



PERSONNEL RULES AND PROCEDURES

Last Revised: March 2021

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DEFINITION OF TERMS

Last Revised: September 2020

DEFINITION OF TERMS

The following terms, whenever used herein shall be defined as follows:

"Additional Duties Assignment:" An employee required to perform significantly different duties that are not normally part of the classification to which they are assigned.

"Administrative Leave:" Absence of an employee from work where the City, in the exercise of its judgment, determines that an employee must be removed from the workplace for investigatory or other legitimate purposes. The employee shall be paid while on administrative leave.

"Advancement:" A salary increase within the limits of the pay range established for a class.

"Allocation:" The assignment of an individual position to an appropriate class on the basis of the duties performed, and the authority and responsibilities exercised, or the assignment of a class to a salary range or salary rate.

"Anniversary Date:" The date of appointment, employment, reinstatement, reclassification or re-employment, or the date of promotion to a new position having a higher salary range, unless otherwise provided herein.

"Applicant:" Any person submitting a formal, completed and signed application for employment with the City.

"Appointing Authority:" The City Manager of the City of Irvine, or his/her designee, shall be the appointing authority and shall have the final authority to administer these rules, including to demote, dismiss, reduce in pay or suspend without pay any employee in the competitive service.

"Appointment:" The employment of a person in a position.

"At-will Employee:" An employee whose position serves at the pleasure of the appointing authority, is excluded from the competitive service, and is not entitled to any benefits or protections provided by these rules and procedures.

"CFRA:" The California Family Rights Act.

"City:" The City of Irvine.

"City Representative:" The Personnel Officer of the City or his/her designee shall be the City Representative in employer-employee relations.

"Class:" A grouping of positions which are sufficiently similar in duties, authority,

responsibility and working conditions, and share common standards of selection, transfer, promotion, and compensation.

"Class Specification:" A written description setting forth factors and conditions which are characteristic of positions in a classification.

"Class Title or Title of Class:" The designation given to, or name applied to, a class or to each position allocated to the class and to the legally appointed incumbent of each position allocated to the class. Its meaning is set forth in the corresponding class specification.

"Classification Plan:" The designation of a title for each class, together with the specifications for each class, as prepared and maintained by the Personnel Officer.

"Compensation:" The salary, wage allowances and other forms of valuable considerations, earned by or paid to any employee by reason of service in any position, but does not include allowances authorized and incurred as incidental to employment.

"Competitive Service:" The positions of employment in the service of the City, except those specifically excluded by ordinance or these rules, whereby City employees are hired and promoted through a competitive process based upon objective standards of merit to assure fair consideration of all aspects of employment/promotion. Full-time positions in the competitive service shall be designated as regular on the position controllist.

"Confidential Employee:" An employee whose duties would give the employee access to confidential decisions or the decision-making process of the City concerning any matter relating to employer-employee relations.

"Continuous Service:" Employment with the City without break or interruption. Absences without pay, whether authorized or not, of thirty (30) days or more shall be construed as a break or interruption in employment, unless otherwise provided by federal and/or state law.

"Council:" The City Council of the City of Irvine.

"Decertification:" The process of withdrawing recognition of a Recognized Employee Organization.

"Demotion:" The movement of an employee from one class to another class having a lower maximum rate of pay.

"Discipline:" The dismissal, demotion, suspension, withholding of pay, reduction of pay or accrued leave, written reprimand or formal warning or any other action for punitive or corrective reasons.

"Dismissal:" The discharge or involuntary termination of employment.

"Eligible:" A person whose name is on an active re-employment, promotional or open

eligibility list and who may, under these rules and procedures, be certified for consideration of appointment to a position in the competitive service.

"Eligibility List:" A list of names of persons who have taken a competitive examination for a class in the competitive service and have qualified.

"Emergency Employee:" A person appointed to a City position due to an immediate need generated by a natural disaster or other unanticipated occurrence.

"Employee:" A person legally occupying a budgeted position in the competitive service. Contractors are not considered employees under these Rules.

"Employee Representative:" The authorized representative of a Recognized Employee Organization.

"Employee Unit:" A unit which has been established in accordance with these rules and procedures.

"Equal Employment Opportunity (EEO):" The policy of the City of Irvine that all employment practices will be conducted in a manner as to assure equal opportunity for all persons.

"Examination:"

- (a) *Competitive examination:* An examination for a particular class that is open to persons meeting the qualifications for the class.
- (b) *Continuous examination:* An open-competitive examination which is administered periodically, and as a result of which, names are placed on an eligibility list for a period of not more than one year.

"Extended Part-time Employee (EPT):" Part-time employees appointed to assignments which require a minimum of thirty (30) hours of work per week on a permanent year-round basis.

"FEHA:" Fair Employment and Housing Act.

"FLSA:" The Fair Labor Standards Act.

"FLSA Exempt Employee:" An employee in a classification that is considered exempt from the guidelines of the FLSA, and as such, is not eligible for overtime pay.

"FLSA Non-exempt Employee:" An employee in a classification that is considered to fall within the guidelines of the FLSA, and as such, is eligible for overtime pay.

"FLSA Section 7(k) Exempt Employee:" An employee who engages in law enforcement duties pursuant to the Department of Labor regulations set forth at 29 C.F.R. Part 553 is

subject to a partial overtime exemption pursuant to 29 U. S. C. § 207(k) (i.e., Section 7(k) of the Fair Labor Standards Act).

"FMLA:" The Family and Medical Leave Act.

"Full-time Employee:" An employee assigned by the appointing authority to a designated regular full-time position as determined by the position control list or a temporary position. A full-time employee's normal assigned work hours equal a forty-hour workweek. Sworn employees may work more than forty (40) hours per week as part of a regular, full-time assignment, in accordance with Section 207(k) of the FLSA.

"Grade Order List:" A listing of the titles and salary ranges for full-time classes in the competitive service.

"Grievance:" A complaint by a regular or probationary employee concerning his or her own working conditions pursuant to these rules and procedures. Grievances must relate specifically to actions or conducts affecting the employee filing the grievance.

"Grievance Procedure:" The systematic means by which an employee may obtain consideration of a grievance.

"Human Resources:" The Human Resources Division within the Administrative Services Department in the City of Irvine.

"IAL:" Industrial Accident Leave.

"Impasse:" The point at which the City Representative and an Employee Representative agree that they are unable to reach agreement concerning a subject over which the City is required to meet and confer in good faith. Impasse shall occur only upon agreement between the City Representative and a duly authorized Employee Representative.

"Industrial Accident Leave:" Salary continuance, provided by current MOU's and Rules and Procedures, for an employee unable to work due to a work related injury or illness.

"Job-Sharing Employee:" An employee that has been approved by the appointing authority to share one (1) budgeted full-time position with another employee, typically by each working twenty (20) hours per week.

"Layoff:" The separation of an employee from the active work force due to lack of work or funds, or the abolition of the position by the City Council.

"Leave:" Absence of an employee from work, whether paid or unpaid, authorized or unauthorized.

"Management Specialist:" A category of classification to describe specialty positions that have at-will employment status and are generally appointed by the City Manager to

work on special assignments of a temporary or permanent nature and/or to fulfill positions requiring special skills or abilities.

“Merit System:” A system which places emphasis on selection, advancement and retention of employees on the basis of demonstrated individual merit.

“Modified Duty:” Temporary work assignment, which accommodates work restrictions and allows an employee to work while recovering from an injury or illness, whether industrial or non-industrial.

“Modification:” The process of modifying established, appropriate employee units in accordance with these rules and procedures.

“Negotiation:” The process by which an Employee Representative and the Personnel Officer or his/her designee meet a reasonable number of times and confer in good faith in an effort to agree upon joint recommendations for presentation to the City Council regarding wages, hours and other terms and conditions of employment. When appropriate, proposals and counter-proposals may be used to resolve differences in an effort to avoid an impasse. The negotiation process does not obligate either party to accept a proposal or make a compromise.

“Out-of-Class Appointment:” An appointment of limited duration to a vacant position in a higher classification during a recruitment.

“Overtime:” The working by employees covered by the Fair Labor Standards Act of more than forty (40) hours in a defined workweek.

“Part-time Employee:” An employee whose normal assigned work hours are less than 40 hours in a defined work week, or 40 hours in a defined work week for an identified time period, not to exceed three years, and whose position as assigned by the appointing authority is not designated as a full-time position on the position control list. It is not the City’s intent that part-time employees become part of the competitive service.

“Personnel Officer:” Shall mean the Assistant City Manager or his/her designee.

“Position:” A combination of duties and responsibilities assigned or delegated, requiring the full or part-time services of an employee.

“Position Control List:” A listing of the number of budgeted positions in the competitive service by classification which have been approved by the City Council.

“Probationary Employee:” An employee working within his/her probationary period.

“Probationary Period:” A working test period during which an employee is required to demonstrate his/her fitness for the duties to which he/she is appointed by actual performance of the duties of the position. An employee may be dismissed without cause

during his/her probationary period.

"Promotion:" The movement of an employee from one position to another which is allocated to a class having a higher rate of pay.

"Reallocation:" The reassignment of a classification to a pay grade or salary range that is different than the pay grade or salary range previously assigned.

"Reclassification:" A reassignment or change in allocation of an individual position by raising it to a higher class, reducing it to a lower class or moving it to another class at the same level, on the basis of a re-evaluation of the kind, difficulty or responsibility of duties performed or the minimum qualifications in such position, or any change in the classification plan, class specifications or class determination, including reallocation of a class to a different pay grade.

"Recognized Employee Organization:" An employee organization which, after completion of all necessary employee organization recognition procedures, has been formally recognized by the City as an exclusive representative employee organization which represents employees of the City. An employee organization so recognized shall be the only Recognized Employee Organization of the Employee Unit for purposes of employee-employer relations.

"Reduction (in pay):" A decrease in salary within the pay range established for a class.

"Re-employment list:" A list of probationary and regular employees who have been laid off, or demoted in lieu of layoff, or who have resigned from their positions according to the provisions of Article 21, Section 5 of these rules and procedures, and who qualify for employment pursuant to these Rules. The names of employees placed on re-employment lists shall remain on the list for not more than one year.

"Regular Employee:" An employee who has successfully completed the probationary period in a particular class in the competitive service and has been retained in employment with the City as hereafter provided in these rules and procedures. Unless otherwise designated, this definition refers to full-time employees. Regular part-time employees hired before May 8, 1997 shall retain the designation of a regular employee within the competitive service. All other part-time employees hired on or after May 8, 1997 shall be "at-will" and serve at the pleasure of the appointing authority.

"Reinstatement:" The re-employment without examination of a former regular employee within one year following his/her resignation from employment with the City, or from a non-paid leave of absence of more than thirty (30) calendar days. Upon reinstatement, the employee shall be subject to the probationary period prescribed for the class. No credit for former employment shall be granted in computing salary, vacation, sick leave or other benefits.

"Resignation:" The voluntary termination of an employee from employment with the City.

“Retirement:” The separation of an employee from employment with the City due to retirement.

“Rolling Calendar:” Refers to the immediate preceding 12 months (i.e. June 10, 2001 – June 9, 2002)

“Selection Process:” The process of testing, evaluating and/or investigating, and determining the fitness and qualifications of applicants.

“Seniority:” The total amount of actual continuous service as a regular full-time employee, excluding unpaid leaves of absence exceeding thirty (30) or more calendar days.

“Separation:” Leaving the service of the City for any reason.

“Suspension:” The temporary separation from the City service of an employee without pay for disciplinary purposes.

“Sworn Employee:” Employees of the police function who actively engage in the enforcement of the laws of the State of California and the ordinances of the City, as defined in California Penal Code § 830, et seq.

“Temporary Employee:” An employee who works either part- or full-time, and whose position is funded on a seasonal or other limited time period basis.

“Termination:” The separation from employment with the City.

“Transfer:” A change of an employee from one position to another position in the same class or in a comparable class, or from one department to another.

“Vacancy:” A budgeted position not occupied by an employee.

“Veteran:” An individual as defined in Section 18973 of the California Government Code.

“Volunteer:” An individual who has agreed to provide a service to the City with no expectation of monetary compensation, for civic, charitable or humanitarian reasons.

“Workday:” The number of hours an employee in each position is required to work per day as set forth by department procedures.

“Y-Rated:” A temporary hold placed on the hourly rate or salary of an employee, who is above the maximum point for the classification and pay grade into which he/she has been placed. An employee whose salary has been y-rated, shall not receive a merit bonus, merit increase, or any other increase to base salary until his/her hourly rate or salary is at, or below, the maximum point for his/her current classification.

ARTICLE 1 - GENERAL PROVISIONS

Last Revised: March 2008

ARTICLE 1 - GENERAL PROVISIONS

SEC. 1 "Purpose:" These rules and procedures establish the personnel system for the City and are applicable to the competitive service as adopted pursuant to Division G, Section Two of the City's Municipal Code. The City Manager, or his/her designee, upon the recommendation of departmental administrators, shall have authority to appoint, promote, discipline, demote and dismiss all officers and employees of the City included in the competitive service. These rules and procedures supersede and replace all previous rules, policies and procedures.

SEC. 2 "Application of Rules:" These rules and regulations shall apply to all officers and employees in the service of the City, except the following, as defined in the City Municipal Code:

- The City Manager;
- Assistant City Manager;
- Elective officers;
- Members of appointive boards; commissions and committees;
- All executive management employees and all non-sworn management employees appointed on or after June 26, 1997;
- Persons engaged under contract to supply expert, professional, technical or any other services;
- Volunteer personnel, such as volunteer reserve police officers;
- City Clerk;
- City Attorney;
- City Treasurer;
- Emergency employees who are hired to meet the immediate requirements of an emergency condition, such as extraordinary fire, flood, earthquake, etc., which threatens life or property;
- Temporary employees, whether part-time or full-time;
- Council Executive Assistants;
- All part-time employees hired on or after May 8, 1997;
- Zoning Administrator;
- All employees in classifications covered by the Classification and Compensation Policy for Management and Non-Represented Employees (Exempt) ;
- Employees whose positions are funded under a state or federal employment program.

These employees are at-will and hold their positions at the pleasure of the City Council or City Manager and are not entitled to any benefits or protections provided by these rules and procedures. However, the provisions of Articles 12 (Harassment in the Workplace) and 13 (Violence in the Workplace) of these Rules shall apply to all City employees and to non-employees, including City elected officials and volunteers.

SEC. 3 "No Contract:" These rules do not create any contract of employment, expressed or implied, or any rights in the nature of a contract.

SEC. 4 "Management Rights:" In order to ensure that the City shall have the ability to carry out its functions to provide continuing public services, the City retains the sole and exclusive right, responsibility and authority to manage municipal services and the work force performing those services, as defined in the City Charter, Municipal Code and resolutions, including, but not limited to the following rights.

- To determine the standards and levels of services to be rendered; operations to be performed; utilization of technology, equipment and facilities; location, means and method of operations; and overall budgetary matters including, but not limited to, the right to contract or sub-contract any work, services or operations of any agency or department.
- To direct and manage the employees of all City agencies and departments; to transfer, promote, hire and assign employees to positions within the City; to determine the appropriate number, qualifications and job classifications, organizational structure and levels of personnel required; to determine the size and composition of all agencies and departments and to establish work schedules and assignments.
- To determine policies, procedures and standards for selection, training and promotion of employees.
- To relieve employees from duties, or to discipline and dismiss employees, subject to the requirements of applicable law.
- To relieve at-will employees from duties for any reason or to discipline, up to and including dismissal of such at-will employees for any reason or no reason, so long as it is not for unlawful reasons.
- To establish performance standards for employees and to require compliance therewith.
- To take whatever actions may be necessary to carry out the mission of the City agencies and departments in situations of emergency.
- To implement rules and regulations, policies and procedures consistent with law.

The right of and responsibility for final decisions regarding wages, hours, and other terms and conditions of employment shall be within the exclusive discretion of the City Council.

SEC. 5 "Employee Rights:"

- Employees shall have the right outside of their regular working hours to form, join and participate, in the activities of employee organizations of their own choosing; and employees shall have the right to refuse to join or participate in the activities of any employee organization and shall have the right to represent themselves individually in their employee-employer relations with the City. Neither the City nor any employee organization shall interfere with, intimidate, restrain, coerce or discriminate against employees who exercise their rights under this section.
- Employees shall have the right to provide input on proposed new or revised policies, rules and regulations that affect the salaries, benefits, and working conditions of said employees in accordance with state law.
- These rules and procedures shall not infringe upon any rights or benefits members of employee organizations may enjoy pursuant to the terms and conditions of any applicable memorandum of understanding ("MOU").

SEC. 6 "Personnel Actions:" Any action concerning an employee's appointment or change in the status of employment shall be processed on a Personnel Action Form. Each departmental administrator shall prepare such form according to procedures established by the Personnel Officer. Any appointment or change in the status of employment shall only become effective upon action of the Personnel Officer. Each employee shall receive a copy of any Personnel Action Form that concerns the employee's status of employment.

SEC. 7 "Personnel Files:" The official personnel file for each City employee shall be maintained by Human Resources. An employee, or the employee's representative with written consent signed by the employee, shall have the right to review his/her official personnel file only in Human Resources by scheduling a specific date and time with the Personnel Officer or his/her designee. The request for review shall be made at least twenty-four (24) hours in advance. Documents designated by law as confidential shall not be subject to review by the employee, unless otherwise provided pursuant to Government Code 3300 et al. seq. for sworn employees.

SEC. 8 "Severability:" If any section, subsection, sentence, clause or phase of these rules and procedures is found to be illegal or unconstitutional, such findings shall not affect the validity of the remaining portions of these rules and procedures.

SEC. 9 "Amendment and Revision of Rules:" Amendments and revisions shall become effective upon the approval of the City Council. Amendments to these Rules may be authorized by the Personnel Officer, with approval by the City Council within ninety (90) days.

SEC. 10 "Violation of Rules:" Violation of the provisions of these rules and procedures shall be grounds for rejection from probation and disciplinary action, up to and including dismissal.

ARTICLE 2 – EQUAL EMPLOYMENT OPPORTUNITY

Last Revised: March 2008

ARTICLE 2 - EQUAL EMPLOYMENT OPPORTUNITY

SEC. 1 "Equal Employment Opportunity:" Personnel actions will comply with all applicable state and federal laws prohibiting discrimination in employment based on an employee's or applicant's race, religious creed, color, national origin, ancestry, mental or physical disability, medical condition, marital status, sexual orientation, veteran status, sex, pregnancy, or age, or perception that an individual has any of these characteristics, or associates with individuals who have or are perceived to have these characteristics. Any technique or procedure used in the recruitment and selection of employees shall be designed to measure only the job-related qualifications of applicants.

SEC. 2 "Communication:" The Equal Employment Opportunity policy shall be communicated to employees. Outreach efforts will be made to solicit employment applications from a broad base of applicants.

SEC. 3 "Periodic Review:" Employee records shall be maintained as required by law. The Personnel Officer or his/her designee will periodically review data on recruitment, selection, employee development, compensation and turnover, and make recommendations for eliminating potentially discriminatory practices, if any.

SEC. 4 "Affirmative Action:" It is the policy of this City to promote and ensure equal opportunity for application, employment and upward mobility in City employment without discrimination. The City's personnel system shall be administered so as to remove artificial and unnecessary barriers to employment. However, this does not imply that the City should hire, retain or promote ineffective employees, or terminate existing staff specifically to create positions for members of protected groups. With the adoption of this policy, the City of Irvine is expressing its commitment to the concept of Equal Employment Opportunity as an integral component of the basic merit system principles.

The Personnel Officer or his/her designee has responsibility for the ongoing administration of this program.

1. Complaint Procedure: An employee or job applicant, who believes he/she has been discriminated against in a City recruitment process, may make a complaint orally or in writing to the Human Resources Division in the Administrative Services Department of the City or the Personnel Officer. Any supervisor, manager or director who receives a discrimination complaint shall notify Human Resources or the Personnel Officer immediately.
2. Investigation: Upon notification of a discrimination complaint, the Personnel Officer or Human Resources shall authorize an investigation of the complaint. The Personnel Officer or Human Resources shall determine who shall conduct the investigation and/or shall make whatever investigation he/she deems necessary.

3. Reporting Discrimination Complaints: Employees or applicants for employment may file complaints about illegal employment discrimination with the California Fair Employment and Housing Commission (FEHC) at 1390 Market Street, Suite 410, San Francisco, CA 94102, telephone: 415-557-2325; or with the Commission's Santa Ana office at 28 Civic Center Plaza, Room 538, Santa Ana, CA 92701, telephone: 714-558-4159.
4. Records: Related records will be maintained as per state and federal law.

ARTICLE 3 - CLASSIFICATION PLAN

Last Revised: March 2020

ARTICLE 3 - CLASSIFICATION PLAN

SEC. 1 "Preparation of the Classification Plan:" The Personnel Officer, or his/her designee, is responsible for ascertaining and recording the duties and responsibilities of all positions in the competitive service. After consulting with the appointing authority and department directors, the Personnel Officer shall recommend a new or revised classification plan for all such positions. The City's classification plan is based upon a broad class concept, whereby positions with similar, not necessarily identical, duties, responsibilities, authority and character of work are included in the same class, and that the same general schedules of compensation apply to all positions in the same class.

The City Council has final authority in establishing a plan for position classification, official classification titles and compensation components, including pay ranges.

SEC. 2 "Amendment and Revision of the Classification Plan:" The Classification Plan shall be adopted and may be amended from time to time by resolution of the City Council. Amendments and revisions to the Plan may be suggested to the Personnel Officer by an employee or his/her representative and shall be submitted to the Personnel Officer through the appropriate department director.

SEC. 3 "Allocation of Positions:" The City Council at any meeting thereof and after consideration of a recommendation from the Personnel Officer, may by resolution create new classes or divide, combine or abolish existing classes. The Personnel Officer shall have responsibility for allocation of positions to their appropriate class.

SEC. 4 "Classification of New Positions:" Before any new position may be filled, department directors shall consult with the Personnel Officer, or designee, to determine the classification of the proposed new position(s). Such consultation shall include a detailed written description of the proposed duties for each position and a statement defining the relationship between the proposed position(s) and other positions in the proposed work unit.

The Personnel Officer, or designee, shall assign each proposed position to an existing classification, or if appropriate, shall designate a new classification and salary range for consideration by the City Manager and City Council.

SEC. 5 "Reclassification of Existing Positions:" Whenever, because of a revision in organization or methods, a significant change of the duties or responsibilities of any existing position is made which may require the reallocation of such position, or whenever a new class is created to which any position may more appropriately be allocated, or whenever, because of the abolishment or combination of any existing positions or classes, or the result of a routine review, an amendment of the classification plan is required, the Personnel Officer, upon his/her own initiative, or written request from the City Manager or a department director, may authorize the study of the classification of any position or groups of positions. On the basis of such study, the Personnel Officer shall recommend such changes as he/she deems appropriate to the City Council.

- A. The Personnel Officer shall periodically order a review of classifications in certain series or occupational groups. The frequency and method of such review shall be at the discretion of the Personnel Officer. Nothing herein shall obligate the City to study any classifications.
- B. The City Manager or department director, or an employee with approval from the department director, may request a review of the classification of specific positions under procedures established by the Personnel Officer.
- C. Positions in classifications designated as flexibly-staffed classifications may be allocated at either the Assistant/I or Associate/II level in the applicable series at the discretion of the Department Director. Such determination shall be based on the responsibilities/complexity of duties of the position and the level of experience and expertise of the incumbent/appointee.

Employees at the training/entry (Assistant/I) level of flexibly-staffed classifications may be reclassified to the journey (Associate/II) level in the applicable classification series upon acquiring the skills and experience necessary for performance of the journey level, and upon successful completion of the probationary period. The department director shall have responsibility for determining whether an employee is qualified to be reclassified under these rules and procedures, subject to verification that the employee meets the minimum qualifications of the journey level classification, in accordance with provisions established by Human Resources.

Upon reclassification of a position to a different classification with a higher pay grade or salary range, a current City employee shall receive a salary increase of eight percent (8%) above his/her current salary, limited to the maximum point of the higher salary range, or shall be paid at the entry rate of the new classification, whichever is higher. Upon reclassification to a classification with a lower pay grade or salary range, the salary of a current employee shall be frozen until the employee's salary is within the salary range of the new classification (Y-rated). In this case, the employee shall only be eligible for salary advancement resulting from their regular performance evaluation when the maximum salary rate of his/her new classification is at or above the employee's current salary. The anniversary date and the dates for performance evaluations shall not change.

SEC. 6 "Reallocation:" Upon periodic review of salaries relative to the marketplace or as a result of a classification review, the Personnel Officer may reallocate a classification(s) to higher or lower pay grade or salary range. Upon reallocation to a higher pay grade pursuant to this paragraph, an employee shall be paid at their current salary or the entry rate of the new pay grade or salary range, whichever is higher. Upon reallocation to a pay grade or salary range with a lower maximum salary rate than the employee's current salary, the salary of the employee shall be frozen until the employee's salary is within the salary range of the new pay grade (Y-rated). Under these provisions, a reallocation to achieve competitiveness with the marketplace may or may not result in a salary increase for an employee, and is not subject to any salary increase provisions stated above under "reclassification."

SEC. 7 "Additional Duties Assignment" If an employee is required to perform significantly different duties that are not normally part of the classification to which they are assigned, and they perform these duties in addition to the duties that are normally considered part of their classification, that employee shall receive a salary increase of five percent (5%) above their current salary. Such assignments must be a minimum of 30 days. If a vacancy exists, the provisions included under "Out-of-Class Appointment" in these Rules shall apply. The department director shall recommend in writing to the Personnel Officer whether an employee is eligible for this provision. The Personnel Officer or his/her designee shall have complete authority to determine whether an employee meets the requirements of this provision. The salary increase may be removed at any time without right of appeal or hearing.

SEC. 8 "Class Specifications:" The Personnel Officer has responsibility for the development, maintenance, and content of all official class specifications.

SEC 9 "Class Title:" The City Manager may change the title of positions subject to future ratification by the City Council; and the City Manager may allow the use of working titles for recruitment purposes or any other business purpose.

SEC. 10 "Use of Class Title:" The title of the class to which any position is allocated shall be used in all official personnel records, correspondence, and in all official personnel transactions of the City.

ARTICLE 4 – RECRUITMENT AND TESTING

Last Revised: March 2008

ARTICLE 4 - RECRUITMENT AND TESTING

SEC. 1 "Applications and Applicants:"

- A. *Announcement:* All examinations for positions in the competitive service shall be publicized by posting announcements at various City facilities, on official bulletin boards, and by such other methods as the Personnel Officer deems advisable. The announcements shall specify the title and pay for the positions; the nature of the work to be performed; the minimum qualifications; the method of applying; the closing date for the application, if one is established; whether a medical and/or psychological examination, including a drug screen, will be required, post-offer of employment, and such other information as is deemed necessary in the discretion of the Personnel Officer or designee.
- B. *Application Forms:* Applications shall be made as prescribed on the examination announcement. Application forms shall require information covering training, experience, and other pertinent information, and may include certificates of skill level, references and fingerprinting, if appropriate
- C. *Disqualifications:* The Personnel Officer shall reject any application which indicates on its face that the applicant does not possess the minimum qualifications required for the position or is not able to provide proof of their ability to work in the United States, except when this ability is not required by state or federal law. Applicants shall be rejected if the applicant is physically or mentally unable to perform the essential functions of the job, with or without reasonable accommodation; is a current user of illegal drugs; has been convicted of a felony or misdemeanor that relates to the position duties that the applicant would perform; has made any false statement of any material fact or practiced fraud or deception in making the employment application; directly or indirectly obtained information regarding examinations; failed to submit the employment application correctly or within the prescribed time limits; has had his or her privilege to operate a motor vehicle in the State of California suspended or revoked if driving is job related; and for any material cause which in the judgment of the Personnel Officer or his/her designee would render the applicant unfit for the position, including a prior resignation from the City, dismissal from the City, or a significant disciplinary action.

Those applications, which have been determined to be defective by the Personnel Officer, may be returned to the applicant with notice to amend and refile, providing the time limit for receiving applications has not expired. Whenever an application is rejected, notice of such rejection shall be sent to the applicant by the Personnel Officer or designee.

SEC. 2 "Nature and Types of Examination:" The selection techniques used in the examination process shall be impartial, of a practical nature and shall relate to those subjects which, in the opinion of the Personnel Officer, measure the relative capacities of the applicants to execute the duties and responsibilities of the class to which they seek to

be appointed. Examinations shall consist of selection techniques which will test the qualifications of applicants such as, but not necessarily limited to, achievement and aptitude tests, other written tests, personal interviews, performance tests, polygraph tests, evaluation of daily work performance, work samples, physical agility tests, medical tests, successful completion of prescribed training, or any combination of these or other tests.

- A. *Open-competitive Examinations:* Open-competitive examinations may be conducted whenever, in the opinion of the Personnel Officer, the needs of the service require. Open-competitive examinations may include any of the selection techniques described in these rules and procedures or any combination of them.
- B. *Continuous Examinations:* Continuous examinations may be administered periodically for a single classification or classification series, as the needs of the service require. Names shall be placed on eligibility lists, and shall remain on such lists, as prescribed in these rules and procedures.

SEC. 3 "Conduct of Examination:" The City Manager or his/her designee may contract with any competent agency or individual for the preparation and/or administration of examinations. In the absence of such a contract, the Personnel Officer or his/her designee shall be responsible for causing these duties to be performed. The Personnel Officer shall arrange for the use of buildings and equipment for the conduct of the examination.

After the time limit for receiving applications for a particular position has expired, the Personnel Officer or his/her designee shall determine the total number of applicants who meet the minimum qualifications for the position. If the Personnel Officer determines that giving an examination of the nature and type appropriate to all the qualified applicants would unnecessarily burden the sources available to the City, the Personnel Officer or his/her designee may rank, for qualifying purposes only, the applications submitted on the basis of the applicant's experience, education, training, and work history (not necessarily in this order) as related to the particular position, and may choose those applicants whom he/she determines would best fit the position. The chosen applicants shall then be given further examination in order to obtain a score for placement on the eligibility list. Any regular, probationary full-time or part-time employee who elects to participate in the recruitment and meets the minimum requirements for the position will be eligible to compete in the examination process in order to obtain a score for placement on the eligibility list.

The selection process may include a qualifying written and/or practical examination prior to an oral interview. Any regular or probationary full-time employee who elects to participate in a recruitment that 1) meets the minimum requirements for the position and 2) achieves a qualifying score on the written and/or practical examination (if such an examination is conducted for the recruitment) will be invited to the oral interview. Current City of Irvine employees will automatically receive an additional five (5) points to their score if the examination process includes a written or graded test.

In the event that the appointing authority or his/her designee determines that a veteran has qualifications identical to those possessed by another applicant, based upon the veteran's and the other applicant's examinations, interviews, experience, education, training and work history, the appointing authority or his/her designee shall grant a preference to the veteran.

SEC. 4 "Qualifying Scores:" Unless otherwise specified in the applicable Memorandum of Understanding between the City and a Recognized Employee Organization, the Personnel Officer shall establish a procedure for determining qualifying scores for each examination. The Personnel Officer may, at his/her discretion, include as a part of the examination, tests that are qualifying only and set minimum standards.

The Personnel Officer or his/her designee shall predetermine a selected "minimum pass point" for any qualifying written and/or practical examinations used in the selection process. Any regular or probationary full-time employee who achieves a qualifying score at or above the predetermined minimum pass point will be invited to participate in the oral interview. At the Personnel Officer's discretion, the minimum pass point may be lowered. Ratings or scores on qualifying examinations will not be reported or revealed to raters during the oral interview process.

Where practical and applicable, the Personnel Officer shall provide employees with the opportunity to participate in written and practical examinations conducted by Human Resources for the purposes of pre-qualifying for future recruitments. Any regular or probationary full-time employee who achieves a qualifying score at or above the predetermined minimum pass point will automatically be eligible to participate in the oral interview phase of the selection process for the next recruitment in that specific classification as long as the next recruitment occurs within 12 months after the date of the written and/or practical examination.

Failure in any one part of the examination, or failure to meet an established standard described in the job announcement, may be grounds for declaring an applicant as failing in the entire examination or as disqualified for subsequent parts of the examination.

Unless otherwise specified in the applicable Memorandum of Understanding between the City and a Recognized Employee Organization, the process for determining qualifying scores and the examination scores cannot be appealed.

SEC. 5 "Notification of Examination Results and Review of Papers:" Each applicant in an examination shall be given notice of whether he/she passed or failed the examination.

Any applicant shall have the right to inspect his/her own examination papers to the extent provided by the contracting test agency within five (5) working days after the notices of examination results are mailed, as established by the Personnel Officer. Any error in computation, if called to the attention of and confirmed by the Personnel Officer or his/her designee within this period shall be corrected and the final score adjusted accordingly.

Such corrections shall not, however, invalidate appointments previously made. Examination papers of applicants are not subject to inspection by the public nor by other applicants.

SEC. 6 "Post-offer Physical Examination:" In order to be eligible for employment with the City, applicants may be required to pass a physical examination, the character of which shall be in accordance with standards consistent with applicable state and federal laws.

All applicants in the same classification shall receive the same physical examination. In the event that an applicant fails to pass such physical examination, the applicant's department director and the Personnel Officer may allow said applicant to seek medical treatment, at the applicant's own cost, to cure or eliminate the medical problem within a reasonable period of time, or the department director may recommend to the Personnel Officer not to employ the applicant. Pre-employment physicals will only be required once a conditional job offer is made.

As a condition of employment, persons who work in positions requiring contact with children are required to certify that they are free from communicable tuberculosis as required by state law. Such certifications shall be maintained on file within the applicable departments.

SEC. 7 "Pre-Offer Investigations:" As part of its pre-offer selection procedures, the City may also conduct an investigation and review of an applicant's personal background and references, which may include, but is not limited to, credit check, Department of Motor Vehicles records check and/or fingerprinting.

ARTICLE 5 – METHOD OF FILLING VACANCIES

Last Revised: March 2020

ARTICLE 5 - METHOD OF FILLING VACANCIES

SEC. 1 "Notice to Personnel Officer:" Whenever a vacancy in the competitive service is to be filled, the responsible department director shall notify the Personnel Officer or his/her designee in the manner prescribed herein. If there is no re-employment list available for the class, the appointing authority shall have the sole discretion to fill the vacancy by reinstatement, transfer, demotion, or appointment from an eligibility list.

When a department director requests a vacancy be filled by appointment from an eligibility list, the Personnel Officer or his/her designee shall certify from the specified list(s) the names of the eligible willing to accept appointment. In addition, names of individuals appearing on a re-employment list shall be certified to the appointing authority without undertaking an additional qualifying examination. Notwithstanding any other provision of these rules and procedures, if there are less than five (5) names on an eligibility list, the department director or designee may declare such list void and fill the position(s) by any method permitted by these rules and procedures, including, but not limited to, undertaking new recruiting and testing procedures. Eligibility lists shall become effective upon the certification by the Personnel Officer or his/her designee.

SEC. 2 "Selection Process:" The Personnel Officer shall determine whether an adequate number of applicants with appropriate skills to constitute a competitive merit process exist to conduct recruitment, as follows.

- A. *Open Selection Process:* An open selection process shall be held for all position vacancies in each class and class series, unless otherwise provided by these Rules.
- B. *Internal Selection Process:* When appropriate, vacancies within the competitive service may be filled by promotion or transfer of probationary or regular employees or other employees at the discretion of the appointing authority. Such promotion/transfer shall be based on competitive examination and may include one (1) or more of the selection techniques set forth in these rules and procedures and measures of qualifications as may be determined by the Personnel Officer or his/her designee.
- C. *Open Continuous Selection Process:* When necessary to meet continued requirements for filling a position or positions due to non-availability of a sufficient number of applicants for a class or position, or a high turnover rate, the closing date for any recruitment may be indefinite and applicants may be tested continuously in such a manner and at such times and places as may be approved by the Personnel Officer.

SEC. 3 "Eligibility Lists:" As soon as possible after the completion of an examination, the Personnel Officer or his/her designee shall prepare and keep available an eligibility list consisting of the names of applicants who qualified in the examination(s). Applicants on an eligibility list may be considered for future vacancies in the classification for which they originally applied, or by approval of the Personnel Officer, for vacancies in a related classification with a pay grade at or below the pay grade of the position for which they originally applied.

- A. *Duration of lists:* Eligibility lists for non-sworn positions shall remain in effect for six (6) months, unless exhausted, amended supplemented or abolished by the Personnel Officer. Eligibility lists for sworn positions shall remain in effect for twelve (12) months unless exhausted, amended, supplemented or abolished by the Personnel Officer. An eligibility list may be extended for additional periods prior to its expiration date, by action of the Personnel Officer.
- B. *Re-employment lists:* The names of probationary and regular employees who have been laid off or demoted in lieu of layoff shall be placed on appropriate re-employment lists. Such names shall remain thereon for a period as defined in these rules and procedures.

Full-time employees on re-employment lists shall receive first consideration for vacancies within job classes requiring basically the same qualification, duties, and responsibilities as the class from which layoff or demotion in lieu of layoff was made.

- C. *Removal of names from lists:* The name of any person appearing on an eligibility or re-employment list may be removed by the Personnel Officer if the eligible requests in writing that his/her name be removed, or if he/she fails to respond to a notice mailed to his/her last known address, or for any of the reasons specified in these rules and procedures.

SEC. 4 "Appointment:" After interview and background investigation, the responsible department director shall recommend to the appointing authority appointments from among those certified, and shall immediately notify the Personnel Officer of the person(s) recommended for appointment. The person accepting appointment shall present him/herself to the Personnel Officer, or his/her designated representative, for processing on or before the date of appointment. If the applicant accepts the appointment and presents him/herself for duty within such period of time, as the appointing authority shall prescribe, he/she shall be deemed to be appointed; otherwise, he/she shall be deemed to have declined the appointment.

The initial compensation to be paid for employment in any position shall normally be the minimum of the appropriate salary range. Where it is found to be difficult to obtain qualified personnel for a position or if a person of unusual qualifications is to be employed in a position, a higher salary may be authorized. The department director may approve hiring at a salary that is no more than 10% above the minimum of the appropriate salary range. Initial compensation, which is 10% or more above the minimum of the appropriate salary range, must be approved by the Personnel Officer or his/her designee. Under no circumstances shall the salary upon appointment be established above the maximum rate of the appropriate salary range.

SEC. 5 "Out-of-Class Appointment:" All vacancies in the competitive service shall be filled by appointment, transfer, demotion, re-employment, or reinstatement. In the absence of persons eligible for appointment in these ways, or where appointment from an existing eligibility list is not operationally practical, out-of-class appointments may be made by the appointing authority of a person meeting the minimum training and experience qualifications for the position. An out-of-class appointment shall be made during the

recruitment of a vacant position.

Out-of-class appointments shall not be made for a period less than twenty-eight (28) days, unless the appointing authority specifically approves a different time period. The maximum length of an out-of-class appointment shall be as provided in the applicable Memorandum of Understanding and conform with CalPERS regulations. Out-of-class appointments shall not exceed a period of six (6) months without approval of the appointing authority. The appointment is further limited to no more than 960 hours in a fiscal year.

An out-of-class employee may be removed at any time without the right of appeal or hearing. An out-of-class employee's service shall be terminated at the time of an appointment from the appropriate eligibility list. Upon termination, out-of-class appointees who were previously employed with the City will be returned to their regular position and the employee shall retain his/her original anniversary date(s) and dates for performance evaluations.

- A. Upon an out-of-class appointment, a current City employee shall receive a salary increase of five percent (5%) above his/her current salary, limited to the maximum point of the out-of-class classification's salary range, or shall be paid at the entry rate of the out-of-class classification, whichever is higher. If, during the course of the out-of-class appointment, an employee would have received a merit increase in their regular position, their out-of-class salary shall be adjusted based on the out of class appointment.

In the event that the employee is on probation in his/her regular position, he/she shall only receive the merit adjustment in salary contingent upon satisfactory performance in the probationary position prior to the out-of-class appointment. Upon termination of the out-of-class appointment, the salary for employees shall be the same salary received prior to the out-of-class appointment with any applicable merit or salary adjustments.

- B. An out-of-class employee who was on probation prior to the out-of-class appointment shall be required to complete the original probationary period upon termination from the out-of-class appointment. Out-of-Class employees appointed to classes outside their regular bargaining unit, or part-time employees appointed out-of-class to full-time classes are not entitled to a change in physical examination or psychological benefits during the period of their out-of-class appointment.
- C. A part-time employee appointed to an out-of-class position will receive a merit increase only when they are reinstated to their part-time position.

No special credit shall be allowed in meeting any qualifications or in the giving of any test for service rendered under an out-of-class appointment.

ARTICLE 6 – PROBATIONARY PERIOD

Last Revised: March 2008

ARTICLE 6 - PROBATIONARY PERIOD

SEC. 1 "Objective of Probationary Period:" The probationary period shall be regarded as a continuation of the examination process. During the probationary period, the employee's work performance shall be closely observed and evaluated to determine the employee's fitness for his/her position.

SEC. 2 "Probationary Periods/Appointments to Positions:" All regular appointments shall be subject to a probationary period of not less than six (6) months actual and continuous service for non-sworn employees covered by these rules and procedures. For sworn employees, all regular appointments shall be subject to a probationary period of eighteen (18) months actual and continuous service, except that probationary periods for lateral transfers shall be reduced to twelve (12) months, subject to extension to the extent permitted in these Rules. Periods of time on paid or unpaid leave exceeding twenty (20) working days shall automatically extend the probationary period by that number of days the employee is on leave.

Upon accepting a promotion, a non-sworn employee shall serve a new probationary period of not less than six (6) months, subject to the provisions defined herein. Upon accepting a promotion, a sworn employee shall serve a new probationary period of not less than one (1) year, subject to the provisions defined herein.

If the department director determines that the performance of the probationary employee has been satisfactory, then the department director shall file with the Personnel Officer and appointing authority a Personnel Action Form stating that such employee has passed probation. If the employee is deemed to be unsatisfactory, his/her employment will be terminated no later than the expiration of the probationary period. The Personnel Officer or his/her designee shall notify the appointing authority and the probationer being terminated prior to the expiration of any probationary period.

SEC. 3 "Extension of Probationary Period Upon recommendation from the department director and approval of the Personnel Officer or his/her designee, the probationary period may be extended for a period not to exceed one hundred-eighty (180) days. Prior to the termination date of the initial probationary period, the department director shall notify the Personnel Officer or his/her designee in writing of the intent to extend the probationary period stating the reasons therefore. With approval of the Personnel Officer, the employee shall be notified of the extension with a statement describing the deficient areas and objectives for improvement during the remainder of the probationary period.

SEC. 4 "Rejection of Probationer:" During the probationary period, an employee may be rejected at any time by the appointing authority, upon recommendation from the department director, without cause and without the right of appeal. Notification of rejection in writing shall be served on the probationary employee and a copy filed with the Personnel Officer or his/her designee. Sworn employees may be entitled to an administrative appeal as provided in Government Code § 3300 et al. seq.

An employee does not acquire regular status in the position until the successful completion of his/her probationary period. The employee is not entitled to notice or a hearing if rejected during probation.

SEC. 5 "Rejection Following Promotion:" An employee rejected during the probationary period from a position to which he/she was promoted shall be reinstated to the position and salary held prior to promotion if a vacancy exists, unless he/she is dismissed for a reason which would have been sufficient to cause his/her dismissal from his/her former position. If no vacancy exists, the employee shall be placed on a re-employment list for the classification from which he/she was promoted. Sworn employees may be entitled to an administrative appeal as provided in Government Code § 3304. Non-sworn employees are not entitled to notice or a hearing if rejected during probation following promotion.

ARTICLE 7 – EMPLOYMENT STATUS

Last Revised: March 2008

ARTICLE 7 - EMPLOYMENT STATUS

SEC. 1 "Regular Employment:"

Regular Full-time Employment: Employees assigned by the appointing authority to a designated full-time position on the position control list, who successfully complete their probationary period and who regularly work a minimum of forty (40) hours per week shall become full-time employees in the competitive service and shall be entitled to all the benefits provided herein.

Regular Part-time Employment: Employees hired before May 8, 1997, who successfully completed their probationary period and who have been designated by the Personnel Officer as part of the competitive service, shall be entitled to regular status equal to the hours worked when compared to forty (40) hours per week and shall be entitled to benefits as authorized in the applicable Compensation Resolution.

SEC. 2 "Temporary Employment:" Without following the rules regarding recruitment and selection, the City may hire full-time or part-time employees on a temporary basis. Such temporary basis shall be at the discretion of the City.

Employees working on a limited time period basis are considered "temporary" and do not acquire regular status and are not entitled to benefits and protections provided in these rules. Temporary employees are at-will and serve at the pleasure of the appointing authority and may be removed at any time without cause, notice or any right of appeal.

ARTICLE 8 - NEPOTISM

Last Revised: March 2008

ARTICLE 8 - NEPOTISM

SEC. 1 "Policy:" It is the policy of the City of Irvine not to discriminate in its employment and personnel actions with respect to its employees and applicants for employment on the basis of marital status or blood or other type of relationship. No employee or applicant for employment shall be improperly denied employment or benefits of employment on the basis of his/her marital status.

SEC. 2 "Definition:" Relationship shall include, for purposes of this Rule, any marital or blood relationship or any other relationship similar to blood or marital relationship, as when an employee is the father, step-father, mother, step-mother, grandmother, grandfather, grandchild, brother, step-brother, sister, step-sister, father-in-law, mother-in-law, spouse, aunt, uncle, cousin, step-child or child of another employee of the City.

Marital status is defined as an individual's state of marriage, non-marriage, divorce or dissolution, separation, widowhood, annulment, or other marital state as defined by California law.

SEC. 3 "Management Rights:" No person shall be appointed or promoted to a position in any department in which such person's relationship as defined in Section 2, would result in any of the following: a supervisor-subordinate relationship; the employees having job duties which require performance of shared duties on the same or related work assignment; or both employees having the same immediate supervisor. Notwithstanding the above provisions, the City retains the following rights:

- To refuse to permit one party to a relationship to be under the direct supervision of the other party to the relationship. For the purposes of this section, a supervisory relationship shall be defined as one in which one person exercises the right to control, direct, reward or punish another person by virtue of the duties and responsibilities assigned to his/her position.
- To refuse to permit both parties to a relationship to work in the same department, division or facility where such employment has the potential for creating an adverse impact on supervision, safety, security or morale, or where such employment involves potential conflicts of interest or other hazards greater for persons in such a relationship than for other persons.
- To maintain or adopt bona fide health plans which provide additional or greater benefits to employees with dependents than to employees with fewer or no dependents.
- To refuse to employ one party to a relationship if the other party to the relationship is employed in a confidential position. Likewise, one party to a relationship may not be employed in a confidential position if the other party to the relationship is employed by the City.

SEC. 4 "Continued Employment:" If employees marry, the applicable department director shall make reasonable efforts to assign job duties so as to minimize problems of supervision, safety, security or morale. Such efforts may include, without limitation, affording either or both affected employees the opportunity to be transferred to another department, or to permit continued employment by both parties to the relationship without change if he/she finds that any adverse impact on the public service would be insignificant. During the period of employment, no supervisory relationship shall exist between the married employees. The Personnel Officer, following consultation with the applicable department director(s), may place reasonable conditions on such continued employment to the extent necessary to ensure that problems of supervision, safety, security or morale are kept to a minimum.

Where the above circumstances exist and mandate that two spouses shall not work in a prohibited relationship, the Personnel Officer or designee will make reasonable efforts to transfer one spouse to a similar comparable position in another department. Although the wishes of the involved parties as to which spouse is to be transferred will be given consideration by the City, the controlling factor in determining which spouse is to be transferred shall be the productive operation and efficiency of the City. If any such transfer results in a reduction in salary or compensation, the same shall not be considered disciplinary in nature and shall not be the subject of any form of administrative appeal.

If continuing employment of two spouses cannot be accommodated consistent with the City's interest in promotion of safety, security, morale and efficiency, then the City retains sole discretion to separate one spouse from City employment. In this case, the Personnel Officer shall notify the affected employees, who shall determine which spouse will be subject to separation. This separation shall not constitute discipline and shall not be subject to any administrative appeal.

SEC. 5 "Discrimination:" Any employment action that must be taken because of a problem with supervision, safety, security or morale shall be taken in a non-discriminatory manner.

SEC. 6 "Determination:" Determinations made pursuant to this Rule shall be made on a case-by-case basis. In making any determinations pursuant to this rule, the Personnel Officer may take into account all relevant factors concerning each of the employees involved in a covered relationship, including, but not limited to, job duties, history of employment, etc. within the City service, and the business reasons of supervision, safety, security, and morale.

ARTICLE 9 – WORKING CONDITIONS

Last Revised: March 2021

ARTICLE 9 - WORKING CONDITIONS

SEC. 1 "Hours of Work:" The FLSA work week for regular non-sworn full-time employees working a 5/40 or 4/10 work schedule shall begin at 12:00 a.m. on Saturday and end the following Friday at 11:59 p.m. The FLSA work week for regular non-sworn full-time employees working a 9/80 or 3/12 schedule shall begin exactly four hours into their eight hour shift on the day of the week which constitutes their alternating regular day off. Department directors may assign a different work week when it is deemed to be beneficial to the City.

The work period for sworn employees shall be established in accordance with Section 207(k) of the FLSA, and 29 CFR Part 533.

SEC. 2 "Pay Periods:" Pay periods for those classifications covered by these rules and procedures shall be bi-weekly.

SEC. 3 "No Smoking in City Facilities/Vehicles:" Smoking is prohibited inside and within twenty feet of a main exit, entrance or operable window of all City facilities. It is also prohibited in City vehicles. This eliminates smoking in all places in these buildings, including private offices, restroom facilities and break/lunch facilities.

SEC. 4 "Flex Time:" All department directors shall have the authority to implement flexible work schedules provided that productivity and service to the public are not decreased and that there are no adverse effects on operations of City departments.

SEC. 5 "Alternate Work Schedule:" All department directors shall have the authority to implement 36/44 (9/80), 4/10, or 3/12 alternative work schedules provided that productivity and service to the public are not decreased and that there are no adverse effects on operations of City departments. The City is under no obligation to maintain such alternate work schedules and department directors have the right to modify an employee's regular schedule for efficiency or consistent service to the public or in emergencies. Any such modification shall not be cause for filing a grievance.

SEC. 6 "Telecommuting:" All department directors shall have the authority to allow telecommuting arrangements through the Irvine Telecommute Program (ITP) provided productivity and service to the public are not decreased and there is no adverse impact to City department operations. The City is under no obligation to allow a telecommuting arrangement and the City retains the right to modify or cease a telecommuting arrangement at any time with no right of appeal.

SEC. 7 "Fitness for Duty Medical Examination:" Employees may be required by their supervisor to submit to a fitness for duty medical examination at any time if the supervisor has evidence of a job performance or safety problem. Under such circumstances, medical examinations are job-related and consistent with business necessity. Such examinations will be conducted at City expense, and will determine whether the employee is able to perform the essential functions of his/her job.

SEC. 8 “Job-related Certificates and Licenses:” Employees are responsible for maintaining the proper certificates and licenses required for the job.

SEC. 9 “Employee Identification and Access Cards:” All employees will be required to wear their assigned identification and/or access card while on duty and on City premises. Employees must report lost or stolen access cards to their department security representative immediately.

ARTICLE 10 - DRUG FREE WORKPLACE

Last Revised: March 2008

ARTICLE 10 - DRUG FREE WORKPLACE

SEC. 1 "Policy:" It is the intent of the City of Irvine to maintain a workplace that is free of drugs and alcohol and to discourage drug and alcohol abuse by its employees. The City has a vital interest in maintaining safe and efficient working conditions for its employees. Substance abuse is incompatible with health, safety, efficiency and service to the public. Employees who are under the influence of a drug or alcohol on the job compromise the City's interests, endanger their own health and safety and the health and safety of others, and can cause a number of other work-related problems, including absenteeism and tardiness, substandard job performance, increased workloads for co-workers, behavior that disrupts other employees, delays in the completion of jobs, and disruption of service to the public.

While conducting or performing City business or on City property, including in City vehicles or while operating City equipment, employees shall not consume or possess alcoholic beverages or consume or possess controlled substances as defined herein. Employees shall not work or be at work while under the influence of any of the above mentioned, or in the case of controlled substances, without authorization from a qualified physician and the employee's supervisor.

The unlawful manufacture, distribution, dispensing, possession, or consumption of any controlled substance is prohibited anytime an employee is conducting or performing City business regardless of location, when operating or responsible for the operation, custody, or care of City equipment or property, on City property, or while subject to duty (i.e., standby). Provisions of this Rule may be subject to department procedures and/or the California Health & Safety Code §11367 for sworn employees.

Addendum 1 attached to these Rules addresses policies and procedures related to employees performing safety-sensitive functions, as covered under the Department of Transportation (DOT) regulations.

SEC. 2 "Definitions:"

- A "Abuse of any legal drug" means the use of any legal drug, including prescription drugs, (a) for any purpose other than the purpose for which it was prescribed or manufactured; or (b) in a quantity, frequency or manner that is contrary to the instructions or recommendations of the prescribing physician or manufacturer.
- B. "Controlled substances" Examples of controlled substances (alternatively, "drugs") include, but are not limited to, marijuana, heroin, cocaine and any derivative or preparation of coca leaves, LSD, speed, PCP, and Quaaludes. A complete listing of controlled substances pertaining to this article may be found in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined at 21 CFR 1300.11 through 1300.15. A copy of Schedules I through V of Section 202 of the Controlled Substances Act shall be kept on file in Human Resources of the City, and will be available for inspection by an employee on request.

- C. "Conviction" is a finding of guilt (including a plea of no contest), an imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.
- D. A determination that an employee is "under the influence" of drugs or alcohol will be based on specific personal observations such as an employee's manner, disposition, muscular movement, appearance, behavior, speech or breath odor; information obtained from a reliable person with personal knowledge, an accident involving City property, where it appears the employee's conduct is at fault, physical altercation, verbal altercation, or unusual behavior.

Such determination may also be based on an employee's possession of drugs, alcohol or paraphernalia in the workplace or on City property. "Possession" means that an employee has the substance on his/her person or otherwise under his or her control.

SEC. 3 "Prescription Drugs:" The use of prescription drugs which would not alter an employee's work performance is acceptable, if prescribed by a qualified physician. Employees must notify their supervisor before beginning work when taking drugs (prescription or non-prescription), which the employee reasonably believes, may interfere with the safe and effective performance of their duties. In the event there is a question regarding an employee's ability to perform assigned duties safely and effectively while using such drugs, clearance from a qualified physician may be required before the employee is allowed to resume the employee's regular duties.

SEC. 4 "Pre-employment Testing:" Toward reaching the goal of a drug- and alcohol-free workplace, the City may conduct pre-employment drug or alcohol testing of applicants for City positions. City employees who apply for, or are reassigned, transferred or promoted to another City position which is sworn or classified as a Department of Transportation safety-sensitive shall also be subject to drug or alcohol testing as set forth in the City policy relating to alcohol and controlled substances and drug testing program. Any applicant who tests positive shall be disqualified from consideration for employment for a period of one year.

SEC. 5 "Supervisor Misconduct:" In the event that an employee suspects that the employee's supervisor is under the influence of drugs or alcohol, the employee may submit a written or oral complaint which contains detailed information regarding the allegation of alcohol or substance abuse to the supervisor's superior or to Human Resources.

SEC. 6 "Searches of City Property:" To prevent the presence of controlled substances and alcohol in the workplace, all City lockers, desks, cabinets, and vehicles are deemed to be the property of the City and, with reasonable suspicion, are subject to search without the employee's consent by City management at any time with or without notice. Refusal to cooperate with a search may result in disciplinary action, up to and including dismissal. Unless the supervisors are directed otherwise by the Personnel Officer, employees will be

given the opportunity to be present when the search is conducted. Searches of property assigned to sworn employees may be subject to Government Code §3309.

SEC. 7 "Prohibited Conduct:" In addition to prohibited acts already provided for, the following acts are prohibited and may subject an employee to discipline up to and including dismissal, in accordance with these rules and procedures:

- (a) The use or possession of alcohol, impairing drugs, including illegal drugs and drugs without a prescription, or being under the influence of drugs or alcohol as defined in Section 2-D of this rule, during working hours or while subject to duty, on breaks, during meal periods or at any time while on City property;
- (b) Reporting to work or being subject to duty while his or her ability to perform job duties is impaired due to on- or off-duty alcohol or drug use; or
- (c) Directly or through a third party sell or provide drugs or alcohol to any person, including any employee, while either or both employees are subject to being called to duty.

SEC. 8 "Employee Reporting Responsibility:" Employees must, as a condition of employment, abide by the terms of this policy and report any conviction under a criminal drug statute for violations occurring on or off City premises while conducting City business. A report of conviction must be made to the Personnel Officer within five (5) days after conviction, as mandated by the Federal Drug-free Workplace Act of 1988.

Failure to report such conviction will subject the employee to discipline, up to and including dismissal, in accordance with these rules and procedures.

ARTICLE 11 – CONFLICT OF INTEREST

Last Revised: September 2020

ARTICLE 11 – CONFLICT OF INTEREST

No City employee shall engage in any activity, employment or enterprise which is inconsistent, incompatible or in conflict with his/her duties, functions and/or responsibilities as a City employee, or with the department by which he or she is employed, nor shall the employee engage in any compensated outside activity which will directly, or indirectly, contribute to the lessening of his or her effectiveness, integrity or accountability as a City employee.

Failure to comply with the provisions of this policy may result in disciplinary action, up to and including dismissal.

SEC. 1 “Conflict of Interest:” The Political Reform Act of 1974 prohibits an employee from making, or participating in, any decision when it is reasonably foreseeable that the decision could have a material financial impact on a source of income to the employee or the assets of the employee. State law prohibits employees from having a financial interest in any contract to which the City is a part. Each employee is required to comply with provisions of State Law and City policies and procedures that are related to conflicts of interest, the reporting of income and business interests, and contracts involving the City and the employee.

- A. *Participating in Decisions:* An employee shall not participate in the consideration or processing of any decision, application, proceeding or other matter involving the employee’s financial interests, including real property, personal property or investments, or those of the spouse or dependent children of the employee. The employee shall disclose to his/her supervisor any financial interest that may be involved in any such application, discussion or proceeding.
- B. *Statements of Economic Interest:* The City of Irvine has adopted a Conflict of Interest Code as required by the provisions of the Political Reform Act (Government Code Section 87100 *et seq.*). This Code includes an enumeration of the City positions which involve the making of decisions which may foreseeably have a material effect on any financial interest, and identifies the incumbents of those positions as designated filers for the purposes of Statements of Economic Interest. It also details the specific types of investments, business positions, interests in real property, and sources of income which are reportable.

Designated employees are required to file an initial Statement of Economic Interest within thirty (30) calendar days after assuming the office/position and annually thereafter. Designated employees are also required to file a Statement of Economic Interest within thirty (30) days of leaving the office/position. Reports must be filed on the forms prescribed by the Fair Political Practices Commission and in the manner and at the time specified by the City Clerk. The City Clerk’s office administers the Conflict of Interest process.

C. *Accepting Gifts/Gratuities:* The acceptance of gifts or gratuities, such as meals, tickets, presents, and food from any person having business with the City may be or create the appearance of, a conflict of interest. To avoid an actual or apparent conflict of interest, each employee shall follow the guidelines provided herein:

- Employees shall not accept any gift or gratuity when it is reasonably apparent that the gift or gratuity is intended to (or may be perceived by others as intended to) influence the employee's performance or non-performance of his or her duties or result in a higher level of service than the donor would otherwise receive. In evaluating the gift or gratuity, the employee shall consider the nature, value and timing of the gift or gratuity.
- Employees shall not accept discounts from the posted or regular price of food, beverages, items or services unless the discount is available to members of the general public.
- Gifts of food may be accepted as long as they are shared with all employees within the Department/Division.
- Any employee who is unsure whether a gift or gratuity could constitute a conflict of interest shall consult their immediate supervisor prior to acceptance.
- Designated employees must comply with the Fair Political Practices Commission's Statement of Economic Interest reporting requirements pertaining to gifts.

D. *Adherence to Financial Policies & Practices:* City employees are required to comply with established Policies and Practices in their daily activities regarding financial transactions, contracts, purchasing, and related matters. Employees should familiarize themselves with the Policies and Practices, which may be found on the Intranet, and ensure that their actions comply with the provisions.

SEC. 2 "Code of Conduct:" The City of Irvine is committed to fostering a culture of openness, trust and integrity in its business practices and to ethical and responsible actions in all its endeavors. Every City employee is required to behave in an honest and ethical manner in all dealings related to their City employment and to treat others fairly and objectively, and with empathy. This includes responsible and ethical use of City assets and public funds, providing effective and efficient service to the public, respect for the confidentiality of information, acting in good faith and exercising due care in all we do, complying with all rules and regulations, and proactively promoting ethical behavior.

A. *Integrity/Ethical Behavior:* Employees are required to serve in an honest and courteous manner that is in keeping with their position of one of public trust and consistent with community values. Employees are expected to:

- *Be honest, be factual, give credit where it is due, apply regulations and procedures consistently, and treat all customers in the same way.*

- *Be courteous, professional and service-oriented in dealing with the public and other employees; employ a problem-solving attitude; offer and provide assistance to the public; provide quality service; be receptive to complaints/suggestions and requests; and help others to understand and navigate City procedures and processes.*
 - *Create a positive work environment, foster an environment that enhances unity of purpose; accept responsibility and be solution-oriented.*
- B. *Confidentiality:* City employees have access to a wide variety of confidential documents and information by nature of their positions. All employees shall treat City information in a confidential and discrete manner for the benefit of the City, its citizens, government, administration and employees. City employees shall not:
- *Use official information that is not available to the general public for private advantage or gain for oneself or another.*
 - *Release or provide official information that is not available to the general public to others.*
- C. *Reporting Unlawful Behavior:* Employees shall report any unlawful activities relating to work to their supervisor immediately.
- D. *Use of City Property:* No employee shall use City-owned equipment, including but not limited to, autos, trucks, instruments, tools, supplies, machines, including computers and related computer systems, or any other item which is the property of the City for other than City business, nor shall any employee allow any unauthorized person to rent, borrow, or use any of the items mentioned above.

No employee shall modify, add to or remove any equipment or accessory belonging to a City-owned vehicle, nor shall any employee attach, temporarily or permanently, any type of sticker, decal, emblem, magnet, license plate frame, or any other type of adhesive label or notice to a City-owned vehicle without prior written permission from the assigned vehicle program manager, based on prior authorization from the City Manager.

- E. *Electronic Communications:* All electronic, Internet, e-mail, voice-mail, mobile data terminals, calendar and telephonic communications and information transmitted by, received from, or stored in these systems are property of the City of Irvine. Although incidental personal use of these systems may be authorized, such use shall not interfere with or be inconsistent with City business, and employees have no expectation of privacy while using these systems. As such, subject to applicable laws, these systems are subject to review by the City.

Electronic communications may be considered public records. When disclosure is required under the California Public Records Act (Government Code 6250

et. seq.) or otherwise by law, the City shall not in any way be liable or responsible for the disclosure of any e-mail message or any part thereof.

No message input into a City-owned system is necessarily a private communication. The City reserves the right to access, review, copy or deletes any message or document on its telephone, e-mail or any computer systems, including those stored on individual employee computers, any City-owned computer or related media, for any purpose, and may disclose such information as the City deems appropriate, subject to applicable laws.

All communications are to be courteous and businesslike. Messages containing racial or sexually explicit slurs, images, or other discriminatory conduct are prohibited. The use of obscenities, libelous statements, or the disclosure of confidential personal information about another employee is against City policy and could subject the author to disciplinary action, up to and including dismissal.

SEC. 3 "Public/News Media Relations:" The actions of City officials and employees are often of interest to the news media and members of the public. Frequent inquiries are received on a variety of subjects and should be handled in the following manner:

- Media inquiries should be directed to the Public Information Office. Exceptions may be made at the discretion of the City Manager as needed.
- Inquiries regarding release of public records and requests made under the Public Information Act shall be referred to the City Clerk's Office.
- Inquiries regarding personnel-related information should be referred to Human Resources.

SEC. 4 "Secondary Employment:" No employee shall engage in any employment, activity or enterprise which:

- Is inconsistent, incompatible or in conflict with his/her duties, functions and/or responsibilities as a City employee, or with the department by which he or she is employed, nor shall the employee engage in any compensated outside activity which will directly, or indirectly, contribute to the lessening of his or her effectiveness, integrity, or accountability as a City employee. Outside employment as an individual contractor or as an employee of a firm currently under a contractual obligation to the City of Irvine is prohibited. However, the department director has the discretion to approve outside employment activities that involve service to public institutions, government agencies, or non-profit charitable or educational organizations, even if this organization has a contractual arrangement with the City. Pursuant to state law, sworn employees shall not be employed in places that serve alcoholic beverages.
- Interferes with the employee's ability to perform his/her regularly assigned duties for the City.

- Places him or her in a position where he/she works with or for another City employee in the same business enterprise, and where one of the employees does or may supervise, either directly or indirectly, the other employee in their respective City employment positions.
- Requires special considerations for scheduling work hours with the City.
- Requires or permits utilization of City work products.

No City-owned equipment, autos, trucks, instruments, tools, supplies, machines or any other item which is the property of the City shall be used by an employee while said employee is engaged in any outside employment or activity for compensation.

A *“Determination of Inconsistent Activities:”* In making a determination as to the consistency or inconsistency of outside activities, the department director shall consider, among other pertinent factors whether the activity:

- Involves the use for private gain or advantage City time, facilities, equipment, and supplies, or the badge, uniform, prestige, or influence of one’s City office or employment;
- Involves receipt or acceptance by an employee of any money or other consideration from anyone other than the City for the performance of an act which the employee, if not performing such act, would be required or expected to render in the regular course of his or her City employment or as part of his or her duties as a City employee;
- Involves the performance of an act in other than his or her capacity as a City employee, which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement by such employee or the department by which he or she is employed;
- Involves conditions or factors that would probably, directly, or indirectly lessen the efficiency of the employee in his or her regular City employment or conditions in which there is a substantial danger of injury or illness to the employee;
- Involves service to a public institution, government agency, or non-profit charitable or educational organization.

Prior to engaging in any occupation or outside activity for compensation, the employee shall notify the department director of the time required and the nature of such activity, and such other information as may be required by the Personnel Officer. Based on the information submitted, the department director shall determine, in his/her discretion, whether or not such activity is compatible with the employee’s City employment.

If the department director determines such activity is compatible, he/she shall authorize such outside employment and forward a copy of the request to the Personnel Officer or his/her designee. Said authorization shall be valid only for the work and period prescribed therein. If the employee requesting approval for any outside employment or activity for compensation is a management-level employee exempt from overtime compensation, he/she must seek written approval from the City Manager. The City retains the right to rescind the authorization at any time and for any reason.

Any violation of the provisions contained herein shall constitute sufficient grounds for disciplinary action, up to and including dismissal.

**ARTICLE 12 – POLICY AGAINST DISCRIMINATION, HARASSMENT AND
RETALIATION IN THE WORKPLACE AND COMPLAINT PROCEDURE**

Last Revised: October 2019

ARTICLE 12 – POLICY AGAINST DISCRIMINATION, HARASSMENT AND RETALIATION IN THE WORKPLACE AND COMPLAINT PROCEDURE

SEC. 1 “Introduction:”

The City of Irvine (“City”) is strongly committed to prohibiting and preventing harassment, discrimination and retaliation in the workplace, and providing a procedure for investigating and resolving internal complaints regarding such conduct.

SEC. 2 “Policy:”

- A. The City has zero tolerance for any conduct that violates this Policy. Conduct need not arise to the level of a violation of law to violate this Policy. Instead, a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions. The City encourages all covered individuals to report any conduct that is believed to violate this Policy as soon as possible. Individuals found to have retaliated in violation of this Policy will be subject to appropriate sanction or disciplinary action, up to and including dismissal.
- B. Harassment, discrimination or retaliation against a covered individual, as defined herein, is prohibited and will not be tolerated. This Policy prohibits harassment and discrimination because: (a) of an individual’s protected classification; (b) of the perception that an individual has a protected classification; or (c) the individual associates with a person who has or is perceived to have a protected classification. Similarly, this policy prohibits retaliation against any individual who files and supports a complaint involving a violation of this Policy, participates in the complaint resolution process, or associates with a person who makes a complaint, or similar protected activity.

Disciplinary action, up to and including dismissal, or other appropriate sanction, will be instituted for any sustained finding of prohibited behavior.

SEC. 3 “Covered Individuals and Scope:”

- A. This Policy applies to all City employees regardless of rank or title, while they are on any City property or premises, and/or while performing services on behalf of or for the City.
- B. This Policy also applies to City elected and appointed officials, job applicants, vendors, contractors, business associates, interns, volunteers, and members of the public, who are on any City property or premises, and/or performing services on behalf of or for the City pursuant to contract or other arrangements. Except where the context requires otherwise, all references to employees in this Policy shall include non-employees specified in this subsection.
- C. This Policy applies to all terms and conditions of employment, internships, and volunteer opportunities, including, but not limited to, selection, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

SEC. 4 “Definitions:”

A. Protected Classification

This Policy prohibits harassment, discrimination and retaliation because of an individual’s protected classification. “Protected classification” includes race, ethnicity, religious creed, color, national origin, ancestry, citizenship status, sex, gender, gender identity, gender expression, sexual orientation, military or veteran status, marital status, pregnancy, age (40 and over), medical condition, genetic characteristics or information, physical or mental disability and any other statutorily protected classifications. Race is inclusive of traits historically associated with race, including, but not limited to, hair texture.

B. Protected Activity

This Policy prohibits harassment, discrimination and retaliation because of an individual’s protected activity. “Protected activity” includes: making a request for or receiving an accommodation for a disability; making a request for or receiving accommodation for religious beliefs or practices; making or supporting a complaint under this Policy; opposing violations of this Policy; or participating in an investigation pursuant to this Policy.

C. Discrimination

This Policy prohibits treating covered individuals differently because of the individual’s protected classification, actual or perceived; because the individual associates with a person who is an actual or perceived member of a protected classification; or because the individual participates in a protected activity as defined in this Policy.

D. Harassment

“Harassment” includes, but is not limited to, the following types of behavior that is taken because of a covered individual’s actual or perceived membership in a protected classification:

1. Speech, including but not limited to: epithets, derogatory comments or slurs, or propositioning on the basis of a protected classification. This includes inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, or racial, sexual, or ethnicity oriented stories or jokes.
2. Physical acts, including but not limited to: assault, impeding or blocking movement, offensive touching, or physical interference with normal work or movement. This includes pinching, grabbing, patting, propositioning, leering or making explicit or implied job threats or promises in return for submission

to physical acts.

3. Visual acts, including but not limited to: derogatory gestures, posters, notices, e-mails, bulletins, cartoons, pictures, or drawings related to a protected classification (including social media postings, texts, videos sent via email).
4. Unwanted sexual advances, including but not limited to: requests for sexual favors, or unwelcome/offensive written, verbal, physical and/or visual contact with sexual overtones, when submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile or offensive working environment.

E. Guidelines for Identifying Harassment

1. Harassment includes any conduct which would be "unwelcome" or "offensive" to an individual of the recipient's same protected classification and which is taken because of the recipient's protected classification. The following are guidelines regarding unwelcome or offensive conduct.
2. It is no defense that the recipient of harassment appears to have voluntarily "consented" to the conduct at issue. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized or subject to retaliation.
3. Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. Small, isolated incidents might be tolerated up to a point. The fact that no one is complaining now does not preclude someone from complaining if the conduct is repeated in the future.
4. Even visual, verbal, or physical conduct between two individuals who appear to welcome the conduct can constitute harassment of a third individual who observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at an individual.
5. Conduct can constitute harassment even if the individual engaging in the conduct had no intention to harass (e.g., gifts, over attention, or endearing nicknames). Even well intentioned conduct can violate this Policy if the conduct is directed at or implicates a protected classification, and if a reasonable person of the recipient's same protected classification would find it offensive or unwelcome.

F. Retaliation

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

SEC. 5 "Responsibilities:"

A. Directors, managers, supervisors and other City management and supervisory personnel are responsible for compliance with this Policy and each of the following:

1. Informing employees of this Policy.
2. Modeling appropriate behavior in conformity with this Policy.
3. Taking all steps necessary to prevent harassment, discrimination and retaliation from occurring.
4. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
5. Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.
6. Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
7. Informing those who complain of harassment and/or discrimination of their option to contact the U.S. Equal Employment Opportunity Commission ("EEOC") or the California Department of Fair Employment and Housing ("DFEH") regarding alleged violations.
8. Assisting, advising or consulting with Human Resources and/or employees of other City department(s) regarding this Policy.
9. Assisting in the investigation of complaints when authorized, and, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with the City's Personnel Rules, up to and including dismissal.

10. Implementing appropriate disciplinary and remedial actions.
11. Reporting potential violations of this Policy of which he or she becomes aware to Human Resources, regardless of whether a complaint has been submitted to any City department or management personnel.
12. Participating in periodic training and scheduling employees for training, including training on harassment, discrimination and retaliation.

Supervisory personnel who are aware of ongoing harassment, discrimination and/or retaliation, as defined in this Policy, but do not take responsible appropriate steps, as set forth above, shall be subject to appropriate disciplinary action, up to and including dismissal.

- B. All employees are responsible for compliance with this Policy and for each of the following:
1. Treating all individuals in the workplace or at worksites with respect and consideration.
 2. Modeling appropriate behavior in conformity with this Policy.
 3. Participating in periodic training.
 4. Fully cooperating with the City's investigation by responding fully and truthfully to all questions posed during the investigation.
 5. Taking no actions to influence any potential witness while the investigation is ongoing.
 6. Reporting any act he or she believes in good faith constitutes harassment, discrimination or retaliation as defined in this Policy to his/her supervisor, department head or Human Resources.
- C. While the City vigorously defends an individual's right to work in an environment free of harassment, discrimination and retaliation, the City also recognizes that knowingly false accusations can have serious consequences. Accordingly, any individual who is found, through the City's investigation, to have knowingly and falsely accused another person of harassment, discrimination or retaliation will be subject to appropriate disciplinary action, up to and including dismissal.

SEC. 6 "Complaint Procedure:"

- A. A covered individual who believes he or she has been subjected to discrimination, harassment or retaliation may make a complaint, orally or in writing, to any of the individuals listed below without regard to any chain of command.

1. Immediate supervisor;
 2. Any supervisor or manager within or outside the department;
 3. Department Director;
 4. Personnel Officer or designated representative;
 5. Any analyst in Human Resources; or
 6. Any department liaison to Human Resources.
- B. Any supervisor, manager or director who receives a harassment, discrimination or retaliation complaint shall immediately notify the Personnel Officer. A complaint accusing the Personnel Officer of harassment, discrimination or retaliation shall be reported to the City Manager.
- C. An individual has the option to report harassment, discrimination or retaliation to the DFEH or the EEOC. These administrative agencies offer legal remedies and a complaint process.

The nearest offices are listed on websites of the DFEH and EEOC, or in the government section of the telephone book, or employees can check the posters that are located on the City's bulletin boards for office locations and phone numbers.

SEC. 7 "Investigation:"

- A. Upon receipt of notification of a harassment, discrimination or retaliation complaint, the Personnel Officer shall:
1. Authorize and supervise or conduct an investigation of the complaint. The Personnel Officer shall determine who shall conduct the investigation and/or authorize whatever investigation he or she deems necessary in accordance with this Policy. The investigation will generally include interviews with: (a) the complainant; (b) the accused; (c) witnesses; and (d) other persons who may have relevant knowledge concerning the allegations in the complaint.
 2. Review the factual information gathered through the investigation to determine whether the alleged conduct did occur and whether there has been a violation of this Policy. In doing so, the Personnel Officer shall consider all the factual information gathered through the investigation, the totality of the circumstances, the nature of the conduct, and the context in which the alleged incidents occurred.
 3. Report a summary of the determination as to whether this Policy has been violated to appropriate persons. If discipline or sanctions are imposed, the

level of discipline or sanctions will not be communicated to the complainant.

4. If it is determined that such conduct in violation of this Policy has occurred, the Personnel Officer shall take or recommend prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.
 5. Take reasonable steps to protect the complainant(s), or other individuals involved in the investigation, from harassment, discrimination and retaliation.
- B. If a complaint of harassment, discrimination and/or retaliation is against the Personnel Officer, the City Manager shall be responsible for investigating such complaint in accordance with Paragraph A immediately above.
- C. The City takes a proactive approach to potential violations of this Policy and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination or retaliation may be occurring, regardless of whether a recipient of the conduct (victim) or a third party reports a potential violation.

SEC. 8 “Confidentiality:”

- A. Efforts will be made to the greatest extent allowed by law to maintain confidentiality of complaints made under this Policy. Complete confidentiality cannot occur, however, due to the need to fully investigate complaints and take effective remedial action. Disclosure of a completed investigation report may be necessary to support a disciplinary action, to defend the City in adversarial proceedings, to take effective remedial action, or to comply with applicable laws and court orders.
- B. An employee who is interviewed during the course of an investigation is prohibited from attempting to influence any potential witness while the investigation is ongoing. An employee may discuss his or her interview with a designated representative who is not otherwise a party to the complaint.

SEC. 9 “Dissemination of Policy:”

All employees will receive a copy of this Policy when they are hired. The Policy may be updated from time to time and redistributed with a form for the employee to sign and return acknowledging that the employee has received, read, and understands this Policy.

ARTICLE 13 – VIOLENCE IN THE WORKPLACE

Last Revised: February 2019

ARTICLE 13 - VIOLENCE IN THE WORKPLACE

SEC. 1 "Policy:"

- A. The City of Irvine ("City") is committed to providing a safe work environment that is free of acts and threats of violence. The City's top priority is preventing and effectively handling critical workplace incidents, especially those dealing with actual or potential violence.
- B. Acts or threats of violence or other behavior that generates a reasonable concern for safety from violence due to its nature and severity (hereafter, "other behavior"), against or by any employee of the City or any other person) are considered prohibited conduct under this Article, and are unacceptable and not tolerated. The City strictly prohibits employees, consultants, visitors, or anyone else while on City property or premises, and/or performing services on behalf of or for the City, from engaging in acts or threats of violence or other behavior that generates a reasonable concern for safety from violence while on the job or with the use of City resources, including, but not limited to: computers, telephones, fax machines or vehicles. The City has zero tolerance for any such acts or threats of violence or "other behavior", and takes all threats seriously.
- C. The City recognizes the impact of domestic violence on the workplace. The City is committed to heightening awareness of domestic violence, providing support for victims of this violence and providing guidance for employees and management personnel to address the occurrence of domestic violence and its effects on the workplace. The City treats threats coming from an abusive personal relationship as it does all other forms of violence.

SEC. 2 "Application:"

- A. All employees are expected to conduct themselves in accordance with this Article, and all other City policies and administrative regulations, while the employee is on any City property or premises, and/or performing services on behalf of or for the City.
- B. This Article applies to all non-employees, including City elected and appointed officials, job applicants, vendors, contractors, business associates, volunteers, and members of the public, who are on any City property or premises, and/or performing services on behalf of or for the City pursuant to contracts or other arrangements. Except where the context requires otherwise, all references to employees in this Article shall include non-employees specified in this subsection.

SEC. 3 "Definitions:"

- A. "Act of Violence" includes any act or conduct used to: frighten, intimidate, kill and/or injure another person; or to damage or destroy the property of another person or of the City regardless of whether it is intended to do so or actually does so. Violent acts include, but are not limited to:
 - 1. Striking, punching, slapping, or assaulting another person;

2. Fighting or challenging another person to fight;
3. Grabbing, pinching, or touching another person in an unwanted way, whether sexually or otherwise;
4. Engaging in dangerous, threatening or unwanted horseplay;
5. Possession, use, or threat of use of a gun, weapon, or other device, real or perceived, that can cause bodily harm of any kind on City property or premises, including parking lots, other exterior premises, City vehicles, or while performing services for or on behalf of the City in other locations, unless such possession or use is a requirement of the job, or the employee has a lawfully valid concealed weapon permit and valid City authorization pursuant to this Article;
6. Harming another person;
7. Engaging in stalking and harassing conduct;
8. Damaging or destroying the property of another person; and/or
9. Damaging or destroying the property of the City or its vendors, clients, or business associates.

B. "Job-related" includes, but is not limited to:

1. While on City property or premises performing services for or on behalf of the City;
2. While performing services for or on behalf of the City at a site or location that is not City property or premises;
3. While representing the City during a special event, meeting, or seminar/workshop/conference, etc. whether on or off City property/premises;
4. While driving or being transported as a passenger in a City vehicle;
5. While wearing a City uniform.

C. "Threat of Violence" includes a direct or implied expression of intent, either verbally or otherwise, to frighten, intimidate, kill and/or injure another person, or to damage or destroy the property of another person or of the City, regardless of whether there is an intent to carry it out, that a reasonable person would perceive as a threat to physical safety or property. The following are some examples, but not an inclusive list, of behavior that may be considered threats:

1. Verbally spoken or written threats of violence, which include descriptions of what the speaker or writer intends to do.
2. Threatening conduct, such as overt physical intimidation and aggression, showing off or brandishing a weapon to frighten or intimidate another person.
3. Statements, jokes, or other actions which threaten to frighten, intimidate, kill or injure another person, or to damage or destroy the property of another person or of the City regardless of whether there is an intent to carry it out.

D. "Other Behavior" includes but is not limited to:

1. Stalking and harassing conduct.
2. Erratic and bizarre behavior.

E. "Domestic Violence" is defined as abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child, or is having or has had a dating or engagement relationship. (California Penal Code 13700).

SEC. 4 "Employee Responsibility, and Reporting and Response Procedure:"

A. All Employees

1. All threats or acts of violence, or "other behavior" must be taken seriously and reported. Any employee who is the victim of any threat and/or act of violence, or is a witness to such behavior, or who has received a report of such conduct, whether the perpetrator is a City employee or a non-employee, shall immediately report the incident to his or her supervisor, or any of the following:

- a. Department director;
- b. Personnel Officer or designee;
- c. Human Resources;
- d. Human Resources liaison;
- e. Threat Management Team Member; or
- f. Call the Safety Hotline at 949-724-RISK (7475)

2. In an emergency, contact the City of Irvine Police Department or call 911.

3. If an individual who has allegedly made a threat and/or engaged in an act of violence or “other behavior” arrives at the workplace, the employee making the observation shall immediately notify his or her supervisor or any of the persons listed in A.1 above, or call local law enforcement if the circumstances warrant immediate intervention.
4. In the event an employee has a restraining order against another person that restricts that person from coming to the employee’s workplace, the employee must report this information to his or her supervisor and the department director, and provide a certified copy of the restraining order to the department director. A description of the individual (photograph if available) against whom the restraining order is filed should be provided to the employee’s supervisor and the department director.
5. Any employee who has a permit to carry a concealed weapon must notify his/her department director of this approval prior to its possession on any City property or premises. Absent documented evidence of legal entitlement to carry a concealed weapon, possessing a weapon on City property or premises shall be considered a violation of this Article.
6. The City prohibits retaliation against any individual who in good faith, initiates a complaint or reports an incident under this Article.

B. Management Personnel. All employees, who are supervisors, managers, directors, or in other management positions with the City must comply with this Article, and upon receiving notice of or becoming aware of a threat or act of violence shall:

1. In the event of risk to the safety of the victim or the safety of others, or if the situation warrants, call law enforcement for assistance. In the event of an emergency, call 911.
2. Immediately take steps appropriate for the situation to prevent harm to person or property.
3. Take reasonable steps to prevent escalation of threats and/or acts of violence, or “other behavior”.
4. Avoid escalating the situation. Do not humiliate or make counter threats to the employee accused of threats and/or acts of violence, or “other behavior”.
5. When appropriate, inform the employee who was threatened that threats and acts of violence, or “other behavior” will not be tolerated and that an investigation will take place.
6. When appropriate, inform the accused employee that threats and acts of violence and retaliation will not be tolerated and disciplinary action may

follow. Employees should be encouraged to access the services of the Employee Assistance Program. Evaluate the need to remove from the workplace the employee who allegedly made the threat(s) and/or committed the act(s) of violence or engaged in “other behavior.”

7. Require the employee who allegedly made a threat and/or engaged in an act of violence, or “other behavior”, and/or who generates a reasonable concern for safety from violence by his/her presence on the job, to leave the workplace immediately.
8. Notify the Human Resources Manager or his or her designee immediately. If the Human Resources Manager or the designee is alleged to have made the threat and/or engaged in an act of violence or engaged in “other behavior”, then immediately notify the City Manager or designee.
9. Contact Human Resources for assistance on appropriate action to take before the employee who allegedly made a threat and/or engaged in an act of violence, or “other behavior” is allowed to return to work.

SEC. 5 “Investigation:”

- A. All reports of threats or acts of violence, or “other behavior” will be taken seriously and will be investigated promptly and thoroughly. Upon receiving a report of or becoming aware of a threat, and/or act of violence or “other behavior”, Human Resources shall conduct an investigation or authorize an investigation. If an employee within Human Resources is accused of making a threat and/or engaging in an act of violence, or “other behavior” against another person, the City Manager or his or her designee shall conduct or authorize the investigation.
- B. Prior to beginning any investigation of the act or threat of violence, or “other behavior”, the investigating officer must become aware of the employee’s rights in such circumstances. This shall be done prior to interviewing any witnesses or the accused employee.
- C. The investigating officer shall document the facts, including what was said and what was heard when the alleged threat or act of violence was made, or when the “other behavior” occurred. Include the following:
 1. WHO committed the act or threat of violence or engaged in the “other behavior,” and names of victims and witnesses.
 2. WHAT was said or done; be as exact as possible.
 3. WHEN did the incident take place.
 4. WHERE did the incident take place.
 5. WHY was the act committed, if known.

- D. The investigating officer must: (a) gather information from individuals who were at the scene where the alleged threat and/or act of violence or “other behavior” occurred; (b) collect written or tape-recorded verbal statements from everyone involved; and (c) take pictures of any personal injury or property damage.
- E. As part of any investigation regarding an act and/or threat of violence or “other behavior”, the City reserves the right to search, without notice and without employee consent, all areas and property in which the City maintains control or joint control with the employee. All City offices, workspace, lockers, desks, cabinets, computers, and vehicles are deemed property of the City and are subject to search without the employee’s consent by City management at any time with or without notice. Refusal to cooperate with a search may result in disciplinary action, up to and including dismissal. Unless directed otherwise by Human Resources or the City Manager, employees will be given the opportunity to be present when the search is conducted. City management shall not physically search the person of an employee, nor shall they search the employee’s personal vehicle or other possessions, without the freely given written consent of, and in the presence of, the employee.
- F. A written report covering the investigation of the act and/or threat of violence or “other behavior” and a description of the resolution, if any, shall be issued by the investigating officer to the Personnel Officer. If the Personnel Officer is the person being accused of making a threat and/or committing an act of violence or engaging in “other behavior” the written report of the investigation shall be issued to the City Manager.
- G. To the extent possible, the City will maintain the confidentiality of the reporting party and of the investigation. In appropriate circumstances, however, the City may deem it necessary to disclose the results of the investigation, for example, in order to protect individual safety or when required by law or City policy.

SEC. 6 “Discipline:”

- A. If a City employee makes a threat or engages in an act of violence in violation of this Article, he/she may be subject to disciplinary action, up to and including dismissal and criminal prosecution, if applicable.
- B. If a non-employee, while on City property or premises, and/or performing services on behalf of or for the City, makes a threat or engages in an act of violence, or “other behavior”, he/she may be subject to criminal prosecution.

SEC. 7 “Enforcement:”

Each department head has authority to enforce this Article by:

1. Educating and training supervisors and subordinates about their responsibilities under this Policy;
2. Assuring that reports of workplace violence are accurately and timely documented and addressed;

3. Notifying the Human Resources Manager and/or law enforcement authorities of any incidents;
4. Making all reasonable efforts to maintain a safe and secure workplace; and
5. Maintaining records and follow up actions as to reports of workplace violence.

ARTICLE 14 – ATTENDANCE AND LEAVES

Last Revised: October 2019

ARTICLE 14 - ATTENDANCE AND LEAVES

SEC. 1 "Requirements of Attendance:" Any unauthorized absence may be cause for disciplinary action, up to and including dismissal from employment. Authorized absence is defined as permission to be absent from duty for a specified purpose, with the right to return before or upon the expiration of the leave period.

Employees shall be in attendance at their work in accordance with the rules regarding hours of work, leave and related provisions unless their absence has been authorized. Department directors shall be responsible for maintaining employee attendance records that shall be transmitted to the payroll office on standardized forms and at times specified by the Personnel Officer or designee.

Except in extraordinary circumstances, an employee who is unable to report for work at the beginning of their established shift, shall notify their immediate supervisor no later than one hour before commencement of such shift, or earlier if required by department procedures. Failure to provide such notification shall result in the unreported period of absence for the first day being considered as leave without pay.

SEC. 2 "Requirements of Attendance-Exempt Employees:" Exempt status recognizes the unique work required of supervisors, administrators, managers, directors and other applicable classifications under the Fair Labor Standards Act. Despite their status as exempt, these employees can be required to provide coverage, maintain a specific schedule and to obtain pre-approval for absences of any duration. Generally, however, they are provided more flexibility regarding their schedules as they are often expected to work outside of normal business hours to fulfill the responsibilities of their positions. In consideration of these expectations, an exempt employee will not be required to use their leave balance for absences of less than four hours in a day. This applies provided, on the day of the absence, an employee is present and working at least six hours (if scheduled for a ten-hour day), five hours (if scheduled for a nine-hour day), or four hours (if scheduled for an eight-hour day). This four hour allowance is not combinable with other leaves and once an absence exceeds four hours, an employee's leave balance must be used for the entire absence. The four hours of leave in this provision cannot be used for absences authorized in accordance with the Family Medical Leave Act (FMLA) and California Family Rights Act (CFRA) as all FMLA/CFRA hours must be accounted for regardless of the duration.

SEC. 3 "Authority to Grant Leaves:" **The** City Council may provide for the establishment and administration of various employee leaves including, but not necessarily limited to, the following:

- Vacation
- Holidays
- Sick leave

Other Medical Leaves
Bereavement Leave
Industrial Accident Leave
Military Leave
Jury Leave
Personal Leave
Administrative Leave

Paid leave hours accrued shall be prorated based on the number of hours worked or paid up to 80 hours in a pay period.

SEC. 4 "Leave of Absence Without Pay:" Unless unpaid leave is provided as a result of an interactive process, leaves of absence without pay may be granted at the sole discretion of the department director. Such leave shall not to exceed a period of twelve (12) weeks and shall take into consideration the wishes of the employee and the needs of the City. Requests for a leave of absence without pay must be made in a written request, copies of which shall be filed with the Personnel Officer. The written request shall specifically state the reason for the leave, the date the employee wishes the leave to commence, and the probable date of return.

If the requested leave is FMLA qualifying, FMLA will run concurrently. Leave requests for a period beyond twelve (12) weeks, but not to exceed six (6) months, may be granted at the sole discretion of the City Manager, upon recommendation of the Personnel Officer. Leave requests for a period exceeding six (6) months must be authorized by the City Council at its sole discretion.

Upon expiration of a regularly approved leave without pay or within seventy-two (72) hours after notice to return to duty, the employee shall be reinstated in the position held at the time the leave was granted or to a comparable position if the former one is abolished during the period of leave. Failure on the part of an employee on leave to report promptly at its expiration or within a reasonable time after notice to return to duty, shall be just cause for dismissal.

Nothing herein shall limit or prevent the granting of a leave of absence without pay for an indefinite period of time to any employee who is injured on the job or has a serious illness, or mental or physical impairment, even though the employee does not meet the one (1) year of continuous service requirement specified above.

- A. An employee who elects to utilize vacation or compensatory time off in conjunction with leaves of absence without pay shall use this time consecutively prior to when the leave without pay is effective.
- B. Leaves of absence without pay of less than thirty (30) calendar days shall not be construed as a break in service or employment, and rights accrued at the time the leave

is granted shall be retained by the employee. However, the employee's anniversary date and any merit pay adjustments due to annual performance reviews shall be adjusted for employees on leave without pay for a period in excess of thirty (30) calendar days. Employees shall not accrue seniority, vacation credits, sick leave and other paid leaves, increases in salary, holidays, and fringe benefits, unless required by law (e.g. military leave) when on leaves without pay in excess of thirty (30) calendar days.

- C. An employee on leave without pay for a period in excess of thirty (30) calendar days shall submit to the City payment for the benefit premiums he/she wishes continued during the leave period. Unless otherwise notified by the employee, the employee's benefit coverage not paid shall be terminated within the limits prescribed by the benefit carriers and will be reinstated within the limits prescribed by the benefit carriers at the time of the employee's reinstatement with the City.

SEC. 5 "Paid Leave:"

- A. *Vacation:* Each full-time employee eligible for benefits shall be entitled to annual vacation leave with pay and shall earn vacation days as defined in the applicable Memorandum of Understanding between the City and the Recognized Employee Organization or the applicable compensation resolution. Vacation time shall begin to accumulate as of the first day of employment and may be taken once an initial eight hours has been accumulated. Vacation leave shall be taken only upon approval of the department director, immediate supervisor or manager per departmental procedures.

Unused vacation time may be accumulated to the maximum defined in the applicable Memorandum of Understanding between the City and the Recognized Employee Organization or the applicable salary resolution. Thereafter, when an employee earns vacation in excess of the maximum accrual, the employee shall be paid for the vacation during the pay period earned and at the employee's base rate of pay. Thereafter, when the employee earns in excess of the maximum accrual, the employee shall be paid for vacation during the pay period earned and at the employee's base rate of pay. Under special circumstances, the City Manager or their designee may approve a higher vacation leave accrual beyond the maximum limits stated herein.

City recognized holidays occurring during vacation leave shall be counted as holidays.

Illness while on paid vacation will be charged to sick leave rather than vacation only when the illness or injury is of a nature that would preclude the effective use of the vacation and would have otherwise prevented the employee from performing their regular duties. In order to charge vacation time to sick leave, the employee shall notify their supervisor within four (4) calendar days of the beginning of the illness or prior to the end of their vacation leave, whichever is sooner. The City shall be under no obligation to extend the vacation beyond the original scheduled vacation ending date.

In the case of termination or death of a full-time employee, said employee or their estate

shall be paid the monetary value of the earned vacation as provided in this section.

B. *Holidays*: With the exceptions provided herein, holidays for employees covered under these rules and procedures shall be defined in the applicable Memorandum of Understanding between the City and the Recognized Employee Organization or applicable salary resolution. In the absence thereof, holidays shall be as follows:

- New Year's Day
- Martin Luther King Jr. Day
- Washington's Birthday
- Memorial Day
- Fourth of July (Independence Day)
- Labor Day
- Veterans Day
- Thanksgiving Day
- The Friday after Thanksgiving Day
- Christmas Eve Day
- Christmas Day

Unless otherwise determined by the City, the actual dates for each of the foregoing holidays shall be the dates adopted by the State of California for its employees.

If any of the foregoing holidays falls on a Sunday, the following Monday shall be considered the holiday. If any of the foregoing holidays falls on a Saturday, the preceding Friday shall be considered the holiday, unless this too is a holiday, then the holiday shall be one day sooner. If a holiday falls on an employee's regularly scheduled time off, the employee may take the holiday on another day during the workweek with prior approval of their supervisor. For employees assigned to a seven-day per week schedule, observation of the holiday shall be governed by the applicable Memorandum of Understanding. If an employee is on Industrial Accident Leave during the holiday, it shall not be counted as both Industrial Accident Leave and holiday.

In order to receive compensation for holidays as provided herein, an employee must be on paid status for all of the regularly assigned work schedule immediately prior to and following the holiday. For the purposes of this section, an employee who is absent on authorized vacation leave, compensatory time off, paid personal leave, or on accrued sick leave shall be deemed to be employed at such time.

C. *Personal Sick Leave*: Sick leave with pay shall not be considered as a privilege, which an employee may use at their discretion, but shall only be allowed for any full-time employee who is incapacitated from the performance of their duties by illness or injury, by pregnancy, or by public health requirements. Each regular full-time employee shall earn sick leave as defined in the applicable Memorandum of Understanding between

the City and a Recognized Employee Organization or applicable salary resolution. In order to receive compensation while absent on sick leave, the employee shall notify their immediate supervisor or department director no later than one (1) hour after the time set for beginning their regular duties, or as otherwise determined by individual department policies and procedures. If the sick leave is foreseeable and/or for scheduled appointments, employees shall notify their supervisor prior to the scheduled leave and accommodate scheduled appointments so as not to cause hardship on City operations. If the need for sick leave is unforeseeable, the employee shall provide notice as soon as practicable.

Sick leave shall begin to accumulate as of the first day of employment and may be taken once an initial eight (8) hours has been accumulated. Unused sick leave may be accumulated without limit. City recognized holidays occurring during sick leave shall not be counted as a day of sick leave.

In all cases, absences of sick leave for six (6) or more days shall require a doctor's release. An employee may be required to provide a doctor's release to return to work following an illness or injury resulting in the inability to perform their assigned duties.

An employee who is receiving temporary disability payments under the workers' compensation laws may use their accumulated sick leave to supplement any of these payments. Under the terms of this paragraph, the City will apply only that portion of the sick leave that is necessary that when added to the disability will equal the full pay rate until the accumulated leave time is exhausted. In such case, leave accruals shall be pro-rated and payment of health insurance premiums may be required pursuant to these Rules.

In accordance with California's Paid Sick Leave law, an employee is entitled to use up to one-half of their annual personal sick leave accrual for the following reasons:

- (1) For the employee's own diagnosis, care, or treatment of an existing health condition or preventative care;
- (2) For the diagnosis, care, or treatment of an existing health condition or preventative care for an employee's family member, including:
 - Child (including a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis.);
 - Spouse or Registered Domestic Partner;
 - Parent (including biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.);
 - Grandparent;

- Grandchild;
- Sibling;

(3) To obtain any relief or services related to being a victim of domestic violence, sexual assault, or stalking including the following with appropriate certification of the need for such services:

- A temporary restraining order or restraining order;
- Other injunctive relief to help ensure the health, safety or welfare of themselves or their children;
- To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking;
- To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking;
- To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking;
- To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

In the event that a conflict arises between this article and federal and/or state law or regulations, the federal and/or state law and regulations will prevail.

D. *Administrative Leave:* Administrative Leave may be granted at the discretion of the department director in unusual circumstances where an employee has worked above and beyond the call of duty. There shall be no obligation for the City to grant administrative leave in any case and no obligation to continue administrative leave once granted. Administrative leave in these special circumstances shall not exceed 40 hours. Administrative leave must be used by the end of the calendar year. Such hours shall not be accrued from year to year or be paid off upon termination.

City payment for health insurance premiums, if applicable, shall continue while on fully paid authorized leave, unless otherwise provided in these Rules.

SEC. 6 "Non-industrial Disability:"

A City employee shall be considered on disability leave as a result of illness or injury due to a non-work related incident. In order to receive compensation while on disability leave, a full-time employee shall be required to use any accrued sick leave consecutively in the beginning of the leave until the sick leave is exhausted. If an employee who is on leave of absence due to a disability elects to take their accumulated vacation or other paid leaves, the leaves must be taken consecutively immediately after the exhaustion of their sick leave accruals. In the case of an employee receiving long-term disability benefits the City will apply only that portion of the paid leaves that are necessary that, when added to the disability, will equal the full pay rate until the accumulated leave time is exhausted. In such

case, leave accruals shall be pro-rated and payment of health insurance premiums may be required pursuant to these Rules.

At the option of the employee, as an alternate to the above procedure, a City employee who is entitled to temporary disability may elect to receive the above-mentioned vacation leave and/or other paid leaves in full, upon the execution of an agreement that he/she will assign all disability indemnity payments to the City upon receipt for deposit in the City treasury.

An employee who is on leave of absence due to a disability may receive medical and dental benefits, if so available, for the employee and their dependents for a period not to exceed six months from the date the leave commences, whether or not the employee is utilizing accumulated leave time to supplement payments under the City's disability benefits.

The employee's anniversary date and pay adjustments for performance reviews shall be adjusted for employees on leave without pay for a period in excess of thirty (30) calendar days. Employees shall not accrue seniority when on leaves in excess of thirty (30) calendar days.

SFC. 7 "Medical Leaves of Absence:" (Statutory)

A. Pregnancy Disability Leave:

(1) *Statement of Rule:* Disabilities caused or contributed to by pregnancy, childbirth or related medical conditions, for all job-related purposes, shall be treated the same as non-service related disabilities caused or contributed to by other medical conditions, under any disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement and payment under any disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth or related medical conditions on the same terms and conditions as they are applied to other such disabilities.

(2) *Procedure:* An employee whose attending physician has certified that she is physically incapacitated from performing her duties due to pregnancy or childbirth is eligible to take leave of absence for a reasonable period of time, provided, such period shall not exceed four (4) months.

- a. An employee requesting pregnancy disability leave shall submit, notice preferably in writing, of her intent to take leave. The leave request shall indicate when or whether the employee intends to return to work.
- b. With as much notice as possible, the request for pregnancy disability leave shall be submitted to the department director, with a copy to the Personnel Officer, and be accompanied by a statement from the attending physician. A Personnel

Action Form shall be issued which indicates the probable length of time of the leave.

- c. In order to receive compensation while on disability leave, a full-time employee shall be required to use any accrued sick leave consecutively in the beginning of the leave until the sick leave is exhausted. Once the employee's sick leave is exhausted, the employee may elect to utilize any accrued vacation and other paid leaves during the four-month period of leave time. Use of paid leaves other than sick leave is optional; however, if elected, paid leaves must be utilized consecutively immediately following the exhaustion of sick leave accruals.
- d. Leave under this article is granted according to the health of the female employee in accordance with the FMLA. Leave authorized pursuant to the FMLA shall run concurrently with Pregnancy Disability Leave. Leave for purposes of child care/bonding after the employee is medically able to return to work shall be granted to the employee as defined in subsection B, Family Medical Leave Act/California Family Rights Act, below.
- e. Upon expiration of the approved leave, the employee shall be reinstated to her former position, or to a comparable one with equivalent employment benefits, pay, shift, schedule, geographic location, and working conditions, including privileges, perquisites, and status if the former position is abolished during the period of leave and the employee would otherwise not have been laid off. Prior to the employee being reinstated, the Personnel Officer may require a statement from the attending physician that the employee is physically capable of resuming the regular duties of her position. Failure to return to work after the authorized four month leave period, unless extended via FMLA/CFRA leave, causes the subject employee to have no reinstatement rights under FMLA or CFRA.

Any period before and after birth where a mother is not able to work for medical reasons may be considered FMLA leave for a serious health condition.

In the event that a conflict arises between this article and federal or state law or regulations, or if some aspect of pregnancy disability law is not covered by this article, the federal and/or state law and regulations will prevail.

B. Family and Medical Leave Act and California Family Rights Act:

- (1) *Statement of Policy:* In accordance with the Family and Medical Leave Act of 1993 (FMLA) and the "California Family Rights Act of 1993" (CFRA), eligible employees may take up to a total of twelve (12) work weeks (or 26 weeks to care for a covered servicemember) of family and medical leave during a twelve (12) month period for a qualifying event. Where FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be

designated as military caregiver leave first. FMLA/CFRA leave may only be taken for the following reasons:

- The birth of a child or to care for a newborn of an employee;
- The placement of a child with an employee in connection with the adoption or foster care of a child;
- Leave to care for a child, parent, spouse, or domestic partner who has a serious health condition;
- Leave because of a serious health condition that makes the employee unable to perform the functions of their position (i.e., an employee is unable to perform any one or more of the essential functions of their position);
- Leave for a “qualifying exigency” may be taken arising out of the fact that an employee’s spouse, son, daughter, or parent is on covered active duty or call to active duty status (under the FMLA only, not the CFRA); or
- Leave to care for a spouse, son, daughter, parent, or “next of kin” who is a covered servicemember of the United States Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces (this leave can run up to 26 weeks of unpaid leave during a single 12-month period) (under the FMLA only, not the CFRA).

Employees who misuse or abuse FMLA and/or CFRA leave may be disciplined up to and including termination. Moreover, an employee who fraudulently obtains or uses FMLA/CFRA leave is not protected by the FMLA/CFRA’s job restoration or maintenance of health benefits provisions.

- (2) *Duration of Leave*: Leave can be requested by the employee or initiated by the department. 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 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 employee must comply with the notice and medical certification provisions of this policy.

The maximum duration of combined leave if both parents work for the City is limited to a total of twelve (12) working weeks if leave is taken for the birth or placement for adoption or foster care of the employees’ child (i.e., bonding leave). The maximum duration of combined leave if both parents work for the City is limited to 26 workweeks during any 12-month period if leave is taken to care for a covered servicemember.

- (3) *Eligibility:* Employees are eligible for leave pursuant to this rule if the employee has been employed with the City for at least twelve (12) months and has at least 1,250 actual hours worked during the 12-month period immediately preceding the commencement of the leave.
- (4) *Notification:* Employees shall provide the City as much notice as possible of their need for FMLA/CFRA leave on forms provided by the Personnel Officer. If the leave is foreseeable, thirty (30) days notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s), the employee shall inform their supervisor as soon as possible of the estimated time when the leave will be needed. Violation of the provisions of this policy may result in a delay of the granting of the leave.
- (5) *Medical Certification:* Employees who request leave for their own serious health condition or to care for a child, parent or spouse who has a serious health condition must provide to the Personnel Officer or designee written certification from the health care provider of the individual requiring care. If the leave is for the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or unable to perform the essential functions of their position.

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

The first time an employee requests leave because of a qualifying exigency, an employer may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to active duty status in a foreign country, and the dates of the military member's active duty service. A copy of new active duty orders or similar documentation shall be provided to the employer if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different military member.

Employees must provide certification prior to when the leave begins. If the leave is unforeseeable, certification must be provided within fifteen (15) calendar days after the notification of the need for the leave, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. Where it is not practicable under the particular circumstances to provide the requisite certification at least fifteen (15) calendar days after the notification of the need for the leave, then the employee shall provide such certification as soon as is reasonably possible under the particular facts and circumstances. If an employee provides an

incomplete medical certification, the employee will have seven calendar days to cure any such deficiency. Violation of the provisions of this policy may result in a delay of the granting of the leave until the required certification is provided.

If the City has a good faith, objective 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 employee, but paid for by the City. The opinion of the third health care provider will be binding. An employee may request a copy of the health care provider's opinions when there is a second or third medical opinion sought.

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" is defined as a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

- (6) *Use of Accrued Leaves:* Leave under this policy is unpaid. An employee taking leave for the employee's own serious health condition must use their accrued sick leave (until the sick leave is exhausted) concurrently with FMLA/CFRA leave. In addition, the employee may elect to use accrued vacation, personal leave and/or accumulated compensatory time to substitute for all or part of the otherwise unpaid leave under this policy. If the leave is for the care of a qualifying family member, the employee must use their accrued vacation, personal or family sick leave, if applicable, (until the leaves are exhausted) concurrently with FMLA/CFRA leave. If an employee who is on protected leave elects to take their accumulated vacation or other paid leaves, the leaves must be taken consecutively immediately after the exhaustion of their sick leave accruals.

If the employee takes a leave of absence for any reason which is FMLA/CFRA qualifying, the City shall designate that leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement. FMLA and CFRA shall run concurrently except during the period of disability related to pregnancy and childbirth.

Intermittent or reduced leave schedule will be tracked on an hour-for-hour basis.

- (7) *Continuation of Benefits:* Leave under this policy is unpaid. While on family and medical care leave, employees will continue to be covered by the City's group health insurance to the same extent that coverage is provided while the employee is on the job for up to 12 weeks each leave year. If the employee is disabled by pregnancy, coverage will continue to be covered for up to 4 months (i.e. 17 and

1/3 weeks) for each pregnancy. In the event an employee is disabled by pregnancy and also uses leave under the California Family Rights Act, the City will maintain the employee's health benefits while the employee is disabled by pregnancy (up to four months or 17 and 1/3 weeks) and during the employee's CFRA leave (up to 12 weeks). Employees will still be responsible for the employee's share of the premiums for health benefits.

Your coverage on a particular plan, including health benefits plans, may be dropped if you are more than 30 days late in making a premium payment. However, you will receive a notice at least 15 days before coverage is to cease, advising you that you will be dropped if your premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

If an employee fails to return to work after their 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 their 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.).

- (8) *Reinstatement*: Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when leave commenced, or to a comparable position with equivalent employment benefits, pay, shift, schedule, geographic location, and working conditions, including privileges, perquisites, and status, and other terms and conditions of employment if the former one is abolished during the period of leave and the employee would otherwise not have been laid off. 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.

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

- (9) *Employee's Obligation to Periodically Report on Their Condition*: Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.
- (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 their 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 percent of all employed by the City within 75 miles of the work site) 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 intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

(12) *Definitions*: For the purposes of this section, the following definitions apply.

- "12-Month Period:" A rolling 12 month period measured backward from the date leave is taken and continuous with each additional leave day taken.
- "Single 12-month period:" means a 12-month period which begins on the first day the eligible employee takes FMLA leave to take care of a covered servicemember and ends 12 months after that date.
- "Child:" A child under the age of eighteen (18) years, or 18 years or older who is incapable of self-care in three or more of the activities or instrumental activities of daily living, such as grooming and hygiene, bathing, dressing, eating, cooking, cleaning, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc. 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.
- "Parent:" The biological, adoptive, step or foster parent of an employee or an individual who stands or stood *in loco parentis* (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.
- "Spouse:" a husband or wife as defined or recognized under California State law for purposes of marriage. "Spouse" also includes registered domestic partners and same-sex partners in marriage.
- "Domestic Partner:" as defined by Family Code §§ 297 and 299.2, shall have the same meaning as "Spouse" for purposes of CFRA Leave.
- "Serious Health Condition:" An illness, injury, impairment, or physical or mental condition that involves:
 - (1) Any period of incapacity or inpatient care in connection with a hospital, hospice or residential medical care facility. A person is considered "inpatient" when a health care facility formally admits him or her to the facility with the expectation that he or she will remain at least overnight, even if it later develops that such person can be discharged or transferred to another facility, and does not actually remain overnight;
 - (2) Any period of incapacity requiring absence from work, of more than three calendar days, that also involves continuing treatment by (or under the

supervision of) a health care provider; continuing treatment includes any one or more of the following: treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist by a health care provider, by a nurse, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity; or treatment by a health care provider on at least one occasion which must take place within seven days of the first day of incapacity and results in a regimen of continuing treatment under the supervision of the health care provider;

- (3) Continuing treatment of a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days. A chronic serious health condition is one which: requires periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse; 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) For prenatal care by a health care provider;
 - (5) 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;
 - (6) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.
- “Health Care Provider:” Any of the following individuals:
 - (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 treat or supervise 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, clinical social workers, and

physician assistants who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;

(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.

- “Non-discrimination.” The City is prohibited from dismissing or in any other way discriminating against any person for opposing or complaining about any unlawful practice under the FMLA/CFRA, or against any employee or applicant for using FMLA/CFRA leave.
- “Covered active duty” means: in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country, or in the case of a member of a reserve component of the Armed Forces, duty during the deployment of member of the Armed Forces to a foreign country under a call or order to active duty under certain specified provisions.
- “Covered Servicemember” means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
- “Outpatient Status” means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to either: a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- “Next of Kin of a Covered Servicemember” means the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.
- “Serious Injury or Illness”: in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by

service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; or in the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy, means a qualifying injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

In the event that a conflict arises between this article and federal or state law or regulations, or if some aspect of the Family and Medical Leave Act or California Family Rights Act is not covered by this article, the federal and state law and regulations will prevail.

SEC. 8 "Military Leave:" Military leave not to exceed 180 calendar days per year, or as extended for designated periods by specific direction of the City Council, shall be granted in accordance with federal and state law. All employees covered herein entitled to military leave shall give the department director adequate notice of requirement to report for duty, with copies of their orders, and shall afford the City an opportunity within the limits of military regulations to determine when such leave shall be taken.

Note: Government Code § 19774 provides that members of reserve military units and the National Guard required to attend scheduled reserve drill periods or perform other inactive duty reserve obligations shall be granted military leave of absence without pay as provided by federal law.

SEC. 9 "Jury Leave:" Every regular employee who is called or required to serve as a trial juror shall be entitled to be absent from duties only during the period of such service or while necessarily being present in court as a result of such call. Employees shall give the department director adequate notice of requirement to report for duty. Copies of the employee's summons/subpoena may be required by the Personnel Officer.

An employee who is subpoenaed to appear in court in an official capacity shall be allowed to do so without loss of compensation. An employee subpoenaed to appear in court in a matter unrelated to their official capacity as an employee shall be permitted time off without pay, or if the employee chooses, to use accrued vacation or personal leave for this purpose.

SEC. 10 "Industrial Accident Leave:" In the event that it is determined that a regular full-time employee is absent from work as a result of an illness or injury arising solely out of the employment with the City, the City shall provide up to six (6) months of leave for non-sworn employees, during any two-year period, and up to one (1) year of leave for sworn employees, unless otherwise defined in the applicable Memorandum of Understanding

between the City and a Recognized Employee Organization or applicable compensation resolution or in Section 4850 of the California Government Code for sworn employees enrolled in CalPERS, under the following conditions:

- A. The employee shall receive the difference between the workers' compensation payments and their regular base salary provided the employee qualifies for such compensation under state law.
- B. The employee's condition is not permanent and stationary as determined by the City's appointed physician.
- C. The employee shall accrue sick leave and vacation leave while receiving Industrial Accident Leave.
- D. In the event of an on-the-job injury or accident resulting in loss of time beyond that required for immediate medical attention, such employee may be required to be examined by a licensed physician appointed by the City.
Any on-the-job accident or injury must be reported to the employee's immediate supervisor within twenty-four (24) hours after the occurrence of the accident or injury. Failure to report said injury or accident shall be grounds for disciplinary action, up to and including dismissal. An employee shall not engage in outside employment while on leave due to an industrial illness/injury.

The City may provide up to 1.5 hours of paid leave per day for an employee to attend physical therapy, doctor appointments and/or medical testing until he/she has expired the course of therapy. Such leave shall apply to full-time employees only who are not permanent and stationary, and who are prescribed by their treating physician to attend such therapy, appointments or testing for treatment of their existing industrial illness or injury. Employees shall receive prior approval for such leave from their supervisor and accommodate scheduled appointments so as not to cause hardship on City operations. Multiple appointments shall be combined where possible to minimize work disruptions.

If the employee's leave for an injury/illness extends beyond the above entitled Industrial Accident Leave period, (i.e., the City-paid leave period), the employee will be entitled to remain on a leave of absence as follows: Once the City-paid Industrial Illness/Injury leave has expired, if the employee wishes to receive compensation from the City, he/she may use any accrued sick leave until exhausted. Otherwise the leave is unpaid.

If the employee is also eligible to receive additional temporary total disability (TTD) payments from the workers' compensation system, as provided for in Article 14 Sec. 4(C) (Personal sick leave), the employee may consecutively use as much of their accrued sick leave as is necessary that when added to the TTD payments, will equal

the employee's full pay rate until their sick leave is exhausted. Once sick leave is exhausted, employees may use other accrued leaves similarly to receive compensation from the City. An employee who is supplementing their TTD benefits with accrued leave is not entitled to City paid health insurance benefits. Unless otherwise provided by MOU, employees shall not submit any benefit payments from the workers' compensation system to the City. Employees shall keep those payments and may supplement their income as provided herein.

Pursuant to the federal COBRA provisions, an employee who is on a leave of absence pursuant to this subsection may purchase medical and dental benefits at the same level of coverage as previously elected. The employee's entitlement to purchase these benefits exists regardless of whether or not the employee is supplementing workers' compensation benefits with accrued leave. As such, an employee on an unpaid leave of absence pursuant to this subsection may also purchase medical and dental benefits pursuant to COBRA.

SEC. 11 "Early Return to Work/Modified Duty:" The City encourages a speedy and healthful return to work for employees who have suffered an injury or illness. Therefore, the City has established an Early Return to Work Program to assist injured or disabled employees in returning to gainful employment at the City on a limited basis when appropriate, until they are able to return to full duty. The intent of the program is to comply with all federal and state laws. The program applies to all City employees who have a temporary disability which prohibits them from performing the essential functions of their position. It covers disabilities whose causation is non-work related as well as work related.

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

Modified duty is defined as temporary work, which can be accomplished by an injured/ill employee within the stipulated work restrictions or functional limitations prescribed by the employee's primary treating physician, and without exposing others to the risk of harm. Modified duty is temporary in nature, and therefore no specific modified duty assignment should exceed sixty (60) days. The City may consider an extension of modified duty assignment beyond the initial sixty (60) days if a written statement from the treating physician is received that indicates a "date certain" that the employee will be released to full duty.

Upon receipt of medical documentation that outlines specific work restrictions or functional limitations, Human Resources & Innovation along with the department HR Liaison, and supervisor, will consult as to the availability of modified duty.

SEC. 12 “Catastrophic Illness/Injury Time Donation:” The City Council may provide for regular employees covered by these rules and procedures a catastrophic illness/injury time donation program to provide (1) employees the opportunity to donate time in the manner described below in order to assist fellow employees who (or employees whose immediate family members) are suffering from a non-industrial catastrophic illness/injury or life threatening disease, and (2) employees (otherwise granted leave of absence without pay by the City) or employees whose immediate family members are suffering from a catastrophic illness/injury, assistance in the form of donated time that may be used in order to continue receiving income throughout the illness/injury in the manner described below.

A. A time bank shall be established to accept donations of accrued vacation or compensatory time in accordance with the following guidelines. Donations shall be:

- Voluntary
- Irrevocable
- Accrued vacation or compensatory time only (In no event shall sick leave be utilized.)
- Whole hour increments
- Confidential
- Accepted by completion of appropriate forms as prescribed by the Personnel Officer
- Accepted during approved periods of request for donations
- Subject to taxation in accordance with applicable state and federal regulations

B. Use of donated time shall be in accordance with the following:

- (1) While on Catastrophic Leave, the City shall maintain its payment for the employee’s health insurance under its group health plan for a period not to exceed 12 months. Additional City paid leaves shall not continue to accrue on donated time.
- (2) Use of donated time shall be coordinated with other applicable leave benefits whenever possible, such that combined leave shall not exceed six months from the date the disability commences. This six month limit may be extended if additional leave is granted as part of an accommodation made pursuant to the Americans with Disabilities Act (ADA) and/or the Fair Employment and Housing Act (FEHA)
- (3) The employee utilizing donated time may not receive combined compensation and other benefit payments greater than their base salary.
- (4) The employee must have been approved by the Personnel Officer as eligible to receive donated time, as specified herein.
- (5) Donations made during general period of request for donations will be placed in a general time bank. If more than one employee is eligible at the same time and the time bank does not have sufficient hours to provide for all eligible employees, the

hours in the bank shall be shared equally between the eligible employees until the bank is exhausted or the employee is no longer in need of the time, or the employee has reached the maximum allowed.

- (6) Donations made during period of request associated with a specific employee will be reserved for use by that employee, with any donated time remaining in the individual's bank at the conclusion of his or her need for Catastrophic Leave transferred into the general time bank.

C. Eligibility for use of donated time shall be in accordance with the following:

- (1) The employee shall be a regular employee as defined in these rules and procedures.
- (2) The employee must be experiencing a diagnosed catastrophic or life threatening illness/injury if the request is for use of donated time for the employee's own serious health condition.
- (3) The employee must have been off work in excess of thirty (30) calendar days or the elimination period of the long term disability policy, whichever is longer, prior to consideration for use of donated time.
- (4) Donated time shall not be used during the elimination period of the long-term disability policy.
- (5) In the case of the illness or injury of an immediate family member, the employee shall have first utilized their own accrued hours of vacation, family sick leave, or compensatory time. For the purposes of this section, immediate family members shall include the employee's mother, father, spouse, children, and may include brothers and sisters if the employee can demonstrate sole and exclusive care.
- (6) The Department Director shall recommend the employee for use of donated time. The Personnel Officer shall have final approval.

SEC. 13 "Personal Leave:"

By January 1st of each year, regular and probationary employees shall receive a Personal Leave benefit as defined by the applicable Memorandum of Understanding or resolution. Such leave shall be available for employees to use from the beginning of the first pay period beginning in the calendar year through the end of the last pay period beginning in the calendar year. Hours shall not accrue from year-to-year. Probationary employees who commence employment with the City after January 1st will receive leave on a pro-rated basis. Use of leave time under this provision is governed by the applicable Memorandum of Understanding or City policy established by the City Manager.

ARTICLE 15 – UNIFORMS, CLOTHING AND SAFETY EQUIPMENT

Last Revised: February 2019

ARTICLE 15 - UNIFORMS, CLOTHING AND SAFETY EQUIPMENT

SEC. 1 “Provision of Uniform(s) or Clothing:”

To ensure the maintenance of high standards of personal presentation and professional image while performing City business, certain employees are required to wear a uniform or clothing particular to their classification. For those employees required to wear a uniform, the City Council may provide for the replacement or reimbursement of the whole or partial cost of repair and replacement of such uniforms, or for the payment of a uniform allowance. The payment and administration of a uniform allowance shall be pursuant to the applicable Memorandum of Understanding between the City and the Recognized Employee Organization.

SEC. 2 “Provision of Safety Equipment:”

To ensure employees are protected from workplace hazards that can cause injury or illness, certain employees may be required to carry or use safety equipment while performing City business. The City will provide such equipment as required by law and as pursuant to the applicable Memorandum of Understanding between the City and the Recognized Employee Organization.

SEC. 3 “Reasonable Care:”

In the event the City provides uniforms, clothing and/or safety equipment to employees, the employees shall be responsible for the reasonable care of such uniforms/equipment. In the event an employee loses or damages his/her uniform or any other item issued by the City as a result of unreasonable neglect or abuse, the employee shall be responsible for replacing the item(s) at his/her own expense. Employees who do not adhere to City or departmental policies regarding the use and wear of clothing and/or safety equipment may be subject to discipline, up to and including dismissal.

SEC 4. “Uniform Value:”

For eligible employees, the value of City-provided uniforms is considered “compensation earnable”. The value of City-provided uniforms, as reported to the California Public Employees’ Retirement System (CalPERS) for retirement purposes, shall be determined by the City, based upon actual costs to purchase and replace such uniforms.

ARTICLE 16 – PERFORMANCE EVALUATION

Last Revised: March 2020

ARTICLE 16 - PERFORMANCE EVALUATION

SEC. 1 "Performance Evaluation:" The Personnel Officer or designee shall provide a method of reporting individual employee performance, which relates to quantity and quality of work, ability, reliability, discipline, attendance, and other factors. The Personnel Officer shall prescribe forms for such performance evaluations and shall be responsible for assuring that such evaluations are adequate to provide information to both the employee and the City for the purposes set forth in this section. An employee must have a satisfactory or better performance evaluation in order to be eligible for a merit salary increase or promotion. Deficiencies in performance by an employee may result in a decrease in salary, suspension, demotion or dismissal, following procedures outlined in these Rules or in the applicable Memorandum of Understanding between the City and a Recognized Employee Organization.

SEC. 2 "Performance Appraisals:" Department directors shall periodically rate the performance of each employee on forms provided by the Personnel Officer, provided, however, that the department directors may delegate the responsibility for rating the performance of specified employees in their departments to the employees' supervisor. Interim appraisals may be completed as necessary when changes in work performance occur. Each employee shall be informed in such appraisals of his/her strengths and weaknesses. Each performance appraisal shall be discussed with the employee. The employee shall electronically acknowledge its contents. Such acknowledgment shall not necessarily mean they fully endorse the contents of said appraisal. The performance appraisals shall not be subject to any grievance and/or appeal procedure, unless otherwise specified in the applicable Memorandum of Understanding between the City and a Recognized Employee Organization.

Individual Memoranda of Understanding or Resolutions may provide for a unique performance appraisal system and/or methods of administering those systems. In the absence of such unique provisions, the following system will apply:

SEC. 3 "Performance Appraisal System for Non-sworn Employees:" For all non-sworn full-time employees, the performance appraisal process shall include the following:

Performance Appraisal Period: The performance appraisal system will have a common annual review period of July 1st to June 30th for all employees. The annual appraisal rating is based on the measurable outcomes included in the strategic initiatives as well as the behavioral descriptors included in the professional standards and core skills portions of the appraisal.

Pay for Performance: The performance appraisal system provides an opportunity for a combination of a base pay increase which will be effective on September 1st each year, in the following manner:

- Employees whose salary is below the maximum point of their pay grade, and who receive an “unsatisfactory” or “needs improvement” performance rating will not be eligible for a pay increase.
- Employees whose salary is below the maximum point of their pay grade, and who receive a “successful” performance rating, will be eligible for a 5.0% base salary adjustment up to the maximum point of the paygrade.
- Employees whose salary is below the maximum point of their pay grade, and who receive an “excellent” performance rating, will be eligible for a 5.0% base salary adjustment up to the maximum point of the paygrade.
- Employees whose salary is below the maximum point of their pay grade, and who receive an “outstanding” performance rating, will be eligible for a 5.0% base salary adjustment up to the maximum point of the paygrade.
- Employees whose salary is greater than or equal to the maximum point of their pay grade, shall not be eligible for a base pay adjustment.

Special provisions regarding the impact of out-of-class appointments and promotions on pay adjustments resulting from performance reviews shall be pursuant to these Rules, Article 5, Section 5 “Out-of-Class Appointments” and Article 17, Section 2 “Promotion”, respectively.

For employees who have taken an unpaid leave of absence in excess of thirty (30) calendar days, any merit increase granted during that annual review process shall be pro-rated by reducing the time period for the review by the unpaid leave time beyond the thirty (30) days.

Mid-Cycle Performance Review: A mid-cycle review may be conducted to provide a formal check-up on an employee’s progress toward achieving the strategic initiatives, professional standards, and core skills. It is the supervisor’s responsibility to ensure that all of their employees are well aware of what is expected and each employee’s progress toward meeting those expectations is discussed.

Probationary Appraisals: Employees who are on probationary employment status effective June 30th of each year will not be eligible to participate in the annual review process until they have completed their probationary period. At the completion of the probationary period, the employee will receive a performance review and merit increase as appropriate. The basis for this review will be the same appraisal scores, standards and initiatives, professional standards, and core skills used for the evaluation of regular employees. The employee will then be eligible to participate in the annual review process in the following July. The merit increase granted during the annual review process will be pro-rated to reflect only the time period between the completion of the probationary period and July 1st. Once the employee has been “caught up” in this manner, the review schedule will be the same as all regular employees.

If the probationary appraisal has been completed within two (2) months prior to the July 1st annual review process, the performance review does not have to be completed again for the latter period. In this case, the appraisal scores from the probationary review may be carried over to the new review on a pro-rated basis.

Performance evaluations for employees who separate from City employment July 1st through August 31st will be waived unless otherwise requested by the department director.

SEC. 4 “Performance Appraisal System for Sworn Employees:” For all sworn full-time employees, the performance appraisal system shall include the following:

Performance Appraisal Period: All newly hired employees shall receive a performance review at the completion of six (6) months of service, at the successful completion of their probationary period, and once annually thereafter. Promoted Police Officers shall receive a performance review at the completion of six (6) months of service, completion of their probationary period, and annually thereafter. Police Sergeants, Lieutenants, and Commanders shall receive a performance review at the completion of six (6) months of service, completion of their probationary period, and annually from their six (6) month service date.

Pay for Performance: Upon completion of a written performance review, employees may be eligible for merit adjustments in the following manner.

- Employees whose salary is below the maximum of their salary range, and who receive a “meets expectations” performance review, will be eligible for a 5% base salary adjustment up to the maximum.
- Employees whose salary is below the maximum of their salary range, and who receive an “excellent” performance review, will be eligible for a 6% base salary adjustment up to the maximum.
- Employees whose salary is below the maximum of their salary range, and who receive an “outstanding” performance review, will be eligible for an 8% base salary adjustment up to the maximum.
- Employees whose salary is near the maximum of their salary range, and who receive a “meets expectations” or “excellent” or “outstanding” performance review, will only receive that portion of the pay increase which increases their base pay up to the maximum of the salary range.
- Employees who receive a “needs improvement” performance review are not eligible for any salary increase.

- Employees whose salary is at the maximum of their salary range, and who receive a “meets expectations,” “excellent,” or “outstanding” performance review, are not eligible for any salary increase.
- The dates for performance reviews and eligibility for merit pay adjustments will be adjusted for unpaid leaves of absence in excess of thirty (30) days.

ARTICLE 17 – TRANSFER, PROMOTION AND DEMOTION

Last Revised: October 2019

ARTICLE 17 - TRANSFER, PROMOTION AND DEMOTION

SEC. 1 "Transfer:" A regular employee may initiate a request to transfer to another position in the same or lower classification for which the employee is qualified in the opinion of the Personnel Officer by submitting a written request. With the approval of the department director for whom the employee currently works and the department director for whom the employee requests to work, the employee will be transferred to the new position when the first vacancy becomes available.

No person shall be transferred to a position for which he/she does not possess the minimum qualifications.

Upon notice to the Personnel Officer, an employee may be transferred by the appointing authority at any time from one position to another position in a comparable class. Whenever possible, an employee being transferred shall receive seven (7) working days notice. For transfer purposes, a comparable class is one that has the same maximum salary, involves the performance of similar duties and requires substantially the same basic qualifications. If the transfer involves a change from one department to another, both department directors must consent thereto unless the City Manager orders the transfer for purposes of economy or efficiency. If an employee disputes the involuntary transfer, the employee may, within two (2) days of the notice of transfer, file a written appeal with the Personnel Officer or designee setting forth the reasons therefore. Any appeal filed must be based upon the alleged violation of the requirements for transfer and/or procedure followed. The Personnel Officer's decision shall be final and binding.

Transfers shall not be used to effectuate a promotion, demotion, advancement, reclassification or reduction, each of which may be accomplished only as provided in these rules and procedures. There shall be no salary adjustments in cases of employee transfer, and the dates established for the employee's performance evaluations shall not change.

SEC. 2 "Promotion:" As consistent with merit-based employment, vacancies will be filled by promotion from within the competitive service if a promotional examination has been administered and a promotional list established. If, in the opinion of the Personnel Officer, a vacancy in the position could be filled better by an open-competitive examination instead of promotional examination, then he/she shall arrange for an open-competitive examination.

The dates for performance evaluations of a promoted employee shall be established pursuant to these rules and procedures following the probationary period.

A. Upon promotion, a current non-sworn employee shall receive a salary increase of eight percent (8%) above their current salary, limited to the maximum of the new classification's salary range, or shall be paid at the entry rate of the new classification, whichever is higher.

B. Upon promotion, a current sworn employee shall receive a salary increase of eight

percent (8%) above their current salary, limited to the maximum of the new classification's salary range, or shall be paid at the entry rate of the new classification, whichever is higher. For Police Officers promoted to Sergeant, the salary on promotion will be calculated as an eight percent (8%) increase over the current base pay plus any special assignment compensation at the time of the promotion, pursuant to article XV of the Memorandum of Understanding.

- C. Full-time non-sworn employees whose effective date of promotion is on or after July 1st but before September 1st will be eligible to participate in the annual review process for the review period that included the time they performed their pre-promotional position's duties and responsibilities. In this instance, an appraisal will be prepared for the employee's performance in the position they occupied previous to their promotion. All provisions related to Pay for Performance, as stipulated in Section 3 of Article 16 of these Rules, will also apply to the promoted employee.

SEC. 3 "Demotion:" The appointing authority may demote an employee whose ability to perform their required duties falls below standard, for disciplinary purposes, as set forth in these rules and procedures, or for failure of a promoted employee to pass their probationary period. With the consent of the appointing authority, an employee may also request to voluntarily demote to a vacant position. No employee shall be demoted to a position for which he/she does not possess the minimum qualifications. Written notice of the demotion shall be given the employee before the effective date of the demotion, and a copy filed with the Personnel Officer.

- A. Upon demotion, a current non-sworn employee shall receive a salary decrease of five percent (5%) below their current salary, or the maximum of the new classification, whichever is lower. Probationary employees, if previously promoted, shall receive a salary decrease of five percent (5%) below their current salary, or the most recent salary prior to promotion, whichever is lower.
- B. Upon demotion, a current sworn employee shall receive a salary decrease of five percent (5%) below their current salary, or the maximum salary of the new classification, whichever is lower. Probationary employees, if previously promoted, shall receive a salary decrease of five percent (5%) below their current salary, or the most recent salary prior to promotion, whichever is lower.

If demotion is not "for cause," the employee shall retain their original anniversary date and performance evaluation dates. A regular employee who voluntarily demotes to a vacant position shall not be required to serve a new probationary period.

SEC. 4 "Reinstatement:" **With** the approval of the appointing authority and the Personnel Officer, a regular employee or newly promoted probationary employee who has completed probationary period in another classification and who has resigned with a good record may, within the sole discretion of the Personnel Officer or their designee, based on the needs of the City, be reinstated within one (1) year of the effective date of resignation, to a vacant

position in the same or comparable class. Prior to reinstatement, the employee may be required to undergo a qualifying exam(s). Upon reinstatement, the employee shall be subject to the probationary period prescribed for the class. No credit for former employment shall be granted in computing salary, vacation or sick leave accruals, or any other benefits. The dates for performance evaluations of a reinstated employee shall be established pursuant to these rules and procedures, following the probationary period.

ARTICLE 18 – GRIEVANCE PROCEDURES

Last Revised: March 2008

ARTICLE 18 - GRIEVANCE PROCEDURES

Unless otherwise provided in the applicable Memorandum of Understanding between the City and a Recognized Employee Organization, this grievance procedure shall be the sole and exclusive procedure within the framework of this municipal government for resolving grievance disputes.

SEC. 1 "Purpose of Grievance Procedures:" The grievance procedure, as outlined herein, is designed to afford regular employees the means of obtaining further consideration of problems, after every reasonable effort has failed to solve them through discussion. The grievance procedure shall be as informal as is practical.

SEC. 2 "Matters Subject to Grievance:" For the purposes of this section, a grievance shall be considered as any matter (for which appeal is not otherwise provided for or prohibited) concerning a violation, misinterpretation or misapplication of these rules and procedures, or section of a Memorandum of Understanding between the City and a Recognized Employee Organization, the results of which affects the employee's work schedule and/or hours, general fringe benefits, compensation level, retirement, classification, or safety. The grievance procedure shall not be used for the purpose of establishing new policies or changing existing rules and regulations, or in cases for which other avenues of appeal are available under the law or these rules and procedures. The procedure may not be used to challenge the content of employee evaluations, or performance reviews, to challenge a reclassification, layoff, transfer, denial of reinstatement, or denial of a merit increase or to challenge the imposition of discipline, including but not limited to a written or oral warning, written reprimand, suspension, demotion, reduction in pay, or dismissal. Grievances shall only be filed by the employee or group of employees adversely affected by an act or omission of the City.

SEC. 3 "Grievance Procedure:" An employee shall attempt to resolve a grievance through discussion with his immediate supervisor on an informal basis. The immediate supervisor shall make whatever investigation he/she deems necessary and reply within fourteen (14) calendar days. If after such discussion the employee does not believe the problem has been satisfactorily resolved, he/she may discuss it with his/her supervisor's immediate superior, if any, within fourteen (14) days of the immediate supervisor's response. Every effort shall be made to find an acceptable solution by informal means at the lowest possible level of supervision. If the employee is not in agreement with the decision reached through informal discussions, he/she may then file a formal grievance in writing on forms provided by the Personnel Officer within fourteen (14) calendar days after receipt of the supervisor's or supervisor's immediate superior's reply.

Formal Grievance Procedure:

A. *Department Director Review:* The employee shall present the formal grievance in writing to his/her department director, with a copy to the Personnel Officer, setting forth the policy(s), rules or MOU provision allegedly violated and reciting all the facts and circumstances constituting the claimed violation, and the remedy requested. The

grievant must sign and date the formal grievance. The department director shall make whatever investigation he/she deems necessary and respond in writing within fourteen (14) calendar days after receipt of the grievance.

- B. *Personnel Officer Review:* If the employee does not agree with the decision reached he/she may appeal the formal grievance, in writing, to the Personnel Officer within fourteen (14) calendar days after receipt of the response from his/her department director. This written appeal shall include a copy of the original grievance, the decision rendered at the previous level, and a clear, concise statement of the reasons for the appeal. The Personnel Officer or designee may discuss the grievance with the employee, and with other appropriate persons. The employee may request a meeting with the Personnel Officer within the time limits provided to discuss the grievance. Either party may have a representative present at this meeting. Forty-eight (48) hours prior to the grievance meeting, the employee shall inform the Personnel Officer of whether he/she shall be represented at the grievance meeting and shall identify the representative. Within fourteen (14) calendar days, the Personnel Officer shall render a written decision. If the employee does not agree with the decision reached by the Personnel Officer, he/she may appeal the formal grievance, in writing, to the City Manager within fourteen (14) calendar days of receipt of the reply of the Personnel Officer.
- C. *City Manager Review:* The City Manager or his/her designee may select the methods considered appropriate for the study of the issues and he/she shall render a written decision to the employee within thirty (30) calendar days after receipt of the grievance appeal. The decision of the City Manager shall be final and binding.

A formal grievance on interpretations/actions of a Memorandum of Understanding between the City and a Recognized Employee Organization, not involving a specific supervisor or department director, may be submitted directly to the Personnel Officer. The decision of the City Manager in these cases shall not restrict an employee from other avenues of appeal available under state law.

SEC. 4 "Conduct of Grievance Procedure:" The written information to be provided by the grievant shall include a clear, concise statement of the nature of the grievance, the circumstances involved, and the specific remedy sought. The appeals provided herein shall not expand the scope of the formal grievance. Copies of all written materials presented, as part of these procedures shall be kept on file with the Personnel Officer or his/her designee.

At any step in the formal grievance procedure described herein, a department director, supervisor or employee may request a representative of Human Resources to participate in any discussions which take place, and/or the employee may request an independent party to represent him/her.

If an employee fails to proceed with a grievance within any of the time limits specified in this rule, the grievance shall be deemed settled on the basis of the last decision reached.

If management fails to respond within the time limits specified in this article, the employee may proceed to the next level. The time limits provided for in this article may be extended when mutually agreed upon by the City and employee.

In the presentation of grievances at any supervisory or appeal level, employees are assured of freedom from discrimination or reprisal. Matters being grieved shall be kept confidential.

ARTICLE 19 – DISCIPLINARY ACTIONS

Last Revised: March 2008

ARTICLE 19 - DISCIPLINARY ACTIONS

SEC. 1 "General Provisions:" The department director or his/her designee shall have the right, for cause, to demote, dismiss, reduce in pay or suspend without pay, any regular employee in the competitive service. Actions taken in this regard shall be considered as disciplinary action and subject to the provisions contained herein. Sworn employees may be entitled to an administrative appeal for lesser forms of discipline as provided in Government Code § 3304 or as provided in a Memorandum of Understanding. Written reprimands and counseling sessions are not subject to appeal as set forth in this article.

The provisions of this article shall not apply to reductions in pay or benefits which are a part of a general plan to reduce salaries, wages or benefits, or to a general plan to eliminate positions or reduce services as determined by the City Council.

The timelines described in this article apply unless otherwise provided in the applicable Memorandum of Understanding between the City and a Recognized Employee Organization.

SEC. 2 "Cause for Discipline:" The department director or his/her designee may discipline any employee as referenced in Section 1 where the director has cause to do so.

SEC. 3 "Statement of Charges:" In actions to discipline an employee as defined in these rules and procedures, specific written charges shall be prepared and presented for action by the department director or his/her designee. The department director or his/her designee shall provide the employee with written notice of the proposed action, including the effective date of the disciplinary action and the reasons therefore, and all written materials, reports, or other documentation such charges and recommendation of discipline were based upon, as well as notification that the employee is entitled to respond either orally or in writing to the charges. Past disciplinary actions which may have a bearing on the disciplinary action or which support the severity of the penalty, shall also be included. A copy of the notification shall be filed with the Personnel Officer.

The City shall have the right to place any employee on immediate paid leave ("administrative leave") pending investigation and processing of any potential disciplinary action.

SEC. 4 "Response to Charges:" Prior to the proposed disciplinary actions becoming final, the employee shall have the right to file a written response to the department director or set a time for an oral response to the charges, within seven (7) calendar days after receipt of the statement of charges. If the written charges have been issued by the department director, the employee may direct his/her written or oral response to the Personnel Officer for consideration.

The department director shall be free to act upon the initial response of the employee, or shall have the option of requesting the employee to submit further information. Oral presentations shall take place within seven (7) calendar days after the employee notifies

the department director of his/her desire to respond orally. Such oral presentations may be continued to a later date by mutual consent. Nothing contained herein shall limit the City of relieving an employee from duties if the employee is incapacitated so as to be unable to perform.

If, after following these procedures, a decision is made by the department director to discipline the employee, written notice of the director's findings shall be served upon the employee and a copy filed with the Personnel Officer. Failure of the employee to respond in writing or request an oral presentation prior to the date of the proposed action becoming final, will constitute waiver of this provision.

SEC. 5 "Appeal Procedures:" When the employee has received written notification of the disciplinary action by the department director pursuant to this article, the employee shall have the right to appeal as provided below. Failure to appeal by the employee or his/her representative in the time provided will make the action by the department director final and conclusive.

A member of the competitive service, who has been demoted, dismissed, reduced in pay or suspended without pay, may appeal within fourteen (14) calendar days after written notification from the department director by filing a written notice of appeal to the Personnel Officer and requesting a hearing. An employee may waive his/her right to appeal as provided below by filing a written appeal directly to the appointing authority stating such rights have been waived.

SEC. 6 "Appeals Hearing:" If within the fourteen (14)-day appeal period, the employee involved files such notice of appeal by giving written notice of appeal to the Personnel Officer, the City shall identify an available third-party neutral from outside the City to hear the appeal and make a recommendation to the appointing authority. Unless otherwise provided in the applicable Memorandum of Understanding between the City and a Recognized Employee Organization, the City shall select a third-party neutral (hearing officer) to hear the appeal.

A. *Procedure:* A time for an appeal hearing shall not be more than sixty (60) working days, from receipt of the appeal unless otherwise agreed to by the parties involved. All interested parties shall be notified in writing of the date, time and place of the hearing at least ten (10) working days prior to the hearing.

At least five (5) working days prior to the date set for the hearing, each party shall serve upon the other party and submit to the hearing officer a list of all witnesses and all exhibits. Neither party will be permitted to call during the hearing a witness not identified pursuant to this section nor use any exhibit not provided pursuant to this section unless that party can show that the party could not reasonably have anticipated the prior need for such witness or exhibit, or such witness or exhibit is necessary for purposes of rebuttal. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner most conducive to determination of the truth. The hearing officer shall rule on the

admission or exclusion of evidence. Oral evidence shall be taken only on oath or affirmation. Decisions made by the hearing officer shall not be invalidated by any informality in the proceedings, and the hearing officer shall not be bound by technical rules of evidence.

The hearing shall proceed in the following order, unless the hearing officer for special reason, otherwise directs:

- The party imposing discipline shall be permitted to make an opening statement.
- The appealing party shall be permitted to make an opening statement.
- The party imposing disciplinary action shall produce the evidence on his/her part.
- The party appealing such disciplinary action may then open his/her defense and offer his/her evidence in support thereof.
- The parties may then, in order, respectively offer rebutting evidence only, unless the hearing officer for good reason, permits them to offer evidence upon their original case.
- Arguments shall be permitted in the discretion of the hearing officer. The party with the burden of proof shall have the right to close the hearing by making the last argument.

The hearing officer, prior to or during a hearing, may grant a continuance for any reason he/she believes to be important to its reaching a fair and proper decision.

The hearing officer shall determine relevancy, weight, and credibility of testimony and evidence, and shall base his/her findings on the preponderance of evidence. The hearing officer shall render his/her findings and recommendations as soon after the conclusion of the hearing as possible, and in no event, no later than thirty (30) working days after conducting the hearing unless otherwise stipulated by the parties. His/her decision shall set forth the recommendations to the appointing authority as to each of the charges and the reasons therefore. The hearing officer may recommend sustaining or rejecting of any or all of the charges filed against the employee. He/she may recommend sustaining, rejecting, or modifying the disciplinary action against the employee.

If the appellant does not testify on the appellant's own behalf, the appellant may be called and examined as if under cross-examination.

In reaching a decision, the hearing officer may take official notice of any matter, which may be judicially noticed, by the courts of this State. Parties present at the hearing will be informed of the matters to be noticed and those matters will be noted and/or appended to the record. Any party will be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, with a specific matter to be determined by the hearing officer.

B. Conduct of Hearing: All hearings shall be private; provided, however, that the appellant may request a hearing open to the public. Any request for an open hearing shall be submitted at least five (5) working days prior to the hearing date or the hearing will be closed. No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during a hearing.

During the examination of a witness all other witnesses, except the parties, shall be excluded from the hearing upon motion of either party.

Each party shall have the right to be represented by legal counsel or other person of his/her choice, to call and examine witnesses, to introduce evidence, to cross-examine opposing witnesses on any matter relevant to the issues, to impeach any witness regardless of which party first called him or her to testify and to rebut the evidence against him/her.

The decision of the hearing officer is advisory only. The proposed decision shall be filed with the Personnel Officer, the charged employee and the appointing authority and shall set forth all findings and conclusions. Within sixty (60) working days, or as otherwise agreed by both parties, the appointing authority shall review the recommendation of the hearing officer. The decision of the appointing authority may affirm, revoke or modify the disciplinary action, and shall be final and binding.

SEC. 7 "Mediation Procedure:" In cases of termination, and after the hearing officer and hearing date have been selected as provided above, the parties may, by mutual agreement, request non-binding mediation to resolve the dispute prior to the appeals hearing. The selection of the mediator shall be made by mutual agreement. The costs of the mediator services shall be equally divided by the Association, if applicable, and the City.

SEC. 8 "Discipline of FLSA-exempt Employees:" FLSA-exempt employees shall be disciplined in a manner consistent with FLSA guidelines, so as to not cause the removal of such FLSA exemptions. FLSA-exempt employees shall not be subject to suspension for less than a workweek or be subject to a reduction in pay unless for violation of clearly posted rules.

ARTICLE 20 - COMPENSATION

Last Revised: March 2008

ARTICLE 20 - COMPENSATION

SEC. 1 "Authority:" The City Council has sole authority for determining appropriations in the City budget for employee compensation. Within the constraints of the approved budget, the City Manager shall have the authority to determine the time, method, and amount of any employee salary adjustments.

SEC. 2 "Rates of Compensation:" The rates of compensation to be provided for full-time positions shall be as set forth in the Salary Grade Order Resolution. Employees shall not be compensated below the minimum or above the maximum rate of pay in the salary range established for their classification..

SEC. 3 "Basis for Compensation:" The salaries or rates of compensation prescribed are fixed on the basis of full-time service in full-time positions unless otherwise designated.

SEC. 4 "Applicability of Salary Ranges:" From and after the adoption and effective date of these rules and procedures, each employee in the City service shall be paid the salary or compensation for services rendered on behalf of the City in accordance with the pay grade or salary range prescribed for the class to which each employee's position is allocated

SEC. 5 " Periodic Salary Review:" Salaries of employees shall be reviewed periodically by the City Council. The Personnel Officer may collect such salary data and related information as may be necessary to assist the City Council in said salary reviews.

SEC. 6 "Application of Salary Ranges:" The salaries within the applicable pay grades and salary ranges are intended to recognize individual differences among positions allocated to the same class, the purpose of which is to provide employee incentive and reward employees for meritorious service and continued improvement within a particular position. All increases in salary within any range shall be made only on the basis of fully satisfactory performance and continued improvement. Increases in salary within any range shall be neither automatic nor a matter of right and shall be effected only upon the recommendation of the department director, with approval of the Personnel Officer, after completion of a thorough employee performance evaluation.

The following general provisions shall govern the granting of salary increases within the range:

- A. Advancement shall be effected only after the employee's supervisor has completed a thorough evaluation of the employee's performance in the position and has determined that the employee has improved his/her performance within the position resulting in increased value to the City. Advancement shall be made only upon such recommendation by the department director and approval of the Personnel Officer, pursuant to provisions in Article 16, Performance Evaluation, of these Rules.

- B. Full-time, regular non-sworn employees are eligible for salary adjustments at the successful completion of their initial probation period and annually thereafter as part of the City's annual review process. Full-time, non-sworn employees who are subject to a probationary period of greater than six (6) months are eligible for salary adjustments after the first six (6) months of employment with the City and annually thereafter as part of the City's annual review process. Under no circumstances shall advancement beyond the maximum rate of the established salary range be allowed.

Newly hired full-time, sworn employees are eligible for salary adjustments after the first six (6) months of employment with the City, at the successful completion of their initial probation period and once annually thereafter. Under no circumstances shall advancement beyond the maximum rate of the established salary range be allowed.

- C. If in the opinion of the supervisor and/or department director the employee has not performed in a manner so as to merit salary advancement, a recommendation for retention at present salary shall be made to the Personnel Officer. The reasons cited for retention shall also be communicated to the affected employee. The employee shall be entitled to place a written response in his/her personnel file.
- D. If the supervisor and/or department director determines, subsequent to completion of a thorough employee evaluation, that an employee has not performed in a manner so as to merit retention or advancement, he/she may recommend disciplinary action including reduction of an employee's salary. A recommendation for reduction of an employee's salary shall be made in writing by the department director to the Personnel Officer. The reasons cited for reduction shall also be made in writing to the employee affected. Such disciplinary action shall be subject to these rules and procedures.
- E. In those instances where an employee has received his/her performance evaluation later than the time lines prescribed pursuant to these rules and procedures, through no fault of his/her own, the employee shall be reimbursed retroactively for any resulting salary increases that are recommended.
- F. *City Manager Authorized Salary Adjustments:* The City Manager may, based on consideration of such factors as external market data, internal salary relationships, position responsibilities, individual performance and sound management principles, increase the salary of an employee within the limits of the employee's salary range.

SEC. 7 "Overtime:" Overtime shall not be authorized without prior approval by the department director or designee. All overtime, whether payment or compensatory time off, must have the prior approval of the department director or designee. Employees are required to report all overtime per City procedures.

- A. For non-exempt employees, overtime shall be compensated at one and one-half times their regular rate of pay in the manner prescribed by the Fair Labor Standards Act.

In determining a non-sworn employee's eligibility for overtime compensation under this section, paid leaves of absences shall not be deducted from the total hours worked.

The work period for non-exempt sworn employees shall be established as the 28-day, 171-hour work period in accordance with Section 207(k) of the FLSA. Unless otherwise specified in the applicable Memorandum of Understanding between the City and a Recognized Employee Organization, overtime for non-exempt sworn employees shall be compensated in the manner prescribed by the FLSA for employees engaged in law enforcement activities.

- B. For non-exempt employees, compensatory time off may be given in lieu of overtime compensation, at the option of the employee, at the hourly rate of time and one-half. For sworn employees, overtime pay and/or compensatory time accrual is governed by the applicable Memorandum of Understanding provisions.

Requests for use of compensatory time off shall be made in writing as prescribed by the Personnel Officer. When the department director or his/her designee receives a request for compensatory time off, it shall be honored, unless to do so would be "unduly disruptive" to the City's operations. Mere inconvenience to the City is an insufficient basis for denial of a request for compensatory time off. For the City to turn down a request from an employee for compensatory time off requires that it should reasonably and in good faith anticipate that it would impose an unreasonable burden on the City's ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee's services. Only employees eligible for overtime compensation shall be eligible for compensatory time off. Accumulation of compensatory time shall be limited to a maximum accrual of 80 hours, unless otherwise specified in the applicable Memorandum of Understanding between the City and a Recognized Employee Organization.

- C. At the discretion of the department director, an equivalent amount of time off within the same workweek, or "flex time," may be given in lieu of overtime compensation.
- D. In the event that a non-exempt employee is promoted, reclassified or reassigned to a classification designated as "exempt" under FLSA regulations, he/she shall not be eligible to accrue compensatory time. In this case, the employee shall be paid for the accrued compensatory time at his/her previous rate of pay in the non-exempt classification, no later than the end of the calendar year.
- E. The City has determined that various executive, administrative and professional employees are exempt from the overtime requirements of the FLSA.

SEC. 8 "Retirement:" The City Council may provide for regular full-time employees covered by these rules and procedures a retirement benefit and for the payment of all or a portion of the cost of such benefits. The City's dollar contribution to the program and benefits of such program are described in the applicable Memorandum of Understanding

between the City and the Recognized Employee Organization or applicable compensation resolution.

SEC. 9 "Group Health Insurance:" The City Council may provide for regular employees covered by these rules and procedures a group medical, dental, vision care, and/or psychological benefit program and for the payment of all or a portion of the cost of such program. The City's dollar contribution to the program and benefits of such program are described in the applicable Memorandum of Understanding between the City and the Recognized Employee Organization or applicable compensation resolution.

SEC. 10 "Disability Insurance:" The City Council may provide for regular full-time employees covered by these rules and procedures a disability insurance program and for the payment of all or a portion of the cost of such program. The City's dollar contribution to the program and benefits of such program are described in the applicable Memorandum of Understanding between the City and the Recognized Employee Organization or applicable compensation resolution.

SEC. 11 "Life Insurance:" The City Council may provide for regular full-time employees covered by these rules and procedures a life insurance program and for the payment of all or a portion of the cost of such program. The City's dollar contribution to the program and benefits of such program are described in the applicable Memorandum of Understanding between the City and the Recognized Employee Organization or applicable compensation resolution.

SEC. 12 "Official Travel:" When transportation is not furnished by the City, an employee may be reimbursed for extraordinary use of his/her privately owned car in the performance of his/her regular duties on behalf of the City, pursuant to City policy.

The City Manager may, from time to time, authorize a monthly automobile allowance to certain management employees as he/she deems necessary. Likewise, the City Manager may discontinue such automobile allowance. Such discontinuance shall not be cause for filing a grievance.

SEC. 13 "Part-time Employees:" The City Council recognizes that part-time and temporary employees play an integral role in the efficient operation of the City.

- A. *Retirement:* In accordance with the Social Security Act, 26 U.S.C. § 3121(b)(7)(f), part-time and temporary employees will be eligible to participate in a qualified retirement plan of the City's choice.
- B. *Other Benefits:* The City Council may provide for eligible part-time employees a group medical, dental and/or vision care benefit program and for the payment of all or a portion of the cost of such program. The City's dollar contribution to the program and benefits of such program are described in the applicable compensation resolution.

ARTICLE 21 – NON-DISCIPLINARY SEPARATION FROM SERVICE

Last Revised: March 2020

ARTICLE 21 - NON-DISCIPLINARY SEPARATION FROM SERVICE

SEC. 1 "Layoff:" Whenever in the judgment of the City Council it becomes necessary in the interest of economy or because the necessity for the position or employment involved no longer exists, the City Council may abolish any position or employment in the competitive service and layoff, demote or transfer any employee holding such position or employment without filing written charges and without the right of appeal.

The order of layoff shall be established by the Personnel Officer. Layoff of full-time employees shall be made within classes of positions, and all temporary, regular and extended part-time, part-time and emergency employees (not necessarily in this order) in the affected class or classes shall be laid off prior to the layoff of any probationary or regular employee within the department. No regular employee shall be laid off in any department while a probationary employee is serving in the same classification in the same department. The appointing authority shall notify the Personnel Officer of the intended action with reasons therefor, and a copy of such notice shall be given the affected employees. Every effort shall be made to provide affected employees at least fourteen (14) calendar days prior notice of the layoff.

Layoff order for regular full-time employees shall be based on performance and seniority, unless otherwise specified in the applicable Memorandum of Understanding between the City and a Recognized Employee Organization or the applicable salary resolution. A reduction in hours that would affect an employee's status as a regular employee shall be considered a layoff and subject to the procedures described herein.

- A. For non-sworn employees, ratings from the two most recent employee performance reviews of less than "achieves expectations" shall be utilized to offset seniority as follows: one "needs development" rating reduces seniority by one year; two "needs development" ratings reduces seniority by three years. In addition to the seniority modifications above, one "exceeds expectations" rating increases seniority by one year. The order of layoff shall begin with the employee who has the least modified total seniority with the City. When modified total seniority of one employee is the same as another employee, the appointing authority shall consider past performance and the needs of the City for placement in the order of layoff.
- B. Prior to the establishment of the order of layoff, the Personnel Officer or designee shall furnish all employees proposed to be included on the layoff list with a copy of the proposed order of layoff. Affected employees shall also be provided with relevant materials used in the evaluation of their placement in the order of layoff by the Personnel Officer. If the employee wishes to contest the application of the criteria set forth in this policy to his/her position on the list, the employee may request an opportunity to present his/her case to the Personnel Officer or designee within seven (7) calendar days following the establishment and distribution of the order of layoff list and supporting materials. After meeting with employees wishing to be heard with respect to their position on the layoff list, the Personnel Officer or designee shall establish the final order of layoff. The decision of the Personnel Officer or designee

shall be final and not subject to the grievance procedures.

- C. A regular full-time employee who receives a final layoff notice pursuant to these provisions may within seven (7) calendar days of receipt of the notice of layoff request demotion to a position, which remains budgeted within the employee's classification series for which the employee possesses the minimum qualifications. In that event, the employee's position on the layoff list shall be re-evaluated as though the employee is in the new classification utilizing the same criteria established for the original list.
- D. The names of probationary and regular full-time employees laid off, or demoted in lieu of layoff, shall be placed upon re-employment lists for one year for classes which, in the opinion of the Personnel Officer, require basically the same qualifications and duties and responsibilities of those of the class or positions from which layoff, or demotion in lieu of layoff, was made.

Full-time employees whose names are placed on re-employment lists pursuant to these rules and procedures, and who are re-employed within the prescribed period, shall be treated as having taken an unpaid leave of absence and shall resume accruals of leave benefits in accordance with the applicable procedures for unpaid leaves of absence.

If a probationary employee on a re-employment list pursuant to this article is reinstated, he/she shall be required to complete the remainder of his/her probationary period, subject to the department director's discretion to extend the probationary period, as defined in these Rules.

The City is under no obligation to provide demotion privileges to the affected regular part-time employees, and realignment of responsibilities to best meet the needs of a City department shall be the responsibility of the affected department director. The decisions made pursuant to these rules and procedures shall be final and binding, and not subject to grievance procedures.

SEC. 2 "Resignation:" An employee wishing to leave the competitive service in good standing shall notify his/her department director in writing at least two weeks before leaving the service, unless such time limit is waived by such official. The written statement shall include the effective date and reasons for leaving. The effective date for the purposes of this section shall be defined as the employee's last day physically present at the work site. In extenuating circumstances, the City Manager may agree to an effective date when the employee is not physically present.

The department director shall forward to the Personnel Officer a written statement of the resigned employee's service performance on forms provided by the Personnel Officer. A resignation becomes final when accepted by the appointing authority. Once a resignation has been accepted by the appointing authority or his/her designee, it cannot be withdrawn. Failure to give notice as required by this section may be cause for denying future employment by the City.

SEC. 3 "Job Abandonment:" An employee shall be dismissed if the employee is absent for five (5) consecutive work days without prior authorization and without notification during that period of the absence. On the second working day of unauthorized absence, the supervisor shall send an overnight letter to the employee's last known address, with a copy to the Personnel Officer, informing the employee that if the employee fails to report to work within three (3) working days, or receive authorization for such absence, the employee shall be dismissed. Employees separated from employment for job abandonment will be reinstated with such charge removed from the employee's record upon presentation of justification for absence such as severe accident, severe illness, false arrest, or mental or physical impairment which made it impossible not only to come to work, but also to communicate that inability to his/her supervisor. Any disciplinary action taken pursuant to this section shall be taken pursuant to these rules and procedures.

SEC. 4 "Retirement:" An employee wishing to retire from City employment for non-disability reasons shall notify his/her department director in writing at least two weeks before the effective date of retirement. In lieu of a written statement from the employee, the department director shall forward to the Personnel Officer or his/her designee a written notice, signed by the employee, of the effective date of retirement on forms provided by the Personnel Officer.

SEC. 5 "Separation:"

A The City may provide up to six (6) months of leave or modified duty or as is specifically provided by Article 14 Section 5 and Section 9 of these rules. If, after six (6) months, the employee is unable to return to his/her regular duties, the following Section will apply.

To the extent permitted under Federal and State law, a regular employee unable to perform the essential functions of his/her position, with or without reasonable accommodation, as a result of a physical or psychological illness or injury shall:

- (1) be terminated from employment. Employees who are separated pursuant to this section shall be accorded procedural due process (i.e., notice and an opportunity to respond to the separation) in accordance with the appeal procedures for disciplinary actions outlined in these rules and procedures. Or,
- (2) be offered the opportunity to resign from his/her position with the City of Irvine and be placed on a re-employment list for a period not to exceed one (1) year. Any employee returning to work pursuant to this section shall provide to the Personnel Officer verification from a medical practitioner of his/her ability to return to work and perform the essential functions of his/her position, with or without accommodation.

If during the period in which the employee is on the re-employment list, the employee is physically and/or psychologically able to resume the duties of his/her previous position and there is a vacant position in his/her classification,

the employee will be entitled to return to that position with all the rights, benefits, and burdens of a regular employee. However, an employee on a re-employment list shall not accrue seniority. Thus, the employee will return to work with the same amount of seniority he/she had prior to being placed on the re-employment list, subject to the reinstatement provisions above.

Placement on the re-employment list does not preclude an employee from applying for a disability retirement.

- (3) *Medical Leaves of Absence*: Employees on family and medical care leave, pregnancy disability leave or other statutory leaves will not be offered the re-employment list option in lieu of separation during such leave if separation during such leave would be precluded by law. Such employees will be offered the re-employment list option described in this section once such leave expires.

The provisions of Section A above do not apply to sworn employees enrolled in the CalPERS retirement plan. In that case, state law applies.

(1) *Sworn Public Safety Officers*: Sworn employees who are not enrolled in the CalPERS retirement plan are entitled to Industrial Accident Leave for an amount of time as provided in the applicable Memorandum of Understanding for temporary disability caused by an injury or disease arising out of or during the course of employment pursuant to state law. After this leave is exhausted, if the employee is not determined to be permanent and stationary, he/she may be offered the re-employment list option described in this section. If they are determined to be permanent and stationary, the City will initiate an application for disability retirement.

- B. Whenever an employee has been given a permanent and stationary rating by the Workers' Compensation Appeals Board of the State of California, a return to the job must be based on the same medical information that the employee used in order to obtain the award. Reasonable accommodation may be considered if applicable.

It is the policy of the City that if he/she cannot do so or if he/she is unable or unwilling to accept some other vacant, budgeted position, if available, for which he/she is physically and otherwise qualified to perform, his/her employment will be terminated. A vacant, budgeted position, under the terms of this paragraph, is considered a position that is vacant and budgeted and which the City intends to fill, or which is being actively recruited, or a budgeted position that the City anticipates will become vacant in a reasonable period of time (i.e., within two-months) and which the City intends to fill.

The medical criteria presented to the Workers' Compensation Appeals Board by the employee and his/her doctor shall be obtained and utilized by the City and interpreted in terms of specific job restrictions and limitations. The department director, or his/her designee, shall then interpret and apply such job restrictions and limitations to the specific physical requirements of the employee's position and make a recommendation

to the Personnel Officer of his/her designee. A determination shall be made by the Personnel Officer as to whether or not the employee shall:

- Return to the job.
- Transfer to some other vacant position for which he/she is qualified based upon physical ability and experience.
- Separate from the City's employment.

C. Disability retirement benefits, whether industrial or non-industrial, shall be provided according to the individual employee's retirement election plan. Application processes and determination of benefits shall be administered according to the respective plan.

ARTICLE 22 - DISMISSAL

Last Revised: March 2008

ARTICLE 22 - DISMISSAL

Dismissal of any employee from the competitive service shall, unless otherwise ordered:

- Constitute a dismissal as of the same date from all positions which the employee may hold in the competitive service;
- Result in automatic removal of the employee's name from all eligibility lists on which it may appear; and
- Terminate the salary of the employee as of the effective date of his/her dismissal, as indicated in the notice of discipline except that he/she shall be compensated for any unpaid salary or unused vacation and compensatory time to his/her credit as of the date of dismissal.

ARTICLE 23 - VOLUNTEERS

Last Revised: March 2008

ARTICLE 23 - VOLUNTEERS

SEC. 1 "General Provisions:"

- A. Volunteers may be appointed to assist in providing City services. Volunteers must report to a City employee, who shall provide specific direction regarding the services they are providing to the City. Appointments may be made by department directors who shall notify the Personnel Officer.
- B. Volunteers shall not be eligible for salaries, benefits or other compensation unless specifically provided for by the City. Necessary equipment or uniforms and reimbursement for approved actual expenses and mileage may be provided in accordance with these rules and procedures and within authorized budgetary limits.
- C. If a volunteer sustains a work-related injury, the volunteer will be considered eligible for workers' compensation coverage under the City's self-insured program.
- D. Volunteers shall not be authorized to operate a city vehicle (any licensed vehicle). Any exception must be approved by the appropriate department director. Authorized volunteer drivers must be enrolled in the DMV Pull-Notice program by contacting Human Resources.

SEC. 2 "Employee Volunteers:" Upon approval from the department director and Personnel Officer, an employee may volunteer for temporary positions provided he/she is not performing the same or similar duties for which he/she is normally compensated. An employee engaging in such assignments shall not be entitled to compensation for said assignments, including salaries, paid overtime or compensatory overtime.

SEC. 3 "Reserve Police Officer:" An individual in the classification of Reserve Police Officer is considered to be a volunteer when not performing the same or similar duties for which he/she is normally compensated. Employees engaging in such assignments shall not be entitled to compensation for said assignments, including salaries, paid overtime, or compensatory overtime.

**ARTICLE 24 – EDUCATIONAL REIMBURSEMENT / PROFESSIONAL
DEVELOPMENT PROGRAM**

Last Revised: March 2008

ARTICLE 24 - EDUCATIONAL REIMBURSEMENT / PROFESSIONAL DEVELOPMENT PROGRAM

SEC.1 "General Provisions:" The Educational Reimbursement/Professional Development Program provides an incentive for City employees to continue their self-development through enrollment in formalized educational and professional development programs. Funds are available on a calendar year basis and the appropriate application form must be completed by the employee and approved by the department director or his/her designee in order for reimbursement for eligible expenses to occur. Generally, the goals of the program are to:

1. Assist employees in broadening their knowledge and experience in their occupational field.
2. Prepare employees for advancement to positions of greater responsibility within the City service.
3. Increase the overall knowledge base of City employees to provide for a more objective approach to carrying out the responsibilities of City government.

Following attendance of any educational course, conference, seminar, or training program, employees may be required to provide a summary of the information learned to share with other employees and/or complete a survey form for the general purpose of tracking City-wide training attendance and overall effectiveness of the program.

SEC. 2 "Educational Reimbursement:" The Education Reimbursement Program is designed for college level courses at accredited colleges and universities. Regular full-time and probationary full-time employees are eligible, on a calendar year basis, for educational reimbursement. Designated amounts shall be defined in the appropriate Memorandum of Understanding or compensation resolution.

Reimbursement may be made for tuition, registration fees, application fees, examination fees, laboratory fees, parking fees, and books (miscellaneous supplies are not reimbursable). Any books purchased under this program may become the property of the City.

Employees requesting educational reimbursement must complete a request form and receive approvals prior to incurring educational expenses.

If requested reimbursement amounts exceed the Council-approved budget for tuition education reimbursement, each employee will receive a percentage of his/her total request based upon available funds.

Attendance at the courses is done on the employee's own time. All approved undergraduate courses must be completed with a minimum final grade of "C" or its equivalent. All graduate courses must be completed with a minimum final grade of "B" or its equivalent. Courses, which are taken on an audit or incomplete basis, are not eligible for reimbursement. Approved courses, which do not result in a grade, must be attended

on a regular basis throughout their duration, and proof of completion must be supplied before reimbursement is provided. For courses completed at the end of the calendar year and grades not received until the beginning of the new calendar year due to the educational institution process, employees may submit final results for reimbursement up to January 31st of the new calendar year, and reimbursements will be charged to the prior calendar year.

Courses must present a reasonable likelihood that the City and the employee will receive some long-term benefit. Courses must possess sufficient curriculum to be viewed as legitimate academic pursuits. Courses that are geared to the personal satisfaction or enjoyment of the employee are not reimbursable.

- *Taxability of Educational Reimbursement benefits:* The Internal Revenue Code will dictate the taxability of Educational Reimbursement benefits.

SEC. 3 "Professional Development:" The Professional Development Program is designed for professional development activities such as training, seminars, conference registration, professional memberships, journals, books, supplement to annual physical examinations for Management, Supervisory/Administrative and other exempt employees, and/or professional subscriptions which further the employee's development and value to the City of Irvine. Travel, hotel costs, meals, and computer software are not paid for or reimbursable as part of the program unless otherwise specified in the applicable Memorandum of Understanding between the City and a Recognized Employee Organization or applicable compensation resolution.

Prior to incurring any expenditure for reimbursement from Professional Development Funds, employees must receive pre-approval by the department director or his/her designee using the appropriate application form. Conference/seminar registration and any annual physical examination are to be paid in advance by the employee and reimbursement from Professional Development funds will be made after attendance at the conference/seminar, or when the annual physical examination is complete. In order to be reimbursed, the registration form indicating the cost of the program and/or proof of payment (receipt or canceled check) should accompany the application form

The intended purpose of the annual physical exam benefit is to provide the eligible employee with a reimbursement for costs not covered by his/her health insurance for a single annual physical exam each calendar year. As such, the following criteria will apply for eligible reimbursements under this provision of the Professional Development Program.

- A request for an annual physical exam reimbursement may occur only once each calendar year.
- The eligible expense will be a single annual physical exam, including directly related medical tests, but not including a series of unrelated medical visits over an extended period of time.

- The request must be accompanied by an explanation of benefits form from the appropriate health insurance company, showing the employee's co-payment, out of pocket expense, and/or any expenses deemed as ineligible or un-allowed by the insurance plan.
- The reimbursement request should be submitted at the same time as the annual physical examination reimbursement request made under the provisions of the applicable Memorandum of Understanding.

All requests are subject to the provisions included in the applicable Memorandum of Understanding or Compensation Resolution.

ARTICLE 25 – IRVINE TELECOMMUTING PROGRAM

Established: March 2021

ARTICLE 25 - IRVINE TELECOMMUTING PROGRAM

SEC.1 "Policy:"

Telecommuting entails working from home or another location on a full-time or part-time basis. The City of Irvine allows employees to voluntarily participate in the Irvine Telecommuting Program (ITP) by entering into a telecommuting agreement that allows them to pre-schedule portions of their workweek away from their regular City worksite. This policy sets guidelines and requirements for all City employees participating in the program.

SEC.2 "Purpose:"

The City recognizes the changing nature of the workplace and its workforce and aims to increase productivity by improving employee work-life balance and morale. As part of this, the City also strives to recruit and retain a skilled, dedicated workforce by offering greater flexibility to employees while meeting the needs of a diverse resident population. Offering a telecommuting program is an innovative way to meet these objectives. As an added benefit, the Irvine Telecommuting Program is intended to reduce vehicle trips to City worksites, decrease employee absenteeism and realize office space savings.

SEC.3 "Definitions:"

Telecommuting – Working at a location other than the employee's primary worksite.

Eligible Employee – An employee whose job duties, tasks, in-person collaboration needs, and remote worksite are suitable for a telecommuting arrangement as determined by the supervisor and department director.

Primary Worksite - The telecommuter's usual and customary City of Irvine worksite.

Remote Worksite – A worksite other than the employee's usual and customary worksite (Primary Worksite). The remote workplace may include the employee's home, another office, or other worksite as approved by the supervisor and department director.

Telecommuter – An employee who works at a remote workplace on pre-agreed days and times to produce an agreed upon work product.

Routine Telecommuting Schedule – Pre-approved as an ongoing, regular telecommuting schedule for an employee during the pay period. An approved routine telecommuting schedule allows an employee to telecommute a set, pre-determined number of days each pay period.

Human Resources Liaison – The Department's personnel and telecommuting coordinator, as designated by the department head.

SEC.4 "Applicability:"

Employees participating in the ITP must be performing all job duties at a satisfactory level and must assure their accessibility to their supervisor, co-workers, and if applicable, members of the public. The ability to telecommute is considered a privilege and there may be times when staff must attend meetings in-person, on scheduled telecommuting days or forego telecommuting days due to holidays, vacations, or staffing needs. Any employee can request a telecommuting arrangement by submitting an Irvine Telecommuting Program Application to their supervisor. The decision to allow a telecommuting arrangement lies solely with the department director. Consideration of a telecommuting arrangement is made with utmost regard to employee

productivity, service to the public, and efficient City department operations. Not all classifications are suitable for telecommuting and an employee whose request is rescinded or denied has no right of appeal including through the grievance process.

SEC.5 "Work Space:"

The telecommuter must have a designated workspace to do the assigned work at the remote workplace.

The workspace should be maintained in a safe condition and free of hazards that might endanger the employee or City equipment.

The telecommuter and the supervisor must take appropriate safeguards to secure confidential data and information.

Under no circumstances should the telecommuter have in-person meetings in the remote workplace. Virtual meetings are expected. If the telecommuter needs to meet with someone in-person, the meeting shall be scheduled in another suitable location, such as the primary worksite.

SEC.6 "Equipment, Technology and Supplies:"

The telecommuter must have a telephone, appropriate equipment, and appropriate supplies to perform the assigned work at the remote workplace.

The telecommuter may obtain all incidental office supplies needed for work at the remote workplace from the primary worksite.

Telecommuting applications that include using City equipment will be evaluated on whether that equipment is already assigned to the employee, is portable in nature, or is otherwise readily available. If available and with due consideration to cost, department directors may provide, at their discretion, telecommuters with a laptop or tablet computer. Equipment provided to an employee shall remain the property of the City and shall be returned to the department upon termination of the employee's participation in the ITP. The use of City equipment, software, data, and supplies is limited to use by authorized persons and for purposes related to City business only. The telecommuter remains responsible for the security of all items furnished by the City and will immediately report any lost or damaged equipment to their supervisor.

The City will not pay or be responsible for any increase in home utility costs incurred as a result of telecommuting. If internet access is needed to complete work from the remote location, it is the responsibility of the employee to acquire and pay for internet service.

The telecommuter understands the Information Technology (IT) Helpdesk will do its best to resolve help desk calls from telecommuters, however, if the issue cannot be resolved remotely, IT will not travel to a remote worksite to address technology issues.

SEC.7 "Liability:"

The employee's remote worksite is considered an extension of the City's workspace, and as such, telecommuters are covered under the City's Workers' Compensation Insurance Program for injuries occurring in the course of the actual performance of official duties at the

telecommuting site during the employee's telecommuting program work hours.

The telecommuter, or someone acting on their behalf, shall immediately notify the telecommuter's supervisor of any accident or injury that occurs at the telecommuting site. All City policies regarding the reporting of injuries for employees injured while at work shall be followed.

The telecommuter remains liable for injuries to third party persons and/or members of the employee's family at the remote worksite.

The City of Irvine is not liable for damages to the telecommuter's personal or real property while the telecommuter is working at the remote worksite.

SEC.8 "Responsibilities:"

The duties, obligations, responsibilities and conditions of the ITP participant's employment with the City remain unchanged. The participating employee's salary, retirement, benefits and City-sponsored insurance coverage shall remain unchanged. Participants remain obligated to comply with all City, State and Federal rules, including the Fair Labor Standards Act (FLSA). In addition, ITP participants remain obligated to comply with all City of Irvine rules, regulations, policies, procedures, and Memorandum of Understanding (MOU) provisions including the Code of Conduct. The violation of any of the above or the misuse of City time or any City-provided equipment may result in exclusion from participation in the ITP and/or disciplinary action, up to and including termination of employment.

SEC.9 "Procedures:"

The following procedures apply to all requests for participation in the City of Irvine Telecommuting Program.

RESPONSIBILITY	PROCEDURE
Employee and Supervisor	Submit <i>Irvine Telecommuting Application</i>
Supervisor, Manager, and Department Director	Review the Application and notify employee of determination
Employee and Department Director	Execute <i>Irvine Telecommuting Program Self-Certification Checklist & Agreement</i>
Human Resources Liaison	Track approvals and forms, coordinate technology needs, including remote access requests, and act as liaison to City of Irvine Department of Human Resources & Innovation

**ADDENDUM 1 – DEPARTMENT OF TRANSPORTATION DRUG
TESTING PROGRAM**

Last Revised: March 2008

ADDENDUM 1 - DEPARTMENT OF TRANSPORTATION DRUG TESTING PROGRAM

The City of Irvine has a strong commitment to provide a safe workplace and establish high standards of employee health and safety. This policy establishes procedures for administering the Department of Transportation (DOT) anti-drug and alcohol misuse prevention program as set forth pursuant to the Federal Highway Administration (FHWA) Drug Testing Regulations of the Omnibus Transportation Employee Testing Act of 1991 (Title 49, Code of Federal Regulations (CFR), parts 382, 391, 392, 395, and procedures as set forth in Title 49, CFR, part 40).

The testing procedures identified in this policy and its procedures are in compliance with the FHWA regulations. Every effort will be made to respect the individual rights of the applicants, employees and volunteers tested including protecting the confidentiality of Alcohol or Controlled Substances testing information. Disciplinary action may, however, be taken against City employees who abuse Alcohol or Controlled Substances.

The DOT asserted the general framework by mandating that all applicants, employees, and volunteers who are required to obtain commercial driver licenses (CDLs) and operate a Commercial Motor Vehicle (CMV) in the performance of their job function (on City time) are considered to be in a "safety-sensitive function" under the regulations, and are subject to drug and alcohol testing (applicants - drug only). By definition, a commercial vehicle:

- Has a gross combination weight over 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- Has a gross vehicle weight rating of 26,001 or more pounds; or
- Is used to transport sixteen (16) or more passengers, including the driver, on a public street or highway; or
- Is of any size displaying a hazardous materials placard, and is used to transport materials that are hazardous for the purpose of the Hazardous Materials Transportation Act.

A full-time or part-time employee, contractor or a volunteer who performs a safety-sensitive function during any period in which he or she is actually performing, is ready to perform, or is immediately available to perform any safety-sensitive function is subject to Alcohol and Controlled Substances testing.

The DOT specifies rules concerning procedures for Controlled Substances (urine) and Alcohol (breath) testing. This policy shall comply with applicable legislation and serve as the agreed testing policy for the City of Irvine. It is the intent of this policy that all Department regulations relevant to the City of Irvine applicants, covered employees, contractors, and volunteers will be followed. In the event this policy violates any

applicable law or administrative regulation, the City will make such changes as necessary to conform this policy to such law or administrative regulation.

The law on which this policy is predicated also applies to any commercial driver under contract with the City of Irvine to provide services requiring a CDL (an "Owner- Operator"). All supervisors who directly supervise individuals subject to these testing procedures will exercise this supervisory authority according to the policy.

SEC. 2 "Prohibited Substances:" Prohibited substances addressed by this policy include the following:

Controlled Substances

Marijuana, amphetamines, opiates, phencyclidine (PCP) and cocaine. The City reserves the right to add additional controlled substances as deemed necessary.

Alcohol

The use of beverages or substances, including any medication, containing alcohol such that it is present in the body at a level in excess of that stated in Department of Transportation guidelines while actually performing, ready to perform, or immediately available to perform any Safety-Sensitive Function is prohibited. "Alcohol" is defined in Section 10.

SEC. 3 "Prohibited Conduct:"

Alcohol Prohibitions - The FHWA regulations and this policy prohibit misuse by employees/ volunteers affecting the performance of a Safety-Sensitive Function on City time, including:

1. Alcohol Use during the four hours before performing Safety-Sensitive Function.
2. Reporting for duty or remaining on duty to perform Safety-Sensitive functions with an Alcohol Concentration of 0.04 or greater.
3. Alcohol Use while performing Safety-Sensitive Functions.
4. Alcohol Use during eight hours following an Accident, or until he/she undergoes a post-accident Alcohol test.
5. Refusal to take a required Alcohol use test.
6. Tampering with a required Alcohol test.
7. No employee tested and found to have an alcohol concentration of 0.02 or greater, but less than 0.04 shall perform any Safety-Sensitive functions including driving, until the start of the employee's next regularly scheduled duty period, but not less than 24 hours following administration of the alcohol breath test.

Controlled Substance Prohibitions: The FHWA regulations and this Policy prohibit the following employee/volunteer conduct concerning Controlled Substances on City time:

1. No employee shall report for duty or remain on duty requiring the performance of a City Safety-Sensitive Function when the employee uses any Controlled Substance

or prescription drug, except when the use is pursuant to the instructions of a physician who has advised the employee in writing that the Controlled Substance or prescription drug does not adversely affect the employee's ability to safely operate a commercial motor vehicle.

2. No employee shall be on duty or operate a commercial motor vehicle when using any Controlled Substance or prescription drug pursuant to the instruction of a physician, without first informing his/her direct supervisor of the therapeutic use. The reporting shall be accomplished by advising the Medical Review Officer (MRO) and/or DER of the use and providing the prescription bottle to the MRO and/or DER prior to reporting for duty. All information provided to the MRO shall remain confidential.
3. No employee shall report for duty, remain on duty, or perform any City Safety-Sensitive Function while using Controlled Substances.
4. No employee shall refuse to submit to Controlled Substance testing.
5. No employee shall tamper with a required test.

SEC. 4 "Compliance with Testing Requirements:" All Safety-Sensitive Employees and Volunteers are subject to Controlled Substance Testing and Alcohol testing; all applicants (including promotions and transfers) for Safety-Sensitive positions are subject to pre-placement Controlled Substance testing. Any Safety-Sensitive Employee or Volunteer who refuses to comply with a request for testing, who provides false information in connection with a test or who attempts to falsify test results through tampering, contamination, adulteration, or substitution shall be removed from duty immediately and be referred to a Substance Abuse Professional (SAP). Refusal to submit to a test can include an inability to provide a urine specimen or breath sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior or physical absence resulting in the inability to conduct the test. Applicants who do not comply with this section, including interference with the required background check, will not be hired.

SEC. 5 "Treatment/Rehabilitation Program:" An Employee/Volunteer with a Controlled Substance and/or Alcohol problem may be afforded an opportunity for treatment in accordance with the following provisions:

Positive Controlled Substance and/or Alcohol Test: Actual program costs and subsequent Controlled Substance and/or Alcohol testing costs will be paid by the Safety-Sensitive Employee. When recommended by the SAP, participation and completion of the rehabilitation program is mandatory. Failure of a Safety-Sensitive Employee to attend and/or complete a prescribed program will result in disciplinary action up to and including dismissal from employment in accordance with City policies and applicable Memoranda of Understanding.

Prior to return-to-duty testing, an Employee must follow the rehabilitation program recommended by the SAP and agree to and sign a Return-to-Duty Agreement. The duration and frequency of unannounced follow-up testing will be determined by the SAP but will not be shorter than one year or longer than five years.

Participants in the rehabilitation program may use accumulated sick leave, vacation, and personal leave.

SEC. 6 “Testing for Controlled Substances.” Analytical urine Controlled Substance testing and breath testing for Alcohol will be conducted as required under DOT guidelines. All Safety-Sensitive Employees and Volunteers shall be subject to testing:

1) prior to employment and volunteer service (controlled substances), 2) randomly, for reasonable suspicion, and 3) following an Accident, as defined in the DOT guidelines. In addition, all Safety-Sensitive Employees and Volunteers will be tested prior to returning to duty after failing a Controlled Substance and/or Alcohol test. Employees who have returned to duty will be subject to unannounced follow-up tests for up to five years, as determined by the SAP. All testing will be conducted consistent with the procedures put forth in the DOT guidelines.

The Controlled Substances that will be tested include marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). An initial controlled substance screen will be conducted on each specimen. For those specimens that are positive, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test (the “Confirmation Test”) will be performed. The Confirmation Test will be considered positive if the controlled substance levels present are above the minimum thresholds established in the DOT guidelines.

Tests for Alcohol Concentration will be conducted using an approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). If the initial test indicates an Alcohol Concentration of 0.02 or greater, a Confirmation Test will be performed to confirm the result of the initial test. An Employee or Volunteer who has a confirmed Alcohol Concentration of 0.02, but less than 0.04, shall not be permitted to perform Safety-Sensitive Functions until the start of his/her next regularly scheduled duty period, but not less than 24 hours following administration of the Alcohol test. An Alcohol Concentration of 0.04 or greater will be considered a positive alcohol test and in violation of DOT guidelines and this Policy. Any Safety-Sensitive Employee or Volunteer who has a confirmed positive Controlled Substance or Alcohol test will be removed from his/her function and evaluated by a SAP.

The City affirms the need to protect individual dignity, privacy and confidentiality throughout the testing process.

Employees or Volunteers in Safety-Sensitive positions may be tested under any of the following circumstances:

Pre-Placement Testing

Offers of employment will be made contingent upon passing the Controlled Substances test and upon review of testing information from previous employers. All applicants for Safety-Sensitive classifications shall undergo urine Controlled Substance Testing prior to placement. Receipt of a satisfactory test result is required and failure of a Controlled Substance Test will disqualify the applicant from further hiring consideration. If the City determines after an applicant is hired that the individual failed a Controlled Substance test with a previous employer within the past two years, the City will terminate the new employee.

Reassigned, Transferred, or Promoted Employees

Prior to the first time a driver performs a Safety-Sensitive function for the City subsequent to a reassignment or job transfer, or prior to placement due to a promotion, the employee shall undergo testing for Controlled Substances as set forth in pre- placement testing cited above. Under no circumstances may a reassigned, transferred, or promoted employee perform Safety-Sensitive Functions unless he/she has received a Controlled Substances test result from the Medical Review Officer indicating a verified negative test result.

Reasonable Suspicion Testing

All Safety-Sensitive Employees or Volunteers will be subject to urine and/or breath testing when there is a reason to believe that Controlled Substances or Alcohol use is adversely affecting job performance. A Reasonable Suspicion referral for testing will be made by a trained supervisor on the basis of documented objective facts and circumstances, which are consistent with the effects of substance abuse. Examples of Reasonable Suspicion include, but are not limited to, the following:

1. Adequate documentation of unsatisfactory work performance or on-the-job behavior.
2. Physical signs and symptoms consistent with prohibited substance use.
3. Occurrence of a serious or potentially serious accident that may have been caused by human error.
4. Fights (to mean physical contact), assaults and flagrant disregard or violations of established safety or other operational procedures.

Reasonable Suspicion determinations will be made by a supervisor who is trained in accordance with the FHWA requirements to detect the signs and symptoms of Controlled Substances and Alcohol use and who reasonably concludes that an employee or volunteer may be adversely affected or impaired in his/her work performance. A written record shall be made of the observations leading to a Controlled Substance or Alcohol test within twenty-four (24) hours of the observed behavior or before the results of the test.

Reasonable Suspicion Alcohol testing is authorized if the required observations are made during, just preceding, or just after the period of the workday that the driver is required to be in compliance with this Policy. An employee/volunteer may be directed to

undergo Reasonable Suspicion testing while he/she is performing Safety-Sensitive Functions, just before the driver is to perform Safety-Sensitive Functions, or just after the driver has ceased performing such functions.

If a Reasonable Suspicion Alcohol test is not administered within two hours following the observations, the supervisor shall prepare a record stating the reasons the Alcohol test was not promptly administered. The supervisor shall cease attempts to have the Alcohol test administered if it is not administered within eight hours and he/she shall record the reason for not administering the test.

Notwithstanding the absence of a Reasonable Suspicion test, no driver shall report for duty or remain on duty requiring the performance of a Safety-Sensitive Function while he/she is under the influence of Alcohol, as shown by the behavioral, speech, and performance indicators of Alcohol use, nor shall a supervisor permit the driver to perform or continue to perform Safety-Sensitive Functions, until:

- a. An Alcohol test is administered and the driver's Alcohol Concentration measures less than 0.02%;
- b. Twenty-four (24) hours have elapsed following the determination that there is Reasonable Suspicion of Alcohol use.

If there is Reasonable Suspicion for Alcohol and/or Controlled Substance testing, the supervisor will remove the Employee/Volunteer from Safety-Sensitive Functions and ensure that he/she is transported to an appropriate test site and thereafter to the employee's residence or, where appropriate, to a place of lodging. Under no circumstances will the Employee/Volunteer be allowed to continue to drive a City vehicle or to use his or her own vehicle until a confirmed negative test result is received.

If, upon confrontation by the supervisor the driver admits to use but requests assistance, the supervisor, with assistance from the Drug Program Manager, will arrange an assessment by an appropriate SAP. Reassignment to the position will be conditioned on compliance with the SAP's guidelines and return to work testing requirements.

Post-Accident Testing

Safety-Sensitive Employees and Volunteers will be required to undergo Controlled Substance and/or Breath Alcohol testing if they are involved in an Accident (see definition - Accident) with a City vehicle if the accident involved the loss of human life; **or the driver** receives a citation under State or local law for a moving traffic violation arising from the accident; or if the accident involved:

- a. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; **or**
- b. One or more motor vehicles incurring disabling damage as a result of the

accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Following an accident, the Safety-Sensitive Employee or Volunteer may be required to provide a breath sample to test for the presence of Alcohol within two (2) hours following an accident, but not to exceed eight hours; and within 32 hours for Controlled Substances. Any Employee or Volunteer who leaves the scene of the Accident without appropriate authorization prior to submission to Controlled Substance and Alcohol testing will be considered to have refused the test and will be subject to disciplinary action up to and including dismissal.

Random Testing

Employees and Volunteers working in Safety-Sensitive Functions will be subjected to randomly selected, unannounced testing. The Random Selection, once begun, will provide for annual Alcohol testing of at least twenty-five percent (25%) and for annual Controlled Substances testing of at least fifty percent (50%) of covered drivers. Safety-Sensitive Employees and Volunteers will be tested either just before departure, or during duty, or just after the driver has ceased performing his/her duty. Once notified, the driver must proceed immediately to the assigned Collection Site.

Return-to Duty Testing and Follow-up Testing

All Safety-Sensitive Employees and Volunteers who previously tested positive on a Controlled Substance or Alcohol test must test negative (less than .02 for alcohol) and be evaluated and released to duty by the SAP before returning to duty. Employees and Volunteers will be required to undergo unannounced follow-up Controlled Substance and/or Alcohol breath testing following any approved return to duty. The duration and frequency will be determined by the SAP. However, it shall not be less than six (6) tests during the first twelve (12) months, nor longer than sixty (60) months in total, following return to duty. Alcohol follow-up testing will be performed when the driver is performing, immediately prior to performing, or immediately after performing Safety-Sensitive Functions.

Split Sample Testing

Controlled Substance testing must follow split sample procedures. Under this provision, a driver whose urine sample has tested positive for a Controlled Substance has the option (within seventy-two (72) hours of being notified by the Medical Review Officer, or MRO) of having the other portion of this split sample tested at another laboratory. If the second portion of the sample also tests positive, then the driver is subject to the sanctions contained in the FHWA regulations and the Policy. If the second portion produces a negative result, or for any reason the second portion is not available, the test is considered negative and no sanctions are imposed.

The Test Procedures

The execution of the Alcohol and Controlled Substance testing program will follow testing procedures established by Federal Regulations to screen body fluids (urinalysis) and to conduct breath testing. These procedures are designed not only to detect

violations, but to ensure fairness to the testee. Employees, Volunteers and Applicants' privacy and dignity will be respected during the Alcohol or Controlled Substance testing process, including collection of a specimen at a Collection Site.

If a urine sample is required, Employees, Volunteers, and Applicants will be permitted to provide a sample under such conditions as will assure the privacy and dignity of the individual and the integrity of the sample while following the appropriate Chain of Custody. The only exception will be where it is anticipated that an individual will attempt to tamper with or substitute a sample; for example, where there is evidence that the Employee, Volunteer, or Applicant had previously attempted to tamper with or substitute a previously given sample. In that case, collection personnel may take further reasonable measures, including auditory or visual observation of the taking of the sample, as they deem necessary to assure the integrity of the sample and of the Chain of Custody.

SEC. 7 "Assessment:" Any Safety-Sensitive Employee or Volunteer who tests positive for the presence of Controlled Substances or whose Breath Alcohol concentration is above the minimum thresholds set forth in the DOT guidelines will be assessed by the SAP. A SAP is a licensed physician, psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and who is clinically experienced in the diagnosis and treatment of Alcohol related disorders. The SAP will evaluate each Employee/Volunteer to determine what assistance, if any, he/she needs in resolving problems associated with prohibited substance abuse or misuse. If a Safety-Sensitive Employee/Volunteer is returned to duty following Rehabilitation, he/she must agree to and sign a Return-to-Duty Agreement, pass a Return-To-Duty and Follow-up Controlled Substance and/or Alcohol test and be subject to unannounced follow-up tests for a period of one to five years, as determined by the SAP.

SEC. 8 "Reporting Prescription Medications:" Applicants, Employees, and Volunteers taking legally prescribed medications issued by a licensed health care professional shall report such use to his/her supervisor if it could affect the individual's ability to perform Safety-Sensitive Functions. The individual shall also report such use to the Medical Review Officer (MRO) before the MRO verifies a test result as positive. The individual may be required to present written evidence from his/her health care professional that describes the effects, if any, such medication may have on his or her ability to perform Safety-Sensitive Functions. Any prescription or supporting medical information can only be issued by a licensed doctor of medicine (M.D.) or doctor of osteopathy (O.D.).

SEC. 9 "Supervisor Responsibilities:" Below is a summary of responsibilities imposed on supervisors (including managers) as a result of the City's testing program. This list is not all-inclusive and supervisors are expected to be familiar with this entire document and with all policies, procedures, materials and information that will be provided to those supervisors who supervise employees subject to the FHWA testing procedures.

1. An Employee/Volunteer performing a Safety-Sensitive Function must be notified that an Alcohol or Controlled Substances test is required by FHWA regulations prior to the administration of any tests.
2. No supervisor having actual knowledge that a driver has an alcohol Concentration of 0.02 or greater shall permit the driver to perform or continue to perform Safety-Sensitive Functions.
3. No supervisor having actual knowledge that a driver possesses unmanifested Alcohol may permit the Employee or Volunteer to drive or continue to drive a Commercial Motor Vehicle (CMV).
4. No supervisor having actual knowledge that a driver is using Alcohol while performing Safety-Sensitive Functions shall permit him/her to perform or continue to perform Safety-Sensitive Functions.
5. No supervisor having actual knowledge that an Employee or Volunteer has used Alcohol within four hours shall permit the Driver to perform or continue to perform Safety-Sensitive Functions.
6. No supervisor shall permit an Employee or Volunteer who refuses to submit to an Alcohol or Controlled Substances test to perform or continue to perform Safety-Sensitive Functions.
7. No supervisor having actual knowledge that an Employee or Volunteer has used a Controlled Substance shall permit the driver to perform to continue or perform Safety-Sensitive Functions.
8. Supervisors shall require Employees or Volunteers performing Safety-Sensitive Functions under their immediate supervision to inform the City of any therapeutic drug use that could affect the ability to perform Safety-Sensitive Functions.
9. No supervisor having actual knowledge that a driver has tested positive for Controlled Substances shall permit the driver to perform or continue to perform Safety-Sensitive Functions.
10. Prior to the first time a newly hired, promoted, transferred, or reassigned Employee or a Volunteer performs a Safety-Sensitive Function, the supervisor shall verify that the individual has received a Controlled Substances test result from the Medical Review Officer indicating a verified negative test result.
11. A supervisor shall remove an Employee or Volunteer from performing a Safety-Sensitive Function and require the individual to submit to an Alcohol test and/or a Controlled Substance test when the supervisor has Reasonable Suspicion to believe that the individual has violated the FHWA and this Policy's prohibitions concerning the use of Alcohol or Controlled Substances. The supervisor shall ensure that the individual is safely transported to a safe place after removal from the performance of a Safety-Sensitive Function.
12. A supervisor shall document the observations and circumstances leading to the Reasonable Suspicion testing of an Employee or Volunteer.
13. A supervisor shall document any failure to test an Employee or Volunteer for which there is reasonable suspicion of Alcohol misuse or Controlled Substance use.
14. A supervisor shall ensure that an Employee or Volunteer involved in an Accident as defined in this Policy is tested for Alcohol and Controlled Substances pursuant to this Policy and FHWA regulations.

15. A supervisor shall document any failure to comply with this Policy and FHWA regulations pertaining to post-accident testing.
16. A supervisor shall not allow an Employee or Volunteer who has violated the City's Policy to return to duty unless the supervisor can verify that the individual has complied with all testing and rehabilitation program requirements.
17. Any tested Employee or Volunteer with an Alcohol Concentration of 0.02, but less than 0.04, shall not be permitted to perform Safety-Sensitive Functions until the start of his/her next regularly scheduled duty period, but not less than 24 hours following administration of the Alcohol test.
18. All supervisors supervising Employees or Volunteers covered by the Policy are required to participate in City provided training.
19. A supervisor who is confronted by an Employee/Volunteer who refuses to submit to an Alcohol or Controlled Substance test shall remind the individual of the requirements of the City's policy and of the consequences of refusal.
20. A supervisor will notify the City's Alcohol and Drug Program Administrator and the respective Department Director when an Employee/Volunteer is in violation of the City's Policy and testing program requirements.
21. A supervisor will not physically search the person of Employees/Volunteers. He/she shall not search the personal possessions of Employees/Volunteers without the written consent of the individual. A search of the individual's personal possessions will be conducted in the presence of the person if feasible.

SEC. 10 "Definitions:"

ACCIDENT - means an unintended happening or mishap where there is loss of human life (regardless of fault), bodily injury treated away from the scene, or a vehicle is required to be towed from the scene.

ALCOHOL - means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.

ALCOHOL CONCENTRATION (OR CONTENT) - means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this regulation. For example, 0.02 means 0.02 grams of alcohol in 210 liters of expired deep lung air.

ALCOHOL USE - means consumption of any beverage, mixture, or preparation, including any medication containing ethyl alcohol. Since ingestion of a given amount of alcohol produces the same alcohol concentration in an individual whether the alcohol comes from a mixed drink or cough syrup, the Department of Transportation prohibits the use of any substance containing alcohol, such as prescription or over-the-counter medication or liquor-filled chocolates. Prescription medications containing alcohol may have a greater impairing affect due to the presence of other elements (e.g., antihistamines).

BREATH ALCOHOL TECHNICIAN (BAT) - means a person trained to proficiency in the operation of the Evidential Breath Testing (EBT) device that the technician is using in the alcohol testing procedures. BATs are the only personnel qualified to administer the EBT tests.

CHAIN OF CUSTODY - means the procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of collection to final disposition.

CITY TIME - means any period of time in which the Safety-Sensitive Employee is actually performing, ready to perform, or is immediately available to perform any Safety- Sensitive Functions. On duty time shall include:

1. All time at a City facility or other City property, or on any public property, on standby, waiting to be dispatched, unless the driver has been relieved from duty by the City;
2. All time inspecting, servicing, or conditioning any Commercial Motor Vehicle at any time;
3. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading of a vehicle, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
4. All driving time;
5. All time, other than driving time, in or upon any Commercial Motor Vehicle;
6. All time spent performing the driver requirements relating to Accidents;
7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

COLLECTION SITE - means a place designated by the City of Irvine where individuals present themselves for the purpose of providing a specimen of either urine and/or breath. The site must have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage and transportation or shipment of the samples to a laboratory.

COMMERCIAL MOTOR VEHICLE (CMV) - means a motor vehicle, or combination of motor vehicle used in commerce to transport passengers or property if the motor vehicle: (1) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or (2) has a gross vehicle weight rating of 26,001 or more pounds; or (3) is designed to transport 16 or more passengers, including the driver; or (4) is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, (49C FR Part 172, subpart F).

CONFIRMATION TEST - for Alcohol testing means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol

concentration. For Controlled Substances testing, this means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial screen test and which uses a different technique and chemical principle from that of the initial screen test in order to ensure reliability and accuracy. (Gas Chromatography/Mass Spectrometry (GC/MS) is the only authorized confirmation method of cocaine, marijuana, opiates, amphetamines, and phencyclidine).

CONTROLLED SUBSTANCE (DRUG METABOLITE) - means the specific substance produced (other than Alcohol), when the human body metabolizes (changes) a given drug (Controlled Substance) as it passes through the body and is excreted in urine, (49C FR Part 40).

CONTROLLED SUBSTANCE (DRUG) TEST - A method of detecting and measuring the presence of Controlled Substances, in a person's body. A Controlled Substance test may be either an initial test or confirmation test. An initial Controlled Substance test is designed to identify specimens having concentrations of a particular class of drug above a specified concentration level. It eliminates negative specimens from further consideration.

A confirmation drug testing is a second analytical procedure to detect the presence of a specific drug or its metabolite. The confirmation procedure is conducted independent of the initial test and uses a different technique and chemical principle in order to confirm reliability and accuracy.

DEPARTMENT OF TRANSPORTATION GUIDELINES - means the Controlled Substance and Alcohol testing rules setting forth the procedures for Controlled Substance and Alcohol testing (49 CFR Part 40) in all the transportation industries.

DRIVER - Means any person who operates a commercial motor vehicle. This includes full-time, and part-time regularly employed drivers: volunteers, casual, intermittent or occasional drivers; leased drivers; and independent, owner-operator contractors. Drivers who are under lease to the City or who operate a commercial motor vehicle at the direction of or with the consent of the City will be required, within the context of their contract, to abide by the Federal Regulations governing the Omnibus Transportation Employee Testing Act of 1991.

EVIDENTIAL BREATH TESTING DEVICE (EBT) - means the device approved by the National Highway Traffic Safety Administration (NHTSA) to be used for the evidential testing of breath alcohol.

MEDICAL REVIEW OFFICER (MRO) - means a licensed physician responsible for analyzing laboratory results generated by the City's Controlled Substance testing program. The MRO is knowledgeable about substance abuse disorders and has appropriate medical training to interpret and evaluate positive test results.

OWNER-OPERATOR - means a driver who has contracted for services with the City. For the purposes of this Policy, owner-operators are not to be considered employees or volunteers, but will be required to adhere to the Federal regulations governing the Omnibus Transportation Employee Testing Act of 1991.

(PERFORMING) SAFETY-SENSITIVE FUNCTION - means a Safety-Sensitive Employee or Volunteer who is considered to be performing a safety-sensitive function as set forth in 49C FR Section 39.5.2; and, as defined under “City Time”; and includes any period in which the Safety-Sensitive Employee/Volunteer is actually performing, ready to perform, or is immediately available to perform such functions.

POST-ACCIDENT ALCOHOL AND/OR CONTROLLED SUBSTANCE TESTING - conducted on employees or volunteers whose performance could have contributed to the accident, as defined in this Policy.

PRE-PLACEMENT OF CONTROLLED SUBSTANCE TESTING - conducted after an offer to hire (including promotions, transfers, and reassignments), but before actually performing safety-sensitive functions for the first time.

PROHIBITED DRUGS (CONTROLLED SUBSTANCES) - means Marijuana, Cocaine, Opiates, Amphetamines, or Phencyclidine.

PROGRAM MANAGER - means the City’s Alcohol and Drug Program Administrator designated to monitor, facilitate, and answer questions pertaining to the City’s Policy and testing procedures. All requests for information shall be made through Human Resources for referral to the Program Manager..

RANDOM ALCOHOL AND/OR CONTROLLED SUBSTANCE TESTING - conducted on a random unannounced basis just before, during or just after performance of Safety-Sensitive Functions.

REASONABLE SUSPICION ALCOHOL AND/OR CONTROLLED SUBSTANCE TESTING - conducted when a trained supervisor or manager observes behavior or appearance that is characteristic of alcohol misuse or controlled substance abuse.

REFUSAL TO SUBMIT (TO AN ALCOHOL AND/OR CONTROLLED SUBSTANCE TEST) - means that a Safety-Sensitive Employee or Volunteer fails to provide an adequate breath or urine sample for testing without a valid medical explanation after that individual received notice of the requirement to be tested, or engages in conduct that clearly obstructs the testing process (i.e., tampering with a sample, verbal declarations, neglecting to sign appropriate control forms, or physical absence resulting in the inability to conduct the test, not being readily available following an accident, or using alcohol within eight hours of an accident).

REHABILITATION - The total process of restoring an Employee to satisfactory work performance through constructive confrontation, referral to the SAP and participation in

SAP recommendations such as education, treatment and/or support groups to resolve personal, physical or emotional/mental problems which contributed to job problems.

RETURN TO DUTY AND FOLLOW-UP ALCOHOL AND/OR CONTROLLED

SUBSTANCE TESTING - conducted when an individual who has violated the prohibited Alcohol or Controlled Substance conduct standard returns to performing Safety- Sensitive duties. Follow-up tests are unannounced, and at least six (6) tests will be conducted in the first twelve (12) months after an Employee returns to duty. Follow-up testing may be extended for up to sixty (60) months following return to duty upon the recommendation of the SAP.

RETURN-TO-DUTY AGREEMENT - means a document agreed to and signed by the City, Safety-Sensitive Employee and the Substance Abuse Professional that outlines the terms and conditions under which the individual may return to duty after having had a verified positive Controlled Substance test result or an Alcohol concentration of 0.04 or greater on an alcohol test.

SAFETY-SENSITIVE EMPLOYEE AND VOLUNTEER (FUNCTION) - An Employee or Volunteer is considered to be performing a Safety-Sensitive Function during any period in which that individual is actually performing, is ready to perform, or is immediately available to perform any Safety-Sensitive Function.

SEC. 11 “Safety-Sensitive Classifications:” The Department of Transportation Drug Testing Program is applicable to Safety-Sensitive positions in the following classifications:

FULL-TIME CLASSIFICATIONS (Safety-Sensitive Functions only)

Equipment Operator I/II
Street Maintenance Technician
Lead Street Maintenance Technician
Street Maintenance Specialist
Landscape Maintenance Technician
Lead Landscape Maintenance Technician
Landscape Maintenance Specialist
Paratransit Driver
Tree Trimmer
Street Maintenance Supervisor
Landscape Maintenance Supervisor
Equipment Mechanic
Senior Equipment Mechanic
Lead Equipment Mechanic
Fleet Services Superintendent

PART-TIME CLASSIFICATIONS (Safety-Sensitive Functions only)

Transit Program Dispatcher - Back-up Transportation Van Driver
Paratransit Driver

SEC. 12 “Procedures:”

REASONABLE SUSPICION TESTING

1. A Safety-Sensitive Employee/Volunteer who may be under the influence of Alcohol and/or Controlled Substances must be observed by a trained supervisor. Any Employee/Volunteer may identify someone suspected of alcohol and/or controlled substance to a trained supervisor. Individuals should realize, however, that the City will not tolerate false or malicious statements about other Employees/Volunteers and doing so can result in disciplinary action being taken against the offending Employee/Volunteer. The trained supervisor must witness first-hand the Safety-Sensitive Employee’s/Volunteer’s signs and symptoms.
2. The trained supervisor is then obligated to ensure that the matter is immediately investigated. It is recommended that two trained supervisors determine (independently or together) that the Safety-Sensitive Employee/Volunteer in question may indeed be under the influence of Alcohol and/or Controlled Substances, and to complete the Observed Behavior Reasonable Cause Record.
3. When the trained supervisor(s) suspect and believe that the Safety-Sensitive Employee/Volunteer may be under the influence of Alcohol and/or Controlled Substances, the Safety-Sensitive Employee/Volunteer is then immediately suspended from duty (with pay) and is transported by the trained supervisor to the City’s mobile testing unit or other designated Collection Site. The City’s Program Manager or Assistant Program Manager will be notified in advance of the individual being taken to the mobile testing unit or other designated Collection Site.
4. At the Collection Site, the Safety-Sensitive Employee/Volunteer will be required to submit a urine sample (in the event that Controlled Substances are suspected) or a breath sample (in the event that Alcohol intoxication is suspected) to the on-duty technician. Care will be taken to provide the Safety-Sensitive Employee/Volunteer with maximum privacy without compromising the integrity of the sample.
5. The City will take precautions to prevent the Safety-Sensitive Employee/Volunteer being tested from going back to work and driving their own car home. Instead, the individual will be given assistance in obtaining a ride home from the mobile testing unit, or other designated Collection Site.
6. The Safety-Sensitive Employee/Volunteer whose Alcohol Concentration test results are negative (0.02 Alcohol Concentration or less) will be reinstated. The Employee/Volunteer whose confirmation Test results indicate an Alcohol

Concentration greater than 0.02, but less than 0.04, will not be permitted to return to duty or perform a Safety-Sensitive Function for twenty-four (24) hours after administration of the test and disciplinary action may be taken in accordance with Article 19 of the Personnel Rules and Procedures or appropriate MOU provisions. The Safety-Sensitive Employee/Volunteer whose Confirmation Test result indicates an Alcohol Concentration of 0.04 or greater for Alcohol will be referred to a City designated Substance Abuse Professional (SAP). The SAP will assess the Safety-Sensitive Employee/Volunteer's condition and make a recommendation for treatment which, if accepted by the City, must be followed by the Safety-Sensitive Employee/Volunteer. Failure to follow the accepted recommendations or refusal to submit to return-to-duty and unannounced follow-up testing will result in disciplinary action up to and including dismissal.

7. The Safety-Sensitive Employee/Volunteer whose Controlled Substance test results are verified negative will be reinstated. The Safety-Sensitive Employee/Volunteer whose Controlled Substance test is verified positive by the Medical Review Officer (MRO) will be referred through the same process as described above (6). Failure to follow the accepted recommendations or refusal to submit to Return-To-Duty and unannounced. Follow-up testing will result in disciplinary action up to and including dismissal.

RANDOM TESTING

1. The City's third-party administrator notifies the supervisor through the City's Program Manager to send the Safety-Sensitive Employee/Volunteer to the Collection Site (mobile testing unit) for Alcohol and/or Controlled Substance testing.
2. The supervisor notifies the Safety-Sensitive Employee/Volunteer to go to the Collection Site (mobile testing unit) for Alcohol and/or Controlled Substance testing immediately. The Safety-Sensitive Employee/Volunteer will present proof of identification, such as a photo driver's license or state-issued photo identification card.
3. At the Collection Site, the Safety-Sensitive Employee/Volunteer will be required to submit a urine sample (in the event that Controlled Substances are to be tested for), or a breath sample (in the event that Alcohol is being tested for) to the on-duty technician. Care will be taken to provide the Safety-Sensitive Employee/Volunteer with maximum privacy without compromising the integrity of the sample.
4. The Safety-Sensitive Employee/Volunteer whose Alcohol test results are negative (0.02 Alcohol Concentration or less) will be sent back to work. The Safety-Sensitive Employee/Volunteer whose Confirmation Test results indicate an Alcohol Concentration greater than 0.02, but less than 0.04, will not be permitted to return to duty or perform a Safety-Sensitive Function for 24 hours after administration of the test. The Safety-Sensitive Employee/Volunteer whose Confirmation Test result indicates an Alcohol Concentration or 0.04 or greater for Alcohol will be referred to a

City designated Substance Abuse Professional (SAP). The SAP will assess the Safety-Sensitive Employee/Volunteer's condition and make a recommendation for treatment which, if accepted by the City, must be followed by the Safety-Sensitive Employee/Volunteer.

5. Failure to follow the accepted recommendations or refusal to submit to return-to-duty and unannounced follow-up testing will result in disciplinary action up to and including dismissal.
6. The Safety-Sensitive Employee/Volunteer whose Controlled Substance test results are verified negative will be sent back to work. The Safety-Sensitive Employee/Volunteer whose Controlled Substance test is verified as positive by the Medical Review Officer will be referred through the same process as described above in Paragraph B(4). Failure to follow the accepted recommendations or refusal to submit to return-to-duty and unannounced follow-up testing will result in disciplinary action up to and including dismissal.

POST-ACCIDENT

1. The Safety-Sensitive Employee/Volunteer or Police personnel notifies a trained supervisor that an Accident has occurred.
2. After discussion with Police personnel, the trained supervisor determines that the circumstances of the Accident warrant a post-accident test (see Definitions - Accident). Thereafter, the supervisor will contact the mobile testing unit to administer Alcohol and/or Controlled Substance testing. The Safety-Sensitive Employee/Volunteer must have proof of identification, such as a photo driver's license or state -issued photo identification card.
3. The Safety-Sensitive Employee/Volunteer will be required to submit a urine sample for Controlled Substances and/or a breath sample for Alcohol testing to the on-duty technician. Care will be taken to provide the Safety-Sensitive Employee/Volunteer with maximum privacy without compromising the integrity of the sample.
4. The City's Program Manager will be notified that an Accident has occurred and that the Safety-Sensitive Employee/Volunteer was instructed to go to the Mobile Testing Unit/Collection Site.
5. The Safety-Sensitive Employee/Volunteer whose test results are negative (0.02 Alcohol concentration or less) will be returned to work if physically able to do so. The Safety-Sensitive Employee/Volunteer whose confirmation test results indicate an Alcohol concentration greater than 0.02, but less than 0.04, will not be permitted to return to duty or perform a Safety-Sensitive Function for 24 hours after administration of the test and disciplinary action may be taken according to Article 19 of the Personnel Rules and Procedures or appropriate MOU provisions. The Safety-Sensitive Employee/Volunteer whose confirmation test result indicates an Alcohol

Concentration of 0.04 or greater for Alcohol will be referred to a City designated Substance Abuse Professional (SAP). The SAP will assess the Safety-Sensitive individual's condition and make a recommendation for treatment, which, if accepted by the City, must be followed by the Safety-Sensitive Employee/Volunteer. Failure to follow the accepted recommendations or refusal to submit to return-to-duty and unannounced follow-up testing will result in disciplinary action up to and including dismissal.

6. The Safety-Sensitive driver whose Controlled Substance test results are verified negative will be returned to work if physically able to do so. The Safety-Sensitive driver whose Controlled Substance test is verified positive by the Medical Review Officer will be referred through the same process as described above in Paragraph C(5).

RETURN-TO-DUTY AND FOLLOW-UP

1. The Third Party Administrator will notify the City to send the Safety-Sensitive Driver to the Mobile Testing Unit/Collection Site for Alcohol and Controlled Substance testing.
2. The trained supervisor will notify the Safety-Sensitive driver to go immediately to the Mobile Testing Unit/Collection Site for Alcohol and Controlled Substance testing. The Safety-Sensitive Employee/Volunteer in question will provide proof of identification, such as a photo driver's license or state-issued photo identification card.
3. At the Mobile Testing Unit/Collection Site, the driver will be required to submit a urine sample for Controlled Substances or a breath sample for Alcohol testing to the on-duty technician. Care will be taken to provide the Safety-Sensitive Employee/Volunteer with maximum privacy without compromising the integrity of the sample.
4. The driver whose confirmation test results indicate an Alcohol concentration greater than 0.02 or whose Controlled Substance test is verified positive will be subject to disciplinary action up to and including dismissal.

CHAIN OF CUSTODY FOR CONTROLLED SUBSTANCE SPECIMENS

1. At the time a specimen is collected, the Safety-Sensitive Employee/Volunteer will be given a copy of the specimen collection procedures.
2. Urine will be in a wide-mouthed clinic specimen container, which will remain in full view of the driver until split, transferred to, sealed, and initialed in two tamper-resistant urine bottles.

3. Immediately after specimens are collected, the urine bottles will, in the presence of the driver, be labeled and then initialed by the Employee/Volunteer. The specimens will then be placed in the transportation container. The container will be sealed in the driver's presence and he/she will be asked to initial or sign the container. The container will be sent to the designated testing laboratory on that day or the earliest business day by the fastest available method.
3. A Chain of Custody form will be completed by the on-duty technician during the specimen collection process and attached to and mailed with the specimen.

ALCOHOL CONCENTRATION

The Safety-Sensitive Employee/Volunteer and the on-duty Breath Alcohol Technician (BAT) complete the alcohol testing form to ensure that the results are properly recorded.

After an explanation of how the Breathalyzer works, an initial breath sample is taken.

If the results of the initial test show an alcohol concentration of 0.02 or greater, a second or confirmation test must be conducted. The confirmation test must not be conducted less than fifteen (15) minutes after, nor more than twenty (20) minutes after the initial screening test.

The confirmation test will use Evidential Breath Testing devices that print out the results, date and time, a sequential test number, and the name and serial number of the Evidential Breath Testing device to ensure the reliability of the results.

REASONABLE SUSPICION EVALUATION FORM
ALCOHOL AND DRUG PREVENTION PROGRAM

Employee Name: _____
Observation Date and Time: _____
Location of Employee: _____
Location of Supervisor(s): _____
Others present during activities or observations: _____
Incident(s) observed which give cause for reasonable suspicion: _____

(Factors that may be considered in combination with those listed in 1 – 6 below include: takes needless risks, accident(s), disregard for others safety, unusual/distinct pattern of absenteeism/tardiness, increased high/low periods of productivity, lapses of concentration or judgment, etc.)

Presence of alcohol, alcohol containers, drugs, and/or drug paraphernalia (specify):

2. Appearance:

Flushed Inappropriate Disheveled

 Bloodshot/Glassy Eyes Puncture Marks Tremors
 Profuse Sweating Runny Nose/Sores Smell of Alcohol

 Dry-mouth Symptoms Dilated/Constricted Pupils
 Inappropriate Wearing of Sunglasses
 Other: _____

3. Behavior/Speech:

Incoherent Slurred Unconscious
 Confused Slowed
 Hostile/Confrontation

 Agitated Sleeping on the job
 Other: _____

4. Awareness:

Confused Mood Swings Euphoric

 Lethargic Paranoid Disoriented
 Lack of Coordination
 Other: _____

5. Motor Skills/Balance:

Unsteady Swaying Falling
 Staggering Stumbling Reaching for Support
 Arms Raised for Balance
 Other: _____

6. Other observed Actions or Behaviors: _____

Supervisor's Comments: _____

Supervisors Name: _____

Signature: _____

Date: _____

Supervisors Name: _____

Signature: _____

Date: _____

Witness(es) Name: _____

Date: _____

Signature: _____

Date: _____