be made to make payments prior to this payday.

The method of distribution of paychecks shall be determined by the City Manager.

#### Section 5.13 Deductions

Deductions from employees' wages are made in accordance with prevailing laws, contracts, rules and regulations:

1. Deductions required by law and contracts: for example, federal withholding tax, social security tax, City retirement payments.
2. Deductions made on the written authorization from each employee: for example, group health insurance premiums, life insurance premiums, deferred compensation contributions, association dues, and such other deductions as approved by the City Manager.

#### Section 5.14 Overtime

It is the policy of the City to avoid the necessity for overtime work. However, when overtime is necessary and consistent with the efficient operation of the City, such overtime shall be authorized, but shall be kept at a minimum.

Overtime work for regular and probationary employees shall be defined as any hours worked beyond 40 hours in a work week, unless the applicable MOU indicates otherwise. The City Manager shall designate the work schedule of a non-safety position as flexible whenever the position is vacant or the incumbent mutually agrees to a flexible work schedule designation.

Shift changes shall not be made to avoid the payment of overtime. The City shall have the right to assign work to and schedule employees in accordance with requirements as determined by the City, and to establish and change work schedules and assignments.

Authorized overtime shall be compensated for at the rate of one and one-half (1-1/2) times the employee's regular rate of pay or by allowing compensatory time off at the rate of one and one-half (1-1/2) hours for each hour of overtime worked. Accumulation and payment of compensatory time shall be in accordance with applicable Memoranda of Understanding. Should an employee desire to take compensatory time off, he/she shall file a written request with the department director who shall grant time off unless it unduly disrupts the normal operation of the department.

#### Section 5.15 Overtime Reporting

In order for an employee to earn compensation for overtime, he/she must receive supervisor and/or department director's approval. Overtime work to meet an emergency situation does not require advance approval, but shall be certified by the department director before being credited to the employee's record.

#### Section 5.16 Overtime Not Applicable

Overtime compensation provisions shall not apply to City Council appointed officers or officers whose appointment is subject to City Council confirmation, department directors and other such classifications designated as exempt. In the event departmental operations require extraordinary work assignments for an employee so designated, he/she may be authorized administrative leave (time off with pay) by his/her department director, such time off not to exceed two working days in any one pay period. Administrative leave in excess of two days per pay period must be authorized and approved in advance by the City Manager.

#### Section 5.17 Recognized Holidays.

For pay purposes, the following holidays are recognized as municipal holidays for regular and probationary employees and officials; said employees shall receive these holidays off with pay: New Year's Day, Martin Luther King Jr, Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the Friday following Thanksgiving Day, Christmas Eve Day and Christmas Day.

When any holiday, recognized by the City, falls on a Sunday, the following Monday shall be considered the holiday; when any day, recognized by the City as a holiday, falls on a Saturday, the preceding Friday shall be considered the holiday.

Request for a religious holiday off shall be made in writing to the department director. If approved, such time shall be charged against accumulated compensatory time or vacation, floating holiday or personal leave.

#### Section 5.18 Employees Required to Work on Holidays

Any employee eligible for holiday pay, required to work on a day designated as a holiday under the provisions of the Personnel Rules, shall be paid at the straight time rate for the normal work hours on said day and, in addition, shall receive pay equal to and in lieu of time off for said

holiday, unless the applicable MOU indicates otherwise. Hours worked in excess of the normal work hours on such holiday shall be considered as overtime hours and shall be compensated for under the appropriate overtime pay provisions. When a holiday falls on a normally assigned day off for an employee who is eligible to receive holiday pay, that employee shall receive additional pay equal to and in lieu of time off for said holiday. Said additional pay equal to and in lieu of time off for said holiday shall be eight hours at the employee's regular straight time hourly rate of pay.

When an employee, eligible for holiday pay, who is required to work on a day designated as a holiday under the provisions of the Personnel Rules, becomes ill and is unable to report for work on that day, the employee shall be paid at the straight time rate for the sick leave hours scheduled to work on said day, and in addition will receive pay equal to and in lieu of time off for said holiday.

#### Section 5.19 Holidays Falling During Approved Leaves of Absence Without Pay

Any regular employee, on an approved leave of absence without pay, having the holiday fall during the period of such leave of absence without pay, shall be eligible for such holiday pay only in those instances where said employee has worked either the day before or the day immediately following said holiday. In such cases when a holiday falls on a day immediately prior to or following a normal weekend, an employee must work either the day before or day after such weekend in order to be eligible for holiday pay. (Example: The holiday falls on Monday, with a normal weekend being Saturday and Sunday, the "day before" would be Friday, or, if the holiday fell on Friday, the "day after" would be Monday.)

#### Section 5.20 Standby Status and Standby Pay

When it is necessary to require a regular employee to be available for emergency call-out or other service during a specific time period, or sworn personnel court standby, other than normal scheduled hours of work, such employee shall be considered on standby status.

The City Manager shall have the right to establish policies and procedures setting forth the conditions and obligations of standby status. He/she shall prepare and recommend for Council approval, a schedule of standby pay and when approved, administer the payment of said pay by consistent and fair application of the policies and procedures established for standby status.

#### Section 5.21 Call Back Pay

Employees shall be paid for time worked when called back after leaving the work premises or when called out as follows: Employees called back or out to work as defined herein shall be paid one and one-half (1-1/2) times the employee's regular straight time hourly rate for each hour worked on call back. Call back time shall commence from the time the employee reports to the department office or the scene of the incident.

#### Section 5.22 Court Time

An employee called back for a subpoenaed court appearance, which arises out of the course of his/her employment and which is not within two hours of the commencement or termination of his/her regular shift, shall be compensated for a minimum of two hours on all such subpoenaed court appearances at the rate of one and one-half (1-1/2) times the

employee's regular hourly rate of pay. Compensation provided for by this Section shall begin when the employee departs from the department to go directly to Court. All employees shall comply with the "on-call" policies administered by the department. Should an employee who is subpoenaed to Court in the course of his/her employment be required to be in Court in excess of the minimum of two hours, he/she shall receive pay at time and one-half (1-1/2) his/her regular hourly rate of pay for the actual hours the employee is in Court. Lunch periods designated by the Court shall not be included in the computation of hours worked as overtime hours and shall be deducted from hours worked as Court time.

## **CHAPTER 6. PROBATIONARY PERIOD**

### Section 6.01 Regular Appointment Following Probationary Period

The original appointment of every full-time or part time employee in the competitive service shall be tentative and subject to a probationary period of 12 months of actual and continuous service, except non-lateral sworn employees who shall be required to serve a probationary period of 18 months of actual and continuous service.

The promotional appointment of every full-time or part-time employee in the competitive service shall be tentative and subject to a probationary period of six months of actual and continuous service, except sworn employees who shall serve a 12-month probationary period of actual and continuous service.

The Personnel Officer shall notify the department director and the probationer concerned, two weeks prior to the termination of the probationary period.

If the service of the probationary employee has been satisfactory, the department director shall file with the Personnel Officer a statement, in writing, to such effect stating that the retention of such employee in the service is desired. No actions changing an employee's status from probationary to regular shall be made or become effective until approved by the City Manager.

### Section 6.02 Objective of Probationary Period

The probationary period shall be regarded as a part of the testing process and shall be utilized for closely observing the employee's work, for securing the most effective adjustment of a new employee to his/her position, and for rejecting any probationary employee whose performance does not meet the required standards of work.

### Section 6.03 Employee Performance Reports

Each probationary employee shall have his/her performance evaluated at the end of each three months of service or at more frequent intervals when deemed necessary by the appointing authority. Such evaluations shall be reported, in writing, and in a form approved by the Personnel Officer.

The written report of an employee's performance evaluation shall be filed as follows: the original with the Human Resources and made a part of the employee's personnel record, one copy to be retained by the department and one copy to be given to the employee.

#### Section 6.04 Rejection of a Probationary Employee

During the probationary period, an employee may be suspended, demoted or rejected any time by the department director, with approval of the City Manager, without cause and without the right of appeal, except sworn personnel who shall have the right of appeal of punitive action as may be provided by the Law. Notification of rejection, in writing, shall be served on the probationary employee and a copy filed with Human Resources.

An exception will be applied where the probationary employee's job termination or dismissal is based on charges of misconduct which stigmatizes his/her reputation and seriously impairs his/her opportunity to earn a living. Where there is such a deprivation of a "liberty interest," the employee shall be given an opportunity for a name-clearing hearing.

### **CHAPTER 7. TERMINATION OF EMPLOYMENT**

#### Section 7.01 Resignation

Any regular employee, in order to be considered as having resigned in good standing, shall be required to submit a written notice of resignation to his/her department director at least ten working days prior to the effective date of said resignation. Such written notice shall include the reason for and the effective date of the resignation. A resignation becomes final when accepted by the appointing authority. Once a resignation has been accepted, it cannot be withdrawn.

The department director or the City Manager may authorize a resignation in good standing when, in his/her opinion, there are sufficient reasons to waive the requirements of this section.

#### Section 7.02 Lay-off

An employee may be terminated as set forth in Section 4.15 by the appointing authority, when deemed necessary or convenient, as a result of substantial changes in duties or organization; abolition of position; shortages of work or funds; or completion of work for which employment was made.

#### Section 7.03 Discharge

An employee may be terminated (discharged) at any time by the appointing authority. Regular employees shall be entitled to Notice and a hearing as set forth in Rule 12.03.

#### Section 7.04 Retirement

All regular employees in the City service who shall become eligible to and do retire under the provisions of any present or subsequent retirement policy and plan shall be deemed, for the purposes of these Rules, to have been separated (terminated) from the City service in good standing.

#### Section 7.05 Disability Retirement Procedures for Safety Members

Under direction of state law, it is the responsibility of the City to make determinations relating to disability retirement applications for its employees who are Safety Members of the

Public Employees' Retirement System (PERS) and relating to reinstatement of such retirees. As authorized by Government Code Section 21034, the City Council has with its Resolution No. 3584 delegated certain of its responsibilities to its City Manager. The following procedures have been established by the City pursuant to the City Council's Resolution:

1. Eligibility for Disability Retirement: A local safety member shall be retired for disability only after it has been determined that he/she has suffered a "disability" resulting in an "incapacity for performance of duty" as defined in Government Code Section 21020, or it has been determined an industrial disability as provided by Government Code Section 21026.

2. Filing of Application for Disability Retirement: Application for disability may be made by either:

- A. The local Safety member or his/her designated representative.
- B. The City or the City's designee.

The person making the application shall be named the "applicant." The applicant shall be required to complete the PERS application and provide detailed information regarding the basis for the disability. The original application and documentation shall be sent to PERS with a copy to be retained by Human Resources.

3. Filing of Application by Disabled Retiree for Reinstatement:

Pursuant to Government Code Section 21101, an employee previously retired from disability from service with the City may apply for reinstatement on the basis that he/she is no longer incapacitated by submitting to the City Manager, in writing, all facts and circumstances forming the basis for his/her application for reinstatement.

The City or the City's designee may apply for reinstatement of a retiree disabled from service on the basis that he/she is no longer incapacitated by submitting to the City Manager, in writing, all facts and circumstances forming the basis for his/her application for reinstatement.

4. Acknowledgment of Application:

Within 15 calendar days of receipt by the City Manager's office of the completed application and supporting documentation, a notice of acknowledgment of receipt of said application will be transmitted to the local safety member or his/her representative along with a copy of these rules and procedures.

5. Recommendation by the City Manager that the Employee be Retired for Disability or that the Disability Retiree be Reinstated:

The City Manager may certify to PERS that an employee be retired for disability, or a disability retiree be reinstated if the facts and circumstances stated in the application provide the basis for such determination to be made to PERS. The City Manager will notify PERS and the employee in writing within ten calendar days from the date of his/her determination of such.



#### 6. Investigation and Proposed Disposition:

If the facts and circumstances provided in the employee's application and supporting documentation do not enable the City Manager to certify to PERS that the employee be retired for disability, then the City Manager shall have the authority and duty to investigate the facts and circumstances pertaining to the employee's application.

Such investigation may include an examination of the employee or retiree by the medical specialist(s) who would be most appropriate to ascertain whether a disability exists; secure medical reports, other documentation for review; and obtain statements by deposition of the employee, retiree and/or other persons.

Based upon the investigation, the City Manager shall determine the City's disposition of the application. A notice regarding the disposition of the application will be sent to the employee or designated representative.

The notice shall indicate the proposed disposition and that the City shall certify such disposition to PERS, unless an objection is filed with the office of the City Manager by the applicant within 15 calendar days from the date of service of the notice.

#### 7. Final Disposition of Application:

If no objection is received within the 15 calendar day period, the City shall certify the proposed disposition to PERS.

#### 8. Informal Conference If Objection Filed:

If an objection is filed within the allotted time, the City Manager shall schedule a conference in no less than ten calendar days and not more than 20 calendar days with written notice to the employee or designated representative. The City Manager will preside over the conference and will notify other appropriate personnel, if necessary.

The conference provides both parties the opportunity to reach agreement as to the final disposition of the matter. If no such agreement is reached, the applicant may request a hearing and if so, to agree to specific conditions to proceed to a hearing on this matter and to discuss dates for the commencement of the hearing.

The hearing shall be set no later than 90 calendar days (if no rehabilitation evaluation pending), or no later than 180 calendar days (if the employee is being evaluated for rehabilitation), from the date of the conference.

#### 9. Filing and Service of Medical Reports and Documentary Evidence:

No later than 30 calendar days before the scheduled commencement of the hearing, each party in this matter shall file with the City Manager, and serve on the other party, any and all medical reports and records.

Unless good cause is shown, any document, report or record not filed and served as herein provided, shall be inadmissible at hearing, and no testimony based on said material may be admitted into evidence at the hearing.

Either party may serve a request for discovery upon the other party as provided for in Government Code Section 11507.6. In such case, the procedures contained in Government Code Sections 11507.6 and 11507.7 shall apply.

#### 10. Hearing Continuances:

Scheduled hearing dates may be continued by order of the City Manager pursuant to stipulation of the parties or pursuant to a written motion filed with the City Manager's office by one of the parties.

A copy of such written motion must be served on the other party. A continuance may be granted by the City Manager for good cause shown.

A continuance shall be granted and all proceedings stayed, if it is shown claimant (1) failed to disclose fully to the City the nature of the disability; or (2) has failed to disclose the name and address of the physician or other practitioner or facilities by whom or at which he/she was examined, treated, or evaluated for any condition upon which a claim for disability is or may be based; or (3) has failed to participate in or complete any examination or evaluations by a health practitioner selected by the City.

In such case, all proceedings shall be stayed until the claimant has made full disclosure and complied with respect to (1) and (2) and (3) above.

#### 11. Stipulated Settlement:

At any time in the proceedings, the parties may enter into stipulations and recommend to the City Manager a final disposition regarding the retirement, rehabilitation, and/or employment status of the employee or retiree.

#### 12. Subpoenas:

Any subpoenas shall be issued by the City Manager in like manner as issued by the City Council

The parties may avail themselves of the subpoena process to ensure the availability of witnesses. The City Clerk shall issue such subpoenas and subpoenas duces tecum upon deposit by the party seeking such subpoena of the costs, fees and expenses as provided for under Government Code Sections 68097.1. et. seq.

#### 13. Conduct of Hearing:

The conduct of the hearing shall be under the direction of the City Manager, unless an Administrative Law Judge (ALJ) is retained as herein provided.

At the discretion of the City Manager, he/she may retain the services of an (ALJ) from the Office of Administrative Hearings. Such ALJ shall sit with the City Manager at the hearing and rule on evidentiary and procedural issues. The ALJ may also, prepare written findings and a decision as directed by the City Manager.

The proceedings at the hearing shall be recorded by a certified court reporter. If stipulated

to by all parties, proceedings may be electronically recorded.

The City shall prepare and serve a statement of issues on the applicant in accordance with the Administrative Procedures Act.

The applicant shall have the burden of proof by a preponderance of the evidence that he/she is disabled and said disability must be found to be in existence and not prospective in nature.

If the City has applied for disability retirement, the City shall have the burden of proof by a preponderance of the evidence. The hearing shall be conducted under the Administrative Procedure Act (Government Code § 11500 et seq.).

Each party has the right to be represented, to present relevant evidence, to examine and cross-examine witnesses, and to object to, rebut and argue the value of such evidence.

The hearing shall continue from day-to-day until the proceedings are concluded or continued to a date certain within the discretion of the parties.

The City Manager or ALJ may hold the record open, at its discretion, for the submission of briefs and/or the assignment of an independent medical examiner (IME).

A. Such IME will be furnished all documentary evidence presented, will examine the employee or retiree at the expense of the City, and shall report in writing to the City Manager. The City Manager will serve said report upon all parties within 15 calendar days of receipt.

B. Any party may request cross-examination by deposition of the IME within ten calendar days of service at such party's expense for the doctor's fee and cost of a court reporter only. The court reporter shall transmit the record directly to the City Manager, with copies to be sent to a requesting party at that party's expense.

#### 14. Cost:

The parties shall bear all costs incurred by each such party, including the costs of their witnesses and representatives, and the costs of a transcript of the hearing ordered by such party; and shall share equally the mutually incurred costs of the hearing, including the charges of the court reporter or other means used for recording the proceedings.

#### 15. Findings and Conclusions:

Within 30 calendar days of the closing of the hearing record, the City Manager or the ALJ shall provide the parties and their representatives with written findings of fact and conclusions. The City Manager will certify to PERS the written findings of fact and conclusions, with copies of such certification to the parties and their representatives.

#### 16. Appeal:

An aggrieved party may appeal the final determination in the manner and to the extent provided by state law.

## **CHAPTER 8. VACATION LEAVE**

### **Section 8.01 Statement of Policy**

Vacation leave shall be granted for the purpose of enabling eligible employees to annually take appropriate leave from their job and return mentally refreshed.

### **Section 8.02 Eligibility**

The following shall apply, except as otherwise provided in the applicable Memorandum of Understanding between the City and the recognized employee association: all probationary, regular, full-time and part-time employees shall be eligible for paid vacation at his/her then current rate of pay.

### **Section 8.03 Vacation Accrual**

Each regular full-time and probationary employee shall accrue vacation leave by the following formula:

<b>Year of Employment</b>	<b>Hours Earned Per Month</b>	<b>Hours Earned Per Year</b>
1st	6.667	80
2nd	7.333	88
3rd	8.000	96
4th	8.667	104
5th	9.333	112
6th	10.000	120
7th	10.667	128
8th	11.333	136
9th	12.000	144
10th	12.667	152
11th	13.333	160

Each regular part-time and probationary employee working 30 hours or more shall accrue vacation leave at the rate of three-fourths of the accrual of a full-time employee using the above formula.

### **Section 8.04 Maximum Accrual.**

The following shall apply, except as otherwise provided in the applicable Memorandum of Understanding between the City and the recognized employee association:

1. An employee may accumulate unused vacation to a maximum of the amount accrued in the 24 months immediately preceding the employee's anniversary date of employment. Vacation shall cease accruing subsequent to reaching said maximum with further accrual occurring only upon the vacation balance falling below the maximum accumulation.

2. For purposes of this Article, the term "anniversary date of employment" is the date an employee began accruing vacation with the City.

#### Section 8.05 Use of Vacation.

1. The time at which an employee's vacation is to occur shall be determined by the department director with due regard for the wishes of the employee and particular regard for the needs of the service.

2. Employees who have completed five years or more of continuous service may elect to be paid for up to a maximum of 40 hours of accrued vacation on an annual basis. These vacation hours will be deducted from the employee's vacation accumulation account.

#### Section 8.06 Vacation Payment at Termination

Employees terminating employment shall be paid in a lump sum for all accrued unused vacation leave.

When termination is caused by the death of the employee, said payment for unused vacation shall be paid to the beneficiary designated by the employee. Such designation shall be in writing, signed by the employee and filed with Human Resources. In the event an employee has not designated a beneficiary, the payment shall be made to the estate of the employee.

#### Section 8.07 Holidays Falling During Vacation Leave

In the event one or more municipal holidays fall within an annual vacation leave, such holiday shall not be charged as vacation leave and the vacation leave shall be extended accordingly.

#### Section 8.08 Vacation Earned During Leave of Absence

No vacation leave shall be earned during any leave of absence without pay.

#### Section 8.09 Vacation - Miscellaneous

Employees shall not work for the City during their vacation and, thereby, receive double compensation from the City.

### **CHAPTER 9. SICK LEAVE**

#### Section 9.01 Statement of Policy

Sick leave shall be requested only in cases of actual personal sickness or disability, medical or dental treatment, family sick leave or as authorized by the City Manager under special circumstances. The employee requesting sick leave shall notify his/her supervisor or department director prior to or within one hour after the time set for reporting to work. Sick leave with pay shall not be allowed unless the employee has met and complied with the provisions of these Rules and Regulations, and his department director or the City Manager has approved such payment.

The department director or the Personnel Officer may require a written statement from the

attending physician or dentist or from a physician or dentist of his/her approval, that the employee is or was ill, incapacitated and unable to perform his duties.

The department director or the Personnel Officer may require a written statement from the attending physician or dentist or from a physician or dentist of his/her approval, that the employee is capable of and released to return to the performance of all of the duties of his/her position.

#### Section 9.02 Eligibility

Regular and probationary employees shall be eligible to accrue sick leave. Regular part-time employees working 30 hours or more shall be eligible to accrue sick leave at the rate of three-fourths the benefit of a full-time employee.

#### Section 9.03 Accrual

Sick leave shall be accrued at the rate of eight hours per calendar month for each calendar month that an employee has worked regularly scheduled hours and/or has been on an authorized leave which provides for full pay, for at least 15 working days in that month.

#### Section 9.04 Accumulation

Accrued sick leave may be accumulated without limit, except as provided in Section 9.07.

#### Section 9.05 Use

Sick leave may be requested and used as approved by the department director or the City Manager. Payment for approved sick leave shall be authorized until the employee's accumulated total sick leave hours has been exhausted and at such time, the employee shall receive no further payment for sick leave. An employee shall have his/her accumulated sick leave balance reduced by an amount equal to the number of hours of sick leave for which he/she receives payment. Employees may use one-half of their yearly accrual of sick leave for the diagnosis, care or treatment of an existing health condition or preventative care for any of the employee's family members: child (of any age or dependency status), parent, parent-in-law, spouse or registered domestic partner, grandparent, grandchild, or sibling.

Sick leave shall not be granted for disability arising from any sickness or injury purposely self-inflicted or caused by employee's own willful misconduct.

#### Section 9.06 Sick Leave During Vacation

An employee who becomes ill while on vacation may have such period of illness charged to his accumulated sick leave provided:

1. Immediately upon return to duty, the employee submits to his department director a written request for sick leave and a written statement signed by his physician providing the dates of illness.

2. The department director recommends and the City Manager approves the granting of such sick leave.

### Section 9.07 Sick Leave Payment Policy

Payment of accumulated sick leave shall be granted by the City Manager on an annual basis to all regular full-time and part-time employees who have a minimum of 120 hours of accumulated sick leave on December 1st, and opt to receive payment, during the subsequent December on a date determined by the City Manager, at a rate of 50% of current salary for one-half (1/2) of their annual unused sick leave.

Payment of accumulated sick leave shall be granted by the City Manager on an annual basis to all regular full-time and part-time employees who have a minimum of 240 hours of accumulated sick leave on record on December 1st, during the subsequent December on a date determined by the City Manager, at a rate of 100% of current salary for one-half (1/2) of their annual unused sick leave.

The sick leave hours for which the employee receives payment shall be deducted from his/her sick leave record with the remaining one-half (1/2) of the annual accumulated sick leave being continued as a credit to the employee's sick leave account.

Upon death, retirement, separation or termination of a regular full-time or part-time employee, with a minimum of 480 hours of sick leave accumulation, said employee is entitled to receive 50% compensation for that accumulated sick leave, unless the applicable MOU indicates otherwise.

Upon death, retirement, separation or termination of an employee with a minimum of five years of service and with between 240 hours and 480 hours of sick leave accumulation, said employee is entitled to receive payment for the difference between that amount of sick leave and 240 hours at 50% compensation, unless the applicable MOU indicates otherwise.

### Section 9.08 Extended Sick Leave

In the event of an employee's continuing illness which results in depletion of sick leave accumulation, the employee may request in writing, to his/her department director and City Manager, a leave of absence without pay for the purpose of recovering from an illness, provided:

1. The employee has used all of his/her accumulated sick leave.
2. The employee presents to his department director for referral to and consideration by the City Manager, a written request for leave and an estimate of the time needed for recovery signed by the employee's physician.
3. Prior to resuming his/her duties, the employee may be required to take a medical examination at the City's expense and provide a medical release to return to work from the employee's physician. The employment record and results of such examination shall be considered by the Personnel Officer in determining employee's fitness to return to work.
4. The maximum period of such leave shall be three calendar months. If the employee desires an extension, he/she shall follow, prior to the termination of the initial leave, the procedure described in sub-paragraph (2) above.

#### Section 9.10 On-The-Job-Injury

When a non-sworn employee is disabled by injury or illness arising out of and in the course of his/her duties for the City, he/she shall become entitled, regardless of his/her period of service with the City, to leave of absence for the period of such disability, but not exceeding one year, or until such earlier date as he/she is retired on permanent disability pension. During the first five work days of such disability, the City shall pay 100% of salary in lieu of temporary disability payments. Thereafter, the employee shall receive 80% of salary in lieu of temporary disability payments for up to four months. Any payments made pursuant to this Section shall not be charged as sick leave; provided, however, no sick leave or vacation benefits shall accrue during the period of such disability.

Sworn employees, when disabled by injury or illness arising out of and in the course of their duties as employees of the City shall be entitled to the benefits and privileges of California Labor Code Section 4850 as the Section now exists or as hereinafter amended. Any payments made pursuant to this Section shall not be charged as sick leave; sick leave and vacation benefits shall accrue during the period of disability pursuant to the provisions of California Labor Code Section 4850.

#### Section 9.11 Off-The-Job-Injury

An employee injured outside of his/her service with the City shall be compensated through the provisions of the disability insurance plan provided by the City.

### **CHAPTER 10. OTHER LEAVES OF ABSENCE**

#### Section 10.01 Authorized Leave of Absence Without Pay

Excluding leave which may fall under the Family Medical Leave Act (FMLA) or the California Family Rights Act (CFRA), upon recommendation from the department director, with the approval of the City Manager, a regular employee may be granted a leave of absence without pay in cases of emergency or where such absence would not be contrary to the best interests of the City, for a period not to exceed one year. Approval of such leave shall be in writing and a copy filed with Human Resources.

At the expiration of the approved leave, or within a reasonable period of time after notice to return to duty, the employee shall be reinstated in the position held at the time leave was granted. Failure on the part of the employee on leave to report promptly at such leave's expiration, or within a reasonable time after notice to return to duty, shall be cause for discharge.

During any authorized leave of absence without pay, an employee shall not be eligible to accumulate or receive fringe benefits except as specifically provided for in these Rules and Regulations. The City shall contribute to an employee's health plan (medical, dental, vision), disability insurance, life insurance and retirement. Employees on unpaid leave of absence do not accrue vacation or sick leave and are not eligible for any other paid leave.

#### Section 10.02 Bereavement Leave

Regular and probationary full-time and part-time employees may be granted a bereavement leave of absence by reason of death in the immediate family which shall be



restricted and limited to parent, sibling, spouse or registered domestic partner, child, grandparent, or parent-in-law. Upon approval of said leave, the employee shall be allowed a maximum of 40 hours.

#### Section 10.03 Military Leave of Absence

Military leave shall be granted in accordance with the provisions of state law. All employees entitled to military leave shall give the appointing power an opportunity within the limits of military regulations, to determine when such leave shall be taken. Whenever possible, the employee involved shall notify his/her department director of such leave request ten working days in advance of the beginning date of such leave.

#### Section 10.04 Pregnancy Disability Leave of Absence

An employee who is disabled due to pregnancy shall be granted a pregnancy disability leave without pay up to four months so long as the employee's attending physician certifies that she is physically unable to work due to pregnancy, childbirth or a related medical condition.

Disabilities arising out of pregnancy shall be treated the same as other temporary disabilities.

Regular full-time, regular part-time and probationary employees may be placed on leave when the employee's medical disability could present a threat to the health or safety of others.

Following childbirth and upon release from medical treatment for the disability resulting from the pregnancy, the employee may be required to submit a medical statement of fitness to perform the duties of the position to Human Resources. Upon expiration of an approved maternity leave of absence, the employee shall be reinstated in the position held at the time leave was granted.

Temporary employees may be granted unpaid leave of absence but shall not be entitled to any other benefits.

#### Section 10.05 Jury Duty

Regular or probationary employees required to report for jury duty shall be granted leave for such purpose, upon presentation of jury notice to the department director. Said employees shall receive full payment for the time served on a jury, provided he/she submits any fees received for such duty to the Finance Department. Compensation for mileage, subsistence or similar auxiliary allowances shall not be considered as a fee and shall be returned to the employee by the Finance Department.

If the sum of the employee's jury duty responsibilities is less than a full work day, the employee shall contact his/her supervisor as to the feasibility of returning to work that day.

An employee shall not receive regular pay for work and pay for jury services which shall be in excess of eight hours pay in any one day.

## Section 10.06 Family and Medical Leave

To the extent not already provided for under current leave policies and provisions, the City will provide family and medical care leave for eligible employees as required by state and federal law. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 ("FMLA"), and the regulations of the California Family Rights Act ("CFRA"). Unless otherwise provided by this article, "Leave" under this article shall mean leave pursuant to the FMLA and CFRA.

### 1. Definitions:

a. "12-Month Period" means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.

b. "Child" means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee's child is one for whom the employee has actual day-to-day responsibility for care and includes, a biological, adopted, foster or step-child, legal ward, or a child of a person standing in loco parentis.

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, using telephones and directories, etc.

c. "Parent" means the biological, adoptive, step or foster parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.

d. "Spouse" means a husband or wife as defined or recognized under California State law for purposes of marriage. "Spouse" also includes registered domestic partners or same-sex partners in marriage.

e. "Serious health condition" means an illness, injury impairment, or physical or mental condition that involves:

Inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or

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:

1) A period of incapacity (i.e., inability to work, or perform other regular daily activities due to serious health condition of more than three consecutive calendar days,

and any subsequent treatment or period of incapacity relating to the same condition, that also involves treatment two or more times by a health care provider or 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.

2) Any period of incapacity due to pregnancy or for prenatal care. (This entitles the employee to FMLA leave, but not CFRA leave. An employee disabled by pregnancy is entitled to pregnancy disability leave as set forth in Section 10.04).

3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which requires periodic visits for treatment by a health care provider; continues over an extended period of time (including recurring episodes of a single underlying condition); and may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.

4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by a health care provider.

5) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

f. "Health Care Provider" means:

1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by 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, who 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.

2. Reasons for Leave:

Leave is only permitted for the following reasons:

- a. The birth of a child or to care for a newborn of an employee;
- b. The placement of a child with an employee in connection with the adoption or foster care of a child;
- c. Leave to care for a child, parent, spouse or registered domestic partner who has a serious health condition; or
- d. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position.

Employees Eligible for Leave:

An employee is eligible for leave if the employee:

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

3. Amount of Leave:

Eligible employees are entitled to 12 workweeks of leave during any 12-month period.

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

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

b. Spouses Both Employed By City: In any case in which a husband and wife both employed by the City are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child (i.e., bonding leave). This limitation does not apply to any other type of leave under this policy.

5. Employee Benefits While on Leave:

Leave under this policy is unpaid. While on leave, employees will continue to be covered by the group health insurance (medical, dental, vision) to the same extent that coverage is provided while the employee is on the job. However, employees will not continue to be covered under the non-health benefit plans.

Employees may make the appropriate contributions for continued coverage under the preceding non-health benefit plans by payroll deductions or direct payments made to these plans. Depending on the particular plan the City will inform an employee whether the premiums should be paid to the carrier or to the City. Coverage on a particular plan may be dropped if an employee is more than 30 days late in making a premium payment. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City shall have the right to recover its share of 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. The City shall have the right to recover premiums through deduction from any sums due the City (e.g. unpaid wages, vacation pay, etc.).

6. Substitution of Paid Accrued Leaves:

While on leave under this policy an employee may elect to concurrently use paid accrued leaves. Similarly, the City may require an employee to concurrently use paid accrued leaves and may also require an employee to use Family and Medical Care Leave concurrently with a non-FMLA/CFRA leave which is FMLA/CFRA-qualifying.

7. Medical Certification:

Employees who request leave for their own serious health condition or to care for a child, parent, spouse or registered domestic partner who has a serious health condition must provide written certification from the health care provider of the individual requiring care if requested by the City.

If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position.

a. Time To Provide A Certification: When an employee's leave is foreseeable if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the City within the time frame requested by the City which must allow at least 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.

b. Consequences For Failure To Provide An Adequate Or Timely Certification: If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to cure any such deficiency. However, if an employee fails to provide a

medical certification within the time frame established by this policy, the City may delay the taking of FMLA/CFRA leave until the required certification is provided.

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

d. 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 to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

8. Employee Notice of Leave:

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

9. Reinstatement upon Return from Leave:

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

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.

10. Fitness For Duty Certification:

As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform his/her job, the employee must obtain and present a fitness-for-duty certification from the health care provider that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.

11. Reinstatement Of "Key Employees":

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

12. Required Forms:

Employees must fill out the applicable forms in connection with leave under this policy as provided by Human Resources.

Section 10.07 Unauthorized Leave of Absence

Unauthorized leave of absence shall be considered as days, or portions of days, not worked which are normal working days and will cause the deduction from an employee's pay of an amount equivalent to the time absent. Unauthorized leaves of absence may be subject to disciplinary action, including termination of employment.

**CHAPTER 11. DISCIPLINARY ACTIONS**

Section 11.01 Progressive Discipline

Management shall use a system of progressive discipline where appropriate, but, management is not bound by progressive discipline in cases of serious offenses. Progressive discipline shall mean that progressively more severe penalties may be imposed on each given employee each time any given offense is repeated. It also means that after repeated offenses, regardless of whether the offenses are identical or not, substantial disciplinary action may be taken. Substantial disciplinary actions are suspensions without pay for a period in excess of five working days, demotions and discharge.

Section 11.02 Exclusion from Disciplinary Process

The disciplinary process set forth herein shall not apply to the following classifications, positions and employments, who serve at the pleasure of the appointing authority and may be discharged at any time without cause:

1. City Manager;
2. Assistant City Manager and/or Assistant to the City Manager;
3. Department directors;
4. Emergency employees;
5. Temporary employees;
6. Provisional employees;
7. Volunteer personnel;
8. Persons engaged under contract to supply expert, professional or technical services;
9. City Attorney.

### Section 11.03 Discipline - General

Disciplinary actions shall consist of counseling, oral reprimand, written reprimand, suspension, demotion and discharge, and shall be imposed or confirmed only by written notice served upon the subject employee with a copy placed in the employee's official personnel file except in the case of counseling and oral reprimands.

### Section 11.04 Counseling

Counseling shall include informal discussions with an employee designed to assist him/her to fully develop his/her skills and abilities or improve conduct. Usually, the immediate supervisor counsels the employee. The discussion may clarify standards, evaluate the employee's strengths or weaknesses, seek information, solve problems or give employee's direction regarding future conduct.

The supervisor shall make note of the date, time and content of the counseling.

### Section 11.05 Oral Reprimand

An oral reprimand shall be used by a supervisor to notify an employee that his/her performance or behavior must be improved. The warning shall define the areas in which improvement is required, set up goals leading to this improvement and inform the employee that failure to improve will result in more serious action. No record of an oral reprimand shall be placed in the employee's file except notation in the employee's evaluation unless subsequent action is necessary. The supervisor shall, however, make note of the date, time and content of the warning. The employee should be notified that a record is being made of the reprimand.

### Section 11.06 Written Reprimand

A written reprimand shall be used by a supervisor to give formal notice to an employee that further disciplinary action will be taken unless his/her behavior or performance improves. The supervisor shall advise the employee in writing of the consequences of failing to improve his/her performance or behavior. It should contain the following: a description of what occurred; date and time of occurrence; the rule, policy or contract that has been violated; and what the employee is directed to do to correct the situation.

Copies of the written reprimand shall be kept by the supervisor, given to the employee and filed in the employee's personnel file. The employee shall be notified of his/her right to respond in writing within ten days of receipt of the reprimand. The employee's written response will be attached to the written reprimand when it is placed in the personnel file. Unless otherwise provided by law, an employee does not have the right to appeal a written reprimand.

### Section 11.07 Suspension

An employee may be suspended by the appointing authority from his/her position at any time for the good of the service, or for other just cause. Suspensions shall be after consultation with the Personnel Officer. Department directors may suspend subordinate employees for not more than five working days. Suspension without pay may be made by the City Manager for suspensions of more than five working days.



During suspension from City service for disciplinary cause, an employee shall forfeit all rights, privileges and salary, except he/she shall not forfeit his/her health plans (medical, dental, vision), retirement plan, disability insurance or life insurance plan. Should such suspension be later modified or revoked, the employee shall be entitled to receive payment to compensate for loss of income and benefits during the period of suspension.

#### Section 11.08 Demotion

An employee may be reduced from a position in one class to a position in a lower class, having lesser duties and responsibilities and a lower maximum rate of pay for disciplinary cause.

#### Section 11.09 Discharge

An employee may be discharged from the City service for disciplinary cause.

#### Section 11.10 Grounds for Discipline

The grounds for discipline are set forth in Section 17.03.

#### Section 11.11 Pre-Disciplinary Procedures

For a suspension without pay, demotion or discharge, these guidelines shall be followed, including:

1. A written notice of the proposed disciplinary action;
2. The proposed effective date of the disciplinary action;
3. The reasons for the proposed action;
4. A summary of facts which establish the reason for the proposed action;
5. A copy of the materials upon which the action is based; and,
6. The right to respond, either orally or in writing, to the appropriate authority.

If, after an employee has been given the above the appropriate authority considers and relies on new material, such material and a chance to respond must be made available to the employee before a decision to impose discipline is made.

The employee shall have the right to respond to the appropriate authority orally or in writing. The employee shall have a right to be represented at any meeting set by the appropriate authority to hear the employee's response. In cases of suspensions, demotions, reductions in pay or dismissal, the employee's response will be considered before final action is taken.

After the response or the expiration of the employee's time to respond to the notice of proposed action per Section 12.03, the appropriate authority shall: (1) dismiss the notice of proposed action and take no disciplinary action against the employee or (2) modify the proposed disciplinary action or (3) prepare and serve upon the employee a final notice of disciplinary action.

The final notice of disciplinary action shall include the following:

1. The disciplinary action taken;
2. The effective date of the disciplinary action taken;
3. Specific charges upon which the action is based;
4. A summary of the facts upon which the charges are based;

5. The written materials, reports and documents upon which the disciplinary action is based;
6. The employee's right to appeal.

Notwithstanding the above-stated provisions, an employee may be suspended without prior notice when in the discretion of the appointing authority, the employee's continued presence at the work site could have detrimental consequences. In such a situation, the employee shall be given disciplinary due process safeguards either during or immediately following said suspension. In these cases, the appointing authority shall document circumstances which indicate the possibility of detrimental consequences. If the disciplinary action is subsequently found to be unwarranted, restitution must be made to the employee to compensate for loss of income and benefits.

## **CHAPTER 12. APPEAL, GRIEVANCE AND HEARING PROCEDURE**

### Section 12.01 Statement of Policy

Use of these procedures shall not reflect unfavorably on employees of the City. Retaliatory or discriminatory action against an employee for using this procedure, or discrimination in the application of a rule or policy shall be a violation of City policy.

### Section 12.02 Purpose of Rules

The purpose of the procedure is to provide a means; whereby, employees may obtain fair, impartial and orderly review and consideration of grievances within a reasonable time period, without jeopardizing their position or employment.

### Section 12.03 Appeal Proceedings

Any employee in the competitive service shall have the right to appeal to the City Council any suspension, demotion or discharge, except to the extent that such appeals are specifically prohibited by the City Code or by these Rules and Regulations.

In order to exercise the right of appeal, an employee must file a written request for an appeal with the Personnel Officer within five working days after receipt of the notice of disciplinary action. The request must include an address for the service of all future documents relative to the appeal; and service of such documents shall be deemed completed upon the mailing thereof, charges prepaid, to the address so designated. The Personnel Officer shall immediately transmit a copy of the request for appeal to the official who imposed the disciplinary action in question.

Within 20 working days of the filing of a request for an appeal, the appointing authority who imposed the disciplinary action shall file with the Personnel Officer and serve upon the employee a formal accusation setting forth in detail the grounds and reasons for said disciplinary action. Within 20 working days after the service of such formal accusation, the employee must file a response thereto with the Personnel Officer either admitting or denying the grounds for suspension, demotion or discharge. Although a challenge may be made to the sufficiency of the grounds, such a challenge will not serve as a demurrer or motion to strike. Failure to respond within said 20-day period will be deemed to constitute a waiver of the appeal and of any further rights to hearing or review.

Upon receipt of the employee's response, the Personnel Officer shall cause the matter to be placed on the agenda of the next regular meeting of the City Council. At said meeting, the City Council shall either establish a time and place at which it will hear the matter itself (which time shall not be more than 30 calendar days following the meeting) or designate a hearing officer to take evidence and prepare a proposed decision.

In the event a hearing officer is designated, he/she shall establish a time and place for the hearing. At the time and place so established, the hearing officer shall proceed to conduct the hearing and to take and consider all relevant evidence. As soon as possible after the close of the hearing, the hearing officer shall prepare a proposed decision in such form that it may be adopted by the City Council as the decision in the case and shall file the same with the City Council. Copies thereof shall be distributed to the appellant and to the Personnel Officer.

Upon receipt of the proposed decision, the City Council shall meet within 30 calendar days and either adopt the proposed decision in its entirety, amend the decision, or reject the decision. As part of its consideration of the proposed decision, the City Council may either take additional evidence or refer the matter back to the hearing officer for additional evidence and hearing. The City Council may continue the time for its review for 30 calendar days, and thereafter for 30 calendar day periods successively but not to exceed 90 calendar days. The City Council may amend or reject the hearing officer's decision only after a review of the record.

The City Clerk is authorized and empowered to issue all subpoenas necessary to effect discovery and/or to compel the attendance of witnesses at the hearing. All witnesses shall be entitled to witness fees to the same extent as in a civil action in the superior court.

The hearing shall not be public unless so requested by either the appellant. In any event, the person(s) conducting the hearing shall have the authority to exclude witnesses from the hearing.

The City shall obtain the services of a certified court reporter to record the hearing, and a transcript of the proceedings shall be available to the appellant at cost.

All testimony presented at the hearing shall be sworn testimony. However, the hearing need not be conducted according to technical rules relating to evidence and witnesses; nor shall the provisions of the Administrative Procedure Act be applicable thereto.

Unless otherwise incapacitated, the appellant shall appear personally at the hearing. He/she may be represented by any person he/she shall select. Failure of the appellant to appear at the hearing or to be represented shall be deemed a withdrawal of the appeal and a waiver of any further rights of hearing or review.

At the hearing, the City shall present all relevant evidence to support the disciplinary action imposed and it shall have the burden of proving its contentions by a preponderance of the evidence. The City shall have the right to call the accused as a witness at any time during the hearing and treat him/her as a hostile witness for purposes of examination.

All parties shall have the right to file with the person(s) conducting the hearing written legal arguments and to present oral arguments at the conclusion of the hearing.

For purposes of judicial review, the record shall consist of the transcripts of all oral

proceedings, all notices and pleadings, all written arguments, all exhibits, and the recommendations and findings of the hearing officer, if any, and the findings and decision of the City Council.

Upon the conclusion of any hearing, the City Council shall cause its findings and recommendations to be prepared in written form and shall certify the same. Such findings shall be countersigned by the Personnel Officer and filed as a record of the City Council. The Personnel Officer shall deliver a certified copy of such findings to any other officer or employee affected by such findings and recommendations, or from whose action the appeal was taken.

#### Section 12.04 Grievance Proceeding

A grievance shall be defined as a timely complaint by an employee or group of employees or a recognized employee organization concerning the interpretation or application of specific provisions of these Rules and Regulations governing personnel practices or working conditions of the City.

The time limits for filing written formal grievance shall be strictly construed, but may be extended by mutual agreement evidenced, in writing, and signed by a duly authorized representative of the City and the grieving party. Failure of the grieving party to comply with any of the time limits set forth hereunder shall constitute waiver and bar further processing of the grievance. Failure of the City to comply with the time limits set forth in this Section shall automatically move the grievance to the next level in the Grievance Procedure. The grieving party may request the assistance of his/her recognized employee organization in presenting a grievance at any level of review or may represent himself/herself.

It is the responsibility of the grievant to promptly inform and discuss their grievance with their immediate supervisor. If the informal discussion does not resolve the issue to the grievant's satisfaction, the grievant may file a formal grievance in accordance with the following procedure:

##### Step 1

The grievant shall reduce his/her grievance to writing by signing and completing all parts of the grievance form provided by the City, and submitting it to his/her immediate supervisor within ten working days from the date the alleged incident occurred or from when the grievant knew or should have reasonably become aware of the incident.

Should the grievant fail to file a written grievance within ten working days the grievance shall be barred and shall not be processed further.

The employee's immediate supervisor, shall render a decision in writing and return to the employee within ten working days after receipt of the grievance. If the employee does not agree with the supervisor's decision, or if no answer has been received within ten working days, the employee may present the grievance, in writing, through the chain of command to the department director. Failure of the employee to take further action within ten working days after receipt of the written decision of the supervisor, or within 15 working days if no decision is rendered, shall constitute a waiver of the grievance.

## Step 2

The department director or designee shall discuss the grievance with the employee, and/or the employee's representative. The department director shall render a decision in writing and return it to the employee within ten working days after receiving the grievance. If the employee does not agree with the decision reached, or if no answer has been received within ten working days, the employee may present the grievance in writing to the City Manager. Failure of the employee to take further action within ten working days after receipt of the department director's written decision, or within 15 working days if no decision is rendered, shall constitute waiver of the grievance.

## Step 3

The City Manager shall discuss the grievance with the employee and/or the employee's representative. The City Manager shall render a decision in writing to the employee within 15 working days after receiving the grievance. If the employee does not agree with the decision of the City Manager, further appeal may be made in accordance with law.

## **CHAPTER 13. HARASSMENT IN EMPLOYMENT POLICY**

### Section 13.01 Purpose of Policy

1. To define and issue to all employees the City's policy on the prohibition of discriminatory harassment in the workplace;
2. To fully inform all employees of their right to be free of unlawful discriminatory harassment in the workplace;
3. To fully inform all employees that the City of Cypress does not and will not tolerate discriminatory harassment in the workplace;
4. To inform all employees of their rights if they believe that they are or have been the victim of discriminatory harassment; and
5. To provide a means for the prompt reporting and full and effective investigation of discriminatory harassment complaints and to provide for effective remedial action against the harasser and for the victim.

### Section 13.02 Statement of Policy

Harassment of an applicant or employee or a person providing services pursuant to a contract by a supervisor, management employee or co-worker on the basis of race, religious creed, color, national origin, ancestry, physical or mental handicap, medical condition, marital status, sex, age or sexual orientation is prohibited and will not be tolerated.

### Section 13.03. Definition of Discriminatory Harassment

Discriminatory harassment includes, but is not limited to:

1. Verbal Harassment - For example, epithets, derogatory comments or slurs on the basis of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age or genetic information.

2. Physical Harassment - For example, assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on the basis of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age or genetic information.

3. Visual Forms of Harassment - For example, derogatory posters, notices, bulletins, cartoons, or drawings on the basis of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age or genetic information.

4. Sexual Favors - Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature which is conditioned upon an employment benefit, unreasonably interferes with an individual's work performance or creates an offensive work environment.

#### Section 13.04. Definition of Employee

For purposes of this Chapter, an employee shall be defined as any individual, regardless of classification, employed by the City of Cypress, or volunteers working under the supervision of the City.

#### Section 13.05. Pre-Grievance Process

An employee who has been harassed on the job should inform the employer. The employee may first notify any of the following persons: 1) his/her supervisor; 2) his/her department director; or 3) Human Resources. Any supervisor or department director who receives a harassment complaint is to immediately notify Human Resources.

To accommodate the unique nature of harassment complaints, a pre-grievance process is provided for the primary purpose of resolution of a complaint at the earliest possible date. Elements of this process are:

Upon notification of a harassment complaint, Human Resources will:

1. Inform the complainant of his/her right to initiate a grievance proceeding pursuant to Section 12.04 of the City's Personnel Rules and Regulations and outline this grievance procedure for the employee;

2. Inform the complainant of his/her right to file a complaint with the California Department of Fair Employment and Housing and the United States Equal Employment Opportunity Commission;

3. Authorize the investigation of the complaint and supervise and/or investigate the complaint. The investigation will include interviews with: 1) the complainant; 2) the accused harasser; and 3) any other persons Human Resources has reason to believe have relevant knowledge concerning the complaint, such as witnesses and victims of similar conduct;

4. Review factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment; giving consideration to all factual information, the totality of the circumstances, including the nature of the context in which the alleged incidents occurred;

5. Report the results of the investigation and the determination as to whether harassment occurred to the complainant, the alleged harasser, the supervisor, and the department director;

6. If harassment occurred, take and/or recommend to the appointing authority prompt and effective remedial action against the harasser. The action will be commensurate with the severity of the offense. The complainant will be informed that action has been taken.

7. Reasonable steps will be taken to protect the complainant and other potential victims from further harassment;

8. Reasonable steps will be taken to protect the complainant from any retaliation as a result of communicating the complaint.

#### Section 13.06 Formal Grievance Process

Formal grievance procedures of the City are available (as set forth in Section 12.04) for resolution of complaints alleging harassment if the complaint is not resolved to the satisfaction of the employee in the pre-grievance process.

Time limits specified in the formal grievance procedure (as set forth in Section 12.04) may be extended if pre-grievance procedures for a harassment complaint were initiated within the applicable time limits for filing a formal grievance. In these instances, if the complaint is not resolved to the satisfaction of the employee, the time limits for filing a formal grievance should begin as of the date of notification of action taken by Human Resources.

If the employee did not initiate pre-grievance procedures within the time limits of the applicable normal grievance procedure, Human Resources may recommend extension of the filing deadline for a formal complaint as set forth in Section 12.04 of these Rules. It should be emphasized that the City wishes to know of any complaint alleging harassment as soon as possible after it occurs.

#### Section 13.07 Dissemination of Policy

All employees, supervisors and managers shall be sent copies of this Harassment in Employment Policy.

### **CHAPTER 14. EMPLOYER AND EMPLOYEE RELATIONS**

#### Section 14.01 Statement of Policy

In the best interests of the City, its citizens and its employees, there shall be adopted by the City Council, rules, regulations and procedures through which full communication between the City, as the employer, and its employees, shall be promoted; reasonable methods of resolving disputes regarding wages, hours and other terms and conditions of employment shall be

established; and the continued improvement of personnel management and employer-employee relations shall be pursued.

Such rules, regulations and procedures shall be adopted as a document separate from, but complementary to, the "Personnel Rules and Regulations of the City of Cypress, California."

#### Section 14.02 City Rights

The City reserves, retains and is vested with, solely and exclusively, all rights of management which have not been expressly abridged by specific provision or by Law to manage the City, as such rights existed prior to the execution of Memorandums of Understanding. The sole and exclusive rights of management, as they are not abridged by Agreements or by Law, shall include, but not be limited to, the following rights:

1. To manage the City generally and to determine the issues of policy.
2. To determine the existence or non-existence of facts which are the basis of the management decision.
3. To determine the necessity and organization of any service or activity conducted by the City and expand or diminish service.
4. To determine the nature, manner, means, and technology and extent of services to be provided to the public.
5. Methods of financing.
6. Types of equipment or technology to be used.
7. To determine and/or change the facilities, methods, technology, means, and size of the work force by which the City operations are to be conducted.
8. To determine and change the number of locations, relocations, and types of operations, processes, and materials to be used in carrying out all City functions including, but not limited to, the right to contract for or sub-contract any work or operations.
9. To assign work to and schedule employees in accordance with requirements as determined by the City, and to establish and change work schedules and assignments.
10. To relieve employees from duties for lack of work or similar non-disciplinary reasons.
11. To establish and modify productivity and performance programs and standards.
12. To discharge, suspend, demote or otherwise discipline employees for proper cause in accordance with the provisions and procedures set forth in departmental disciplinary procedures.
13. To determine job classification and to reclassify employees.



14. To hire, transfer, promote and demote employees for non-disciplinary reasons in accordance with these Rules and Regulations.
15. To determine policies, procedures and the standards for selection, training and promotion of employees.
16. To establish employee performance standards including, but not limited to, quality and quantity standards; and to require compliance therewith.
17. To maintain order and efficiency in its facilities and operations.
18. To establish and promulgate and/or modify rules and regulations to maintain order and safety in the City which are not in contravention with Agreements.
19. To take any and all necessary action to carry out the mission of the City in emergencies.

Except in emergencies, or where the City is required to make changes in its operations because of the requirements of Law, whenever the contemplated exercise of management's rights shall impact on a significant number of employees of a bargaining unit, the City agrees to meet and confer in good faith with representatives of the Association regarding the impact of the contemplated exercise of such rights prior to exercising such rights unless the matter of the exercise of such rights is provided for in the Agreements.

## **CHAPTER 15. EMPLOYEE TRAINING AND EDUCATION PROGRAMS**

### Section 15.01 Statement of Policy

The City encourages the training, self-improvement and personal development programs for all employees which includes two general phases: on-the-job training and education programs.

### Section 15.02 On-the-Job Training

Responsibility for developing training programs for employees shall be assumed jointly by the City Council, the Personnel Officer and department directors. Such training programs may include lecture courses, demonstrations, assignment of reading matter or such other devices as may be available for the purpose of improving the effectiveness and broadening the knowledge of municipal officers and employees in the performance of their respective duties.

### Section 15.03 Education Programs

Personal and professional development of employees is vital to the success of each individual and to the City. Internal and external education programs are available to all employees and the City offers financial support for tuition reimbursement for approved courses.

### Section 15.04 Tuition Reimbursement Plan

When an employee enrolls in approved courses on his/her own time, the City will pay

required school fees such as tuition, registration fees and books according to maximum amounts stated in the applicable Memorandum of Understanding or Management Resolution. Mileage and optional fees shall not be refundable. Human Resources approval shall be obtained by the employee before registering for any course in order to be eligible for refund of required fees.

Courses taken at any college, university, high school, business or technical school, or courses given by a recognized correspondence school shall be approved when they are:

1. Related to employee's present position in the City.
2. Related to employee's potential development with the City.
3. Part of a program leading to a degree related to employee's present position or potential for development.

An employee may apply for reimbursement of required fees pursuant to the rules and procedures as established by the City Council.

In the event an employee receives assistance under federal or state government legislation or other student aid programs for education charges for an approved course, only the difference, if any, between such assistance and the education charges an employee actually incurs, will be eligible for refund under this plan.

When an employee fails to satisfactorily complete an approved course, he/she shall not be eligible for a tuition reimbursement for that course.

Should an employee receive an advance payment of tuition and required fees and should said employee fail to satisfactorily complete the course(s) or terminate his/her employment with the City within six months after completion of the course(s), the amount of expenses paid will be deducted from his/her earned salary.

## **CHAPTER 16. REPORTS, RECORDS AND NOTICES**

### **Section 16.01 Official Records**

Human Resources shall maintain a complete official file for each employee, showing his/her name, address, class title, salary, department to which assigned, sick leave, vacation, changes in salary, employment status and such other information as may be considered pertinent.

The form and manner in which such information shall be maintained shall be determined by the Personnel Officer.

### **Section 16.02 Change-of-Status Report**

Every appointment, transfer, promotion, demotion, change of salary rate, resignation, suspension and any other temporary or permanent change in status of employment shall be reported to the Personnel Officer and the date thereof, and a record of same shall be kept by Human Resources.

### Section 16.03 Notification of Change by Employees

All persons employed in the City service shall notify the department director and Human Resources of any change of address, telephone, marital status, group life insurance beneficiary, number of dependents, military status, education and such other information as deemed pertinent by the Personnel Officer.

### Section 16.04 Release of Personal Information

Unless authorized by law, neither Human Resources nor anyone in the City service shall be allowed to make known the address or phone number, as shown in the Human Resources Office records, of any employee, officer or appointed official without the prior approval of that employee, officer or appointed official. The Personnel Officer shall have the authority to verify or confirm addresses and phone numbers unless otherwise notified in writing by the employee, officer or appointed official.

### Section 16.05 Destruction of Records

Roster and payroll records shall be kept permanently. All other records relating to personnel, including correspondence, applications, examinations and reports may be destroyed after one year, or as provided for by law.

## **CHAPTER 17. EMPLOYEE CONDUCT**

### Section 17.01 Incompatible Activity of City Employees

An employee shall not engage in any employment, activity or enterprise which is inconsistent, incompatible or in conflict with his/her duties as a City officer or employee. Each appointing authority shall determine and prescribe those activities which, for employees under his/her jurisdiction, will be considered inconsistent, incompatible or in conflict with their duties as City employees. In making this determination, the appointing authority shall give consideration to employment, activity or enterprise which:

1. Involves the use for private gain or advantage of City time, facilities, equipment and supplies, or the badge, uniform, prestige or influence of one's City office or employment.
2. Involves the soliciting or the acceptance by the employee of any money gift, gratuity, or other consideration from anyone other than the City for the performance of an act which the employee, if not performing such an act, would be required or expected to render in the regular course of hours of his/her City employment, or as a part of his duties as a City officer or employee.
3. Involves the performance of an act other than his/her capacity as a City employee, which act may later be subject to direct or indirect control, inspection, review, audit or enforcement by such employee or the agency

No City officer or employee shall engage in any political activity of any kind whatsoever during working hours or while on City property or while wearing a City uniform.

Each City employee shall, during his/her hours of duty as a City employee and subject to

such rules and regulations as pertain thereto, devote his/her full time, attention and efforts to this City office or employment. Each City employee shall cooperate with the City Council and the Personnel Officer to successfully fulfill the objectives and purposes of these Rules and Regulations.

#### Section 17.02 Gifts and Gratuities

No officer or employee of the City shall solicit or accept any gift or gratuity, except those unsolicited gifts that are reported in a standard conflict of interest statement filed with either the City Clerk or the State of California.

#### Section 17.03 Employee Performance or Conduct (Grounds for Discipline)

Employees shall carry out their assigned duties at acceptable standards of performance. Unacceptable job performance or conduct may result in disciplinary action including discharge. Unacceptable job performance or conduct includes, but is not limited to:

1. Excessive absenteeism;
2. Excessive tardiness;
3. Incompetency;
4. Insubordination;
5. Violation of rules and regulations;
6. Intentional falsification of employment applications;
7. Intentional falsification of time and production records;
8. Theft;
9. Unauthorized outside employment;
10. Assault on a superior;
11. Unlawful activities;
12. Fighting between employees;
13. Horseplay;
14. Violation of safety rules and regulations;
15. Discriminatory harassment;
16. Sleeping on the job;
17. Unauthorized leave of absence;

18. Violation of the City's policy against alcohol and substance abuse.
19. Working overtime without authorization.
20. Possession of unauthorized weapons on City property. (This excludes weapons use in the course of law enforcement as authorized).

#### Section 17.04 Alcohol and Substance Abuse.

##### 1. Purpose of the Policy

The City is committed to providing employees with a workplace which is safe, productive and conducive to the welfare of all persons. The presence of drugs and alcohol on the job, and the influence of these substances on employees during working hours, are inconsistent with this objective.

##### 2. Statement of Policy:

A. Employees shall not be under the influence of, or in possession of, alcohol or drugs while at work locations, while on duty or subject to being called to duty. Furthermore, no employee, while he/she is on duty or subject to being called to duty, shall sell drugs or alcohol to any other employees or persons.

B. Prospective employees will be subject to a drug and/or alcohol analysis as part of the pre-employment medical examination.

C. Refusal to submit to the required alcohol and/or drug analysis shall result in the prospective employee being disqualified from employment.

D. A positive test result from the pre-employment alcohol and/or drug analysis may result in the prospective employee being disqualified from employment. If a drug and/or alcohol test is positive at the pre-employment physical, the applicant must provide within 24 hours of request, bona fide verification of a valid current prescription for the drug declared by the applicant before the drug test and identified in the drug screen. The prescription must be in the applicant's name. If the applicant does not provide acceptable verification, or if the drug is one that is likely to impair the applicant's ability to perform the job duties, the applicant may not be hired.

E. An employee reasonably believed to be under the influence of alcohol or drugs shall be prevented from engaging in further work and shall be detained until he/she can be safely transported from the work location.

F. The City shall, upon showing of reasonable suspicion that an employee is intoxicated or under the influence of drugs and/or alcohol while on the job or subject to being called to duty, compel an employee who appears to be unable to perform any portion of his/her job to submit to a drug and/or alcohol test on City time and at the City's expense. Refusal to submit to the test may be deemed insubordination and may subject the employee to discipline, up to and including termination. Nothing contained herein shall limit the City's right to discipline or discharge any employee. Any manager or supervisor directing an employee to submit to a

drug and/or alcohol test shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.

G. If a drug screen is positive, the employee must provide within 24 hours of request, bona fide verification of a valid current prescription for the drug declared by the employee before the drug test and identified in the drug screen. The prescription must be in the employee's name. If the employee does not provide acceptable verification of a valid prescription, or if the employee has not previously notified his/her supervisor, the employee will be subject to disciplinary action, up to and including termination.

If an alcohol or drug test is positive for alcohol or drugs, the City shall conduct an investigation to gather all facts. The decision to discipline or terminate will be carried out following an evaluation of the circumstances. A positive result from a drug and/or alcohol analysis may result in disciplinary action, up to and including termination.

H. If the employee desires to appeal a positive test result, he/she may request a new testing of the remaining portion of the original sample. The test shall be conducted at the employee's expense and shall be conducted at a laboratory mutually approved by the City and the employee.

I. Laboratory reports and test results shall not appear in an employee's general personnel folder. Information of this nature will be contained in a separate confidential medical folder that will be securely kept under the control of Human Resources. The reports or test results may be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information is compelled by law or by judicial or administrative process; (2) the information has been placed at issue in a formal dispute between the City and the employee; (3) the information is to be used in administering an employee benefit plan; (4) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

J. Managers and supervisors shall notify their department director or designee when they have reason to believe that an employee may have illegal drugs in his/her work area. If the department director or designee concurs that there is evidence of illegal drug possession, the department director shall notify the appropriate law enforcement agency. The City reserves the right to search, without employee consent, all areas and property in the City which the City maintains control or joint control with the employee in such a situation.

K. Employees must notify their supervisor before beginning work when taking medications or drugs which could foreseeably interfere with the safe and effective performance of their duties or operation of City equipment. Medical clearance by a qualified physician may be required by the City in the event that there is a question regarding an employee's ability to safely and effectively perform assigned duties.

L. An employee who is convicted of a criminal drug charge because of a drug violation he/she committed on City property is required to notify the City of the conviction.

The employee must notify the City within five working days of the time he/she is convicted. In addition to any sentence imposed by a court, the City will still impose discipline, up to and including termination of employment, on any employee so convicted and may also require

the employee to participate in an alcohol/drug abuse rehabilitation program.

M. The City sponsors a voluntary employee assistance program (EAP) to provide confidential and professional assistance to employees or immediate family members who think that they may have an alcohol or drug usage problem. Every effort shall be made by the City to refer employees who have such problems to this counseling service for assistance.

N. The City is committed to providing reasonable accommodation to those employees whose drug and/or alcohol problems classify them as being disabled under federal and/or state law. Participation in a rehabilitation program does not limit or exclude the employee's obligation to comply with personnel rules and job performance standards.

O. The City is committed to making good faith efforts to maintain a drug-free work place environment. These efforts include, among other things, providing employees training concerning the City's drug/alcohol policies and concerning the adverse effects and hazards of drug and/or alcohol abuse.

### 3. Definition of Terms:

A. "Under the influence" means, with respect to alcohol, a blood alcohol concentration of .08 percent (.04 for Class A or B license holders) or more, which is the standard typically used for determining when an individual is driving under the influence of alcohol.

B. "Under the influence" means, with respect to drugs, the appearance of any detectable amount of a drug, or its metabolites, and an appearance, behavior or speech which leads a supervisor to reasonably suspect that an employee's ability to perform his/her job safely and effectively has been impaired by drugs.

C. The term "drugs" per Federal standards means any and all controlled substances, such as, but not limited to, marijuana, cocaine, hallucinogens, amphetamines, barbiturates, PCP, depressants, opiates, methadone, methaqualone, benzodiazepines, "designer" drugs and synthesized substances with similar effects. The term "drugs" also includes the misuse of legally obtained prescription medications, over-the-counter medications and inhalants, or the unlawful use of another person's prescription medication.

D. "Reasonable suspicion" is a belief based upon objective and articulable facts, gathered from the totality of the circumstances, that would cause a reasonable, prudent supervisor to suspect that an employee is under the influence of drugs and/or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.

Any of the following, alone or in combination, may constitute reasonable suspicion, but they are neither all inclusive nor absolute signs of substance abuse:

1. Slurred speech
2. Odor of alcohol on breath
3. Inability to walk a straight line
4. An accident involving City property
5. Physical altercation
6. Verbal altercation

7. Behavior which is so unusual that it warrants summoning a supervisor or anyone else with authority
8. Possession of alcohol or drugs
9. Information obtained from a reliable person, with personal knowledge both articulated and documented, of an employee's substance abuse or use and/or possession of alcohol or drugs in the workplace
10. Physical appearance such as sloppiness, disarray or red eyes
11. Difficulty responding to simple questions such as time of day, location, etc.
12. Difficulty performing simple tasks such as counting, touching nose, etc.

Reasonable suspicion is not to be based upon unconfirmed rumors, but shall be based upon the individual observations by supervisors. Thus, when possible, a supervisor's observations, leading to a determination of reasonable suspicion, should be corroborated by other supervisory personnel. The supervisor is required to take into account other possible explanations for the observed behavior, such as lack of sleep, fatigue, and reactions to noxious fumes or smoke. The factors supporting the determination of reasonable suspicion shall be documented or recorded in a manner provided and approved by City management.

## **CHAPTER 18. AMENDMENTS AND REVISION TO THE PERSONNEL RULES AND REGULATIONS**

### Section 18.01 The Personnel Rules and Regulations may be Amended by Resolution of the City Council

The City Council, as it deems necessary, may amend, change or revise these Rules and Regulations by Resolution. The City Manager may, as he/she deems necessary, present to the City Council for its consideration, amendments, changes and revisions to these Rules and Regulations. Any employee who suggests any amendment, change or revision shall submit such suggestions in writing to the City Manager.

### Section 18.02 Notification of Amendments

All amendments, changes and revisions shall be made available to all employees of the City in the manner and form prescribed by the Personnel Officer and approved by the City Manager.

## **CHAPTER 19. MISCELLANEOUS**

### Section 19.01 Administrative Regulations

The City Manager is authorized to issue additional administrative policies to carry into effect these Rules and Regulations. The City Manager is authorized to approve supplementary departmental personnel rules and regulations not in conflict with these Rules.

### Section 19.02 Avoidance of Inequities

The City Manager is authorized to issue special adjustments to avoid or eliminate inequities resulting from the strict application of any of the provisions of these Rules and Regulations.



### Section 19.03 Driver Licenses

Any employee who operates a City vehicle or any motor vehicle on City related business shall have in her/his possession a current, valid driver license. Employees whose job duties include operating or driving a motor vehicle shall immediately notify their immediate supervisor of any restrictions, suspensions or revocation of their driver license. Failure to do so may result in disciplinary action against the employee.

### Section 19.04 Software Use

1. The City receives the right to use or "license" computer software from a variety of outside companies who hold the copyright for such software. The City does not own the software or its related documentation ("computer materials"). Unless specifically authorized by the developer of the software or the copyright holder, the City is unauthorized to reproduce or copy such software or documentation. The only authorized right to copy such software is for archive or backup purposes and the archive or backup copy may not be sold, transferred, or utilized at home for an employee's personal use.

2. With regard to use of such computer materials on local area networks, multiple terminals, workstations, or personal computers, City employees shall use the computer materials only in accordance with the terms of the license agreement granted to the City by the software developer or the copyright holder.

3. Computer materials shall only be used internally for duties relating to City matters arising within the scope of employment with the City.

4. City employees learning of any unauthorized reproduction or copying of computer materials or related documentation shall notify their supervisor or department director.

5. Pursuant to the Copyright Act of the United States, the illegal reproduction of software may subject the violator to civil damages of as much as \$100,000.00 and criminal penalties which include both fines and imprisonment. City employees who make, acquire, or use unauthorized copies of computer software may be subject to discipline, including termination, as appropriate under the circumstances.