



CITY OF PINOLE

PERSONNEL RULES

Adopted May 19, 2009

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**CITY OF PINOLE
PERSONNEL RULES
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CITY OF PINOLE PERSONNEL RULES

1 General Provisions

1.1 Purpose

The purpose of these Personnel Rules is to establish a system of personnel administration which provides for effective personnel management practices; to promote fairness and equality in the recruitment, appointment, retention, promotion, and separation of employees on the basis of merit and fitness; provide a framework for ensuring a safe workplace, free of unlawful conduct; and in order to provide the public with the highest quality of public service.

1.2 Conflicts with Other Policies

These Personnel Rules do not create any additional or parallel rights which already exist in a Memorandum of Understanding and in no event are to be considered to create an additional or supplemental appeal right from a personnel decision.

Whenever these Personnel Rules contain a provision relating to a subject matter that is also referred to in a Memorandum of Understanding, then the provisions of said Memorandum of Understanding shall prevail.

Whenever there is a conflict between Personnel Rules and the City of Pinole Municipal Code, then the Municipal Code shall prevail.

This Priority Chart is for Informational Purposes Only.
Priorities Listed from Highest to Lowest

1. MOU or Employment Contract
2. Municipal Code
3. Personnel Rules
4. City Manager's Adopted Administrative Policies
5. Department Policies and Procedures

1.3 Notice

These Personnel Rules, any changes thereto, and any department directives or regulations related to these rules, regulations, policies and procedures shall be made available to all City employees at the time of appointment and upon request. Employees may elect to receive either an electronic or hard copy.

1.4 Scope

Except where otherwise indicated these Personnel Rules shall apply to all positions and employees of the City of Pinole except:

1. Elected officials and members of appointive boards, commissions, and committees;
2. Independent contractors engaged under contract (through accounts payable) to supply expert, professional, technical or any other services, except as otherwise provided in these Personnel Rules.

1.5 Administration

The City Manager is designated as the Personnel Officer and shall administer the City personnel system and may delegate any of the powers and duties to any other management employee of the City.

1.6 Relationship to Other Administrative Procedures

The City Manager and department heads may develop and implement operating procedures; provided, however, that these Personnel Rules shall prevail.

1.7 Severability

If any provision of these Personnel Rules is held to be invalid by a Court of competent jurisdiction, then that provision shall be deemed deleted and the remaining provisions shall continue in full force and effect.

1.8 Interpretation

The City Manager and the Human Resources Director are responsible for the interpretation of these Personnel Rules.

1.9 Amendments

Following appropriate notice to collective bargaining organizations for rules that fall within the scope of representation, or effect matters within the scope of representation, the City Manager or his/her designee is authorized to amend these rules, subject to the approval of the City Council.

2 Definition of Terms

2.1 Advancement

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

2.2 Allocation

The assignment of an individual position to an appropriate class on the basis of the type, difficulty and responsibilities of the work assigned. As used in these Personnel Rules, employees are appointed to positions; positions are allocated to classes.

2.3 Anniversary Date

The month and day of an employee's appointment.

2.4 Applicant

A person who has submitted an application for consideration for a position currently being recruited.

2.5 Appointing Authority

The City Manager, or by delegation, his/her designee(s). The City Council is the appointing authority for the City Attorney and the City Manager.

2.6 Appointment

The employment of a person in a position. Types of appointment are at-will, regular or temporary and shall be either full-time or part-time.

2.6.1 At-Will Appointment

Except as defined in the Municipal Code as being within the Competitive Service, employment of City employees may be terminated with or without cause and with or without notice at any time by either the employee or the City. Nothing in these Personnel Rules or in any document or statement shall limit the right to terminate employment at-will.

2.6.2 Regular Position Appointment

Appointment to a position which works an ongoing schedule and for which the City Council has authorized the providing of health and welfare benefits.

2.6.3 Temporary Position Appointment

Appointment to a position which is not a regular position appointment. Temporary position appointments are limited to a maximum of nine hundred ninety-nine (999) paid hours during any fiscal year. Temporary positions do not receive health and welfare benefits, accrue vacation, sick leave or other paid leaves, or receive any other benefits accorded to regular position appointments.

2.6.4 Provisional Position Appointment

Appointment on an interim basis to a regular position without any health and welfare benefits or accrual of vacation, sick leave or other paid leaves, or receipt of any other benefits accorded to regular position appointments. Provisional position appointments are limited to a maximum of nine hundred ninety-nine (999) paid hours during any fiscal year.

2.6.5 Full-Time Employee

An employee who is regularly scheduled to work forty (40) hours per work week.

2.6.6 Part-Time Employee

An employee who is regularly scheduled to work less than full-time.

2.7 Candidate

An applicant whose application has been accepted for participation in the recruitment and selection process for a position being recruited.

2.8 City

The City of Pinole; to also include the Pinole Redevelopment Agency and any other governing body in which the City Council of the City of Pinole serves as the majority membership of the governing board, unless specifically excluded in these Personnel Rules.

2.9 City Manager

The City Manager of the City of Pinole; may also be referred to as the Personnel Officer or the Employee Relations Officer.

2.10 Class or Classification

A group of positions sufficiently similar in duties, responsibilities, authority, and qualifications to permit combining them under a single title.

2.11 Class Series

The placement of two or more classifications within a group where the classifications within the series perform similar types of job duties and are primarily distinguished by the level of responsibility and the complexity of the assigned duties.

2.12 Class Specifications

A written description of a class of work, including an appropriate class title, the level of the work assigned, and the desirable knowledge, skill and ability standards for positions assigned to the class.

2.13 Competitive Service

All positions of employment in the service of the City except those specifically excluded by Municipal Code Section 2.48.040.

2.14 Days

Means calendar days unless otherwise stated.

2.15 Demotion

The voluntary or involuntary reduction of an employee to a position in another class having lesser duties and responsibilities and a lower maximum salary rate.

2.16 Department Manager/Department Head

The management employee with administrative responsibility for an operational department or functional area.

2.17 Dismissal

The involuntary termination of an employee.

2.18 Disciplinary Action

For cause disciplinary action may include a written reprimand, suspension, demotion, reduction in pay, or a dismissal of an employee.

2.19 Domestic Partnership

Two persons regardless of their gender who have filed a Declaration of Domestic Partnership with the State of California and provide the Human Resources Department with a copy of their State Certificate of Registration of Domestic Partnership.

2.20 Elected Officials

The elected City Treasurer and the elected City Council Members.

2.21 Eligible

A person whose name is on an employment or reinstatement list.

2.22 Employee

A person occupying a position in the City service.

2.23 Employee Relations Officer

The City Manager or his/her designee.

2.24 Employment Eligibility List

A list of qualified candidates for a specific classification.

2.24.1 Open Employment List

A list of names of candidates who have taken an open-competitive examination for a class in the competitive service and have been determined to be qualified.

2.24.2 Promotional Employment List

A list of names of regular employees who have taken a promotional examination for a class in the competitive service and have been determined to be qualified.

2.24.3 Reinstatement List

A list of names of former regular employees who have been laid off or demoted to a lower classification in lieu of layoff.

2.25 Examination

A recruitment for employment, including the testing, selection and evaluation processes of an individual for a prospective position.

2.25.1 Open-Competitive Examination

A recruitment for a particular class which is open to all persons.

2.25.2 Promotional Examination

A recruitment for a particular class which is open only to current regular employees.

2.26 Gender and Number

The masculine pronoun, whenever used herein, shall include the female pronoun and the singular shall include the plural, except where the content requires otherwise.

2.27 Layoff

The non-disciplinary separation of an employee.

2.28 Leave

Authorized absence of an employee from work, with or without pay.

2.29 Overtime

For employees who are defined by the Fair Labor Standards Act (FLSA) as non-exempt, all hours worked in excess of forty (40) hours during the work week. Employees designated as FLSA exempt are not eligible to receive overtime.

2.30 Pay Status

The period in which an employee is at work, on vacation leave, sick leave, compensatory time off, salary continuation due to an industrial injury, paid military leave, or an approved leave of absence with full pay.

2.31 Personnel Action

Any action taken with reference to appointment, compensation, classification, leave of absence, disciplinary action, or termination.

2.32 Human Resources Director

A management position assigned by the City Manager to manage the day-to-day operations of these Personnel Rules and other duties as specified in the class specification. Also includes someone acting on behalf of the Human Resources Director.

2.33 Personnel Ordinance

Pinole Municipal Code Section Number 2.48 which creates a personnel system for the City and which the City Council from time to time may amend.

2.34 Position

A group of duties and responsibilities requiring employment of one person.

2.35 Probationary Employee

An employee, in a regular position and whose position is within the competitive service, and who is completing a probationary period as defined within these Personnel Rules.

2.36 Probationary Period

A trial period during which an employee is required to demonstrate his/her fitness to perform the actual duties required of a specific position. The probationary period is an integral part of the examination and selection of an individual.

2.37 Promotion

The advancement of an employee from a position in one class to an existing vacant position in another class having a higher maximum rate of pay. Movement within a class series is not considered to be a promotion.

2.38 Qualified Candidate

A person who has been certified by the Human Resources Director for consideration for appointment.

2.39 Reclassification

The reassignment of a position by raising it to a higher class, reducing it to a lower class, or by moving it to another class at the same level as measured by change in the kind, difficulty, and responsibility of the work performed. Movement within a class series is considered to be a reclassification.

2.40 Reduction in Step

The placement of an employee at a step within their classification pay range, lower than that currently held, for disciplinary reasons.

2.41 Reemployment

The reappointment, without examination, of a former employee who has resigned in good standing to the last class the employee previously held.

2.42 Reinstatement

The reappointment, without examination, of a former employee who has previously been laid off, or demoted in lieu of being laid off, and whose name appears on a reinstatement list.

2.43 Retirement

2.43.1 Service Retirement

The voluntary separation and concurrent retirement of a regular employee after becoming eligible for retirement benefits.

2.43.2 Disability Retirement

The separation and concurrent retirement of a regular employee due to physical or mental inability to perform the duties of the position. Non-industrial disability means the disability need not be job related. Industrial disability means the disabling injury or illness is work-incurred or job-related.

2.44 Salary Range

The minimum, maximum, and intermediate salary steps that are assigned to a class and the positions within a class.

2.45 Safety Position

A position as defined within the Public Employment Retirement Law (PERL) and/or California Public Employees' Retirement System (PERS).

2.46 Service

A period that includes all paid periods of City employment.

2.47 Supervisor

An employee with the responsibility for organizing, directing, and evaluating the work of other employees.

2.48 Suspension

The temporary loss of pay and loss of work, for disciplinary purposes, not to exceed thirty (30) calendar days in a twelve (12) month period.

2.49 Termination

The separation of an employee from City service, either voluntarily or involuntarily.

2.50 Time Sheet

The document on which an employee's actual hours worked and absences from work are recorded.

2.51 Transfer

A change of an employee from one position to another position in the same class or in a comparable class.

2.52 Vacancy

An authorized position that is not occupied.

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3 Classification Plan

3.1 Purpose

The purpose of the classification plan is to provide a complete inventory of all classes, to provide accurate class specifications, and to ensure that each position is allocated to the appropriate class.

3.2 Preparation of Plan

The Human Resources Director, in consultation with the collective bargaining organization(s), shall ascertain and record the duties and responsibilities of all positions in the competitive service and shall recommend to the City Manager or his/her designee a class for such positions. The classification plan shall consist of classes of positions defined by class specifications, including the title. The classification plan shall be so developed and maintained that all positions substantially similar with respect to duties, responsibilities, authority, and character of work are included within the same class, and that the same salary range may be made to apply to all positions in the same class.

3.3 Approval, Amendment and Revision of Plan

Any proposed amendment or revision to the classification plan shall be initiated by or submitted to the Human Resources Director who shall provide a recommendation to the City Manager or his/her designee. The classification plan shall be approved, and may be amended from time to time, by the City Manager or his/her designee after consultation with the affected collective bargaining organization(s).

3.4 Allocation of Positions

The City Council shall allocate every position to one of the classes established by the classification plan.

3.5 Reclassification

Positions, the assigned duties of which have been materially changed by the City so as to necessitate reclassification, whether new or already created, shall be allocated by the City Council to a more appropriate class.

Positions within a class series may be allocated by the City Manager to the appropriate class.

This Summary of Approvals is for Informational Purposes Only.

3.3	Approve or amend job descriptions.	City Manager
3.4	Assign positions to a class.	City Council
3.5	Move a position within a class series.	City Manger
3.5	Move a position to a new class.	City Council
12.1	Assign a salary range to a class.	City Council

Reclassification shall not be used to avoid the process requirements of demotion or promotion.

4 Equal Employment Opportunity

4.1 Purpose

To establish a policy to ensure equal employment opportunity with the City, to outline procedures for action in case of violation and to create a large pool of qualified candidates to encourage diversity and ensure equal employment opportunity in hiring.

4.2 Policy

It is the policy of the City to ensure equal employment opportunity for all employees. This commitment includes a mandate to assure equal employment opportunity based on ability and fitness to all persons regardless of race, religion, color, creed, national origin, gender, sexual orientation, marital status, age, physical or mental disability, legally protected medical condition, veteran status, or any other basis protected by state or federal laws.

The goals and objectives of the Equal Employment Opportunity Policy are to:

1. Ensure fair treatment and non-discrimination in City hiring and City employment.
2. Provide compliance with State and Federal equal opportunity requirements and regulations.

4.3 Program Responsibility

The Human Resources Director shall serve as the Equal Employment Opportunity Officer to carry out the Equal Employment Opportunity Policy. The Human Resources Director shall be the focal point for the City's equal opportunity efforts and shall advise and assist staff and management personnel in all matters regarding implementation of and compliance with the Equal Employment Opportunity Policy, and be responsible for the successful execution of the program, utilizing the assistance of appropriate State and community agencies. The Equal Opportunity Officer will have responsibility to examine existing internal policies or procedures which may serve as barriers to implementing the Equal Employment Opportunity Program.

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5 Recruitment

5.1 Applications and Applicants

All examinations for classes shall be publicized by such methods as the Human Resources Director deems appropriate. Job announcements shall specify the title and pay of the class for which the examination is announced, the nature of the work performed, required training and experience, the manner of making application, the type of eligibility list to be utilized, and other pertinent information.

5.2 Application Forms

The application form requires information deemed necessary by the Human Resources Director and consistent with applicable state and federal laws. A supplement to the application form may be used to gather additional information to assist the City in determining the most qualified applicants.

5.3 Disqualification

Any application may be rejected which is incomplete, was not submitted by the specified filing date, which indicates on its face that the applicant does not possess the qualifications for the position, or which contains false statements, or if the applicant does not satisfactorily complete any element of the selection process. When an application is rejected, the applicant shall be notified by mail of the rejection. At the discretion of the Human Resources Director, an applicant may be asked to correct an application that is missing required information; provided, however, that all filing deadlines are met by the applicant.

5.4 Selection Process

The selection techniques used in the examination process shall be impartial and relate to those subjects which, in the opinion of the Human Resources Director, measure the relative capabilities of the persons examined to execute the duties and responsibilities of the class to which they seek appointment. Examinations shall consist of selection techniques which will test the qualifications of candidates such as, but not necessarily limited to, achievement and aptitude tests, review of work history and/or education, written tests, personal interviews, performance tests, physical ability tests, skill tests, evaluation of daily work performance, work samples, medical tests, psychological tests, successful completion of prescribed training, or any combination of these or other tests. Applicants meeting the minimum qualifications are not guaranteed advancement through any portion or phase of the selection process.

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6 Anti-Nepotism Policy

6.1 Definitions

For purposes of this policy, relative shall mean spouse or registered domestic partner, son, daughter, brother, sister, father, mother, grandchild, or grandparent, either by blood, present marriage or domestic partnership. Hiring, reemployment, reinstatement, promotion, transfer, or other job assignment, which will result in relatives of employees working in the same department, shall be permitted, except as provided below.

6.2 City Rights Under the Anti-Nepotism Policy

Notwithstanding the above provisions, the City retains the right:

1. To refuse to place one relative under the direct supervision of the other relative where such has the potential for creating adverse impact on supervision, safety, security, or morale.
2. To refuse to place both relatives in the same department, division, or facility where one relative is in a position to evaluate another, where such has the potential for creating adverse impact on supervision, safety, security, or morale, or involves potential conflicts of interest, including, but not limited to, situations where both employees would have the same immediate supervisor, or where the employees would have job duties requiring performance of shared duties on the same or related work assignments.

6.3 Marriage of Co-Employees

If employees marry or become domestic partners, or an employment relationship listed in Section 6.2 is created by any other means, the City shall make reasonable efforts to assign job duties so as to minimize problems of supervision, safety, security, morale, or potential conflicts of interest. Should reasonable efforts to assign job duties to minimize such problems fail, one of the following must occur:

1. The City Manager or designee will attempt to arrange a transfer to a similar position in another department, division, or facility for one of the employees, usually the one in the more junior classification. While the wishes of the involved parties will be considered, the controlling factor in determining which relative shall be transferred shall be the positive operation, efficiency, and needs of the City. There can be no guarantee that the new position will be within the same classification or at the same salary level.
2. Newly married or domestic partnered employees may continue to work in the same department when so requested by the Department Head and approved by the City Manager, or designee.

3. One of the employees must be separated from City employment if a transfer is not available or approval for retention is not authorized. If one of the employees does not voluntarily resign, the employee with the most City service will be retained and the other employee will be dismissed from employment.
4. Neither the transfer of an employee nor the separation from service of an employee nor any other decision implemented pursuant to this policy shall be subject to any administrative appeal or the grievance appeal.

6.4 Relatives of Elected Officials

No person who is the spouse or domestic partner, son, daughter, brother, sister, father, mother, grandchild, or grandparent, either by blood or present marriage, of a currently sitting City elected official shall be eligible for appointment.

Relatives of elected officials currently employed as of the date this Personnel Rule was originally adopted shall remain employed within the City and shall not be subject to automatic exclusion of employment.

7 Veterans' Preference

7.1 Policy Statement

In accordance with Government Code Section 50088(b) or any successor legislation, preference in entrance examinations shall be given to veterans over the other identically qualified applicants. Veterans' preference is provided to assist individuals as they transition from military employment to civilian employment. No preference is provided for promotional examinations nor to a current employee in a regular position.

7.2 Definition of Veteran

For the purposes of this Personnel Rule, "veteran" means any person who has served on active duty for a period of not less than six (6) continuous months in the armed forces of the United States.

7.3 Preference Provisions

1. **Eligibility List by Rank:** Eligible veterans who obtain a passing score and are placed on an employment eligibility list will receive an additional five (5) points added to their score. The veteran shall be placed on the employment eligibility list at the appropriate ranking after the additional points are added.
2. **Pass/Fail or Block Eligibility List:** Eligible veterans who obtain a passing score and are placed on an employment eligibility list will receive a veterans' preference notation and such individuals shall be considered prior to the appointing authority's consideration of other equally ranked eligibles.

7.4 Notice of Veteran Status and Request for Preference

Any individual applicant for entrance employment with the City wishing to receive veterans' preference must submit proof of his/her veteran status in the form of a DD-214, retirement certificate, or duty orders along with the original employment application.

7.5 Currently in the Military Service

Candidates who are in the military service at the time of an examination, and who are discharged from military service during the duration of the employment list, may apply for Veterans' Preference upon discharge from the military by submitting a written request for the preference and proof of veteran status, as identified above. If all the eligibility criteria and documentation requirements in accordance with this chapter have been met, then the candidate's rank on the employment list will be adjusted to reflect the addition of the preference points.

7.6 Those Not Eligible for Veterans Preference

Veterans preference shall not be given to those applicants who:

1. Are competing in a promotional examination or for a classification not included within the competitive service; or
2. Are retired from the armed forces at or above the rank of Major, or its equivalent; or
3. Were discharged more than five years prior to the final filing date stated on the job announcement; or
4. Were discharged for a reason other than "honorable."

8 Employment Eligibility Lists

8.1 Employment Lists

As soon as practicable after the completion of an examination, the Human Resources Director shall prepare an employment eligibility list consisting of the names of candidates who qualified in the selection process. Multiple employment lists for a single class are permitted. When multiple employment lists exist, an eligible may be considered based on his/her overall rating as opposed to when he/she was placed on an employment eligibility list.

8.2 Duration of Lists

Promotional and open-competitive employment lists shall remain in effect for six (6) months, unless exhausted sooner or abolished by the Human Resources Director. The Human Resources Director may abolish the list because of an insufficient number of available eligibles, if there was a significant change to the classification, or for any other objective reason satisfactory to the Human Resources Director. In the event that a promotional eligibility list is abolished, any employee whose name appears on the list may request to meet with the Human Resources Director to discuss the rationale for the abolishment. The Human Resources Director may, at his/her discretion, extend the duration of an employment list, in six month increments, such that the total duration of an employment list is twenty-four (24) months.

8.3 Consideration of Applicants

Any applicant on the employment list may be considered for appointment, and such consideration of applicants shall be termed "the rule of the list" such that any individual on the list may be appointed. However, no person on an employment list shall be considered for appointment unless all other eligibles with a higher or equal employment list ranking have been interviewed by the appointing authority or designee.

8.4 Precedence

The names of eligibles shall be certified in accordance with the following priority:

1. Reinstatement List
2. Transfer List
3. Promotional and Open-Competitive Lists
4. Reemployment List

8.5 Removal of Names from List

The name of any person appearing on an employment list shall be removed by the Human Resources Director if the person: 1) requests in writing that his/her name be removed, or 2) fails to respond to a notice mailed to the last designated address, or 3) no longer meet the eligibility requirements for appointment, or 4) is subsequently hired by the City.

The name of any person appearing on an employment list may be removed by the Human Resources Director following an interview after which the appointing authority indicates he/she no longer wishes to consider the qualified candidate further.

8.6 No Guarantee of Employment

No person who appears on an eligibility list is guaranteed employment with the City. The City Manager or designee, Human Resources Director, and/or appointing authority may opt not to hire any and/or all persons whose names appear on an eligibility list.

9 Medical Standards

9.1 Post-Offer, Pre-employment Examinations

A post-offer, pre-employment medical examination may be required for applicants in select classes. A pre-employment physical shall include a review of the individual's medical history and the prospective employee shall be evaluated in accordance with the standards set forth in the Americans with Disabilities Act or other applicable law, to determine whether the employee can perform the duties of the position.

No appointment may be made official until a positive physician's report is received. Only under unusually extenuating circumstances will a new hire be allowed to report to work prior to successful completion of the medical examination.

9.2 Fitness for Duty Examinations

An employee may be required to submit to an examination by a competent medical practitioner, including any and all testing the practitioner deems appropriate, whenever there is a reasonable suspicion that an employee is physically or mentally unfit to perform the duties of his/her position, may subject others to infection, or may subject the employee or third persons to the risk of injury. Examination costs shall be at the City's expense.

9.3 After Absence

The City may require a medical examination and/or medical release before an employee may return to work following an absence due to illness, injury, or surgery. Examination costs shall be at the City's expense.

9.4 Classification Change

A standard medical examination may be required before an employee may change to a classification with more rigorous medical standards. Examination costs shall be at the City's expense.

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10 Reference Checks

10.1 Purpose

The purpose of this Personnel Rule is to describe City policy in conducting pre-employment reference checks on potential new City employees, and the release of personal and/or professional references of current or former City employees to third parties.

10.2 Policy Statement

1. **New Hires:** It shall be City policy to obtain as much job-related/pre-employment information, within the confines of the law, from current and/or former employers of potential new City employees before a formal employment offer is extended; and
2. **Current or Former Employees:** To avoid potential liability to the City, it shall be City policy that all requests for information on current or former employees are to be directed to the Human Resources Director.

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11 Appointment

11.1 Appointing Authority

All appointments shall be made by the appointing authority. All vacancies shall be filled from an appropriate employment eligibility list, if available. In the absence of persons eligible for appointment from an eligibility list, provisional appointments may be permitted.

11.2 Notice to Human Resources Director

Whenever a vacancy is to be filled, the department head shall notify the Human Resources Director. The Human Resources Director shall advise the department head as to the availability of eligibles on employment eligibility lists for the class.

11.3 Provisional Appointment

In the absence of appropriate employment eligibility lists, a provisional appointment may be made by the appointing authority. An employment eligibility list shall be established within six (6) months for any position filled by provisional appointment. No person who is provisionally appointed shall work in excess of nine hundred ninety-nine (999) hours during the fiscal year.

A provisional appointment does not guarantee that the employee will be selected for regular appointment. If appointed to a regular position, the employment period as a provisional appointment does not count towards the regular appointment's probationary period, if any.

If an appropriate employment eligibility list exists, then a provisional appointment may still be made by the appointing authority; provided, however, that the total employment of all persons so provisionally appointed shall not exceed 200 (two hundred) hours.

11.4 Emergency Appointment

To meet the requirements of an emergency condition that threatens life, property, or the general welfare of the City, the City Manager may employ such persons as may be needed for the period of the emergency, without regard to the regulations as to appointment in these rules.

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12 Compensation

12.1 Salary Plan

Salary ranges are set for each class by the City Council. No person may be paid less than the minimum, nor more than the maximum of the salary range established for the class in which employed. No change in the salary range of a class may be made without City Council approval.

Advancement within a salary range is based on performance and requires the approval of the City Manager and shall be effective at the beginning of a pay period. Employees are eligible to be considered for a salary range advancement after either six (6) months or after twelve (12) months following appointment/promotion and a determination of satisfactory service. Thereafter, an employee with satisfactory service may advance within the salary range every twelve (12) months. The City Manager, with the recommendation of the Department Head, and based upon meritorious service may provide an employee with a salary range advancement more frequently than every twelve (12) months or a salary range increase greater than one (1) salary step.

**This Table is for Informational Purposes Only.
Consideration for Advancement within Salary Range
Following Appointment and/or Promotion**

6 Months or 12 Months

- Promotional Probationary Period Ends (excluding Fire, sworn Police & Dispatchers)
- Performance Evaluation
- Salary Increase Consideration

12 Months

- Initial Hire Probationary Period Ends (non-sworn positions)
- Promotional Probationary Period Ends (Fire and Dispatchers)
- Performance Evaluation

18 Months (sworn Police positions)

- Probationary Period Ends
- Performance Evaluation
- Salary Increase Consideration

Every 12 Months Thereafter

- Performance Evaluation
- Salary Increase Consideration

12.2 Salary Payment

Employees are paid every other Friday, for the two week period ending the Sunday prior to pay day. When a payday falls on a City-recognized holiday, payment will be made on the prior day.

12.3 Salary Upon Appointment

An appointed employee may be paid anywhere within the salary range; provided, however, it is not less than the minimum nor greater than the maximum salary established for the class to which appointed.

12.4 Salary Upon Promotion

An employee who is promoted shall be placed at the step in the new classification salary range that would constitute a minimum five percent (5%) increase. However, the employee shall receive not less than the minimum nor greater than the maximum salary established for the class to which promoted.

12.5 Salary Upon Transfer

An employee who transfers to another position shall have no change made in his/her salary or salary advancement consideration date.

12.6 Salary Upon Demotion

An employee who is demoted shall be placed at the salary range step of the new classification salary range closest to the step held for the position he/she is vacating; provided, however the employee shall not receive a salary increase, and that the employee shall receive not less than the minimum nor greater than the maximum salary established for the class to which demoted.

12.7 Salary Upon Reclassification

When an employee's position is reclassified, the employee's salary shall be determined as follows:

1. If the position is reclassified to a class with a higher salary range than the previous class, the employee's salary shall be determined in the same manner as if the employee had been promoted.
2. If the salary range of the employee's previous class is the same as the salary range of the new class, the salary of the employee shall not change; if the salary steps of the employee's current class do not equal the steps of the salary range for the new class the employee shall be placed at the step closest to his/her current salary rate. The employee shall not receive less than the minimum salary established for the class to which reclassified.

3. If the salary of the employee is greater than the maximum of the range of the new class, the salary of the employee shall be designated as a “Y-Rate” and shall not change during continuous City service until the maximum of the salary range to which the class is assigned exceeds the “Y-Rate” salary of the employee.

12.8 Salary Upon Reinstatement

An employee reinstated shall be placed at no lower than the same salary step he/she held at the time of separation from City service.

12.9 Salary Upon Reemployment

An employee reemployed shall be placed at no lower than the same salary step he/she held at the time of separation from City service.

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13 Probationary Period

13.1 Objective of the Probationary Period

The probationary period shall be regarded as part of the selection process and shall be utilized for closely observing the employee's work, for securing the most effective adjustment of a new employee to his/her position, and for releasing any probationary employee whose performance in the opinion of the Department Head and/or the City Manager does not meet the required standards of work. Nothing in this policy is intended to limit the reasons for which an employee may be released during the probationary period. Release of an employee during the probationary period may be with or without cause and with or without prior notice to the employee.

13.2 Probationary Period

All original appointments to a regular non-sworn position, excluding at-will employees, shall be tentative and subject to a probationary period of twelve (12) months of active duty from the date of probationary appointment. All promotional appointments to regular non-sworn positions, excluding Dispatchers, shall be tentative and subject to a probationary period of six (6) months of active duty from the date of promotion. All original and promotional appointments to a sworn Police position shall be tentative and subject to a probationary period of eighteen (18) months of active duty from the date of probationary appointment or promotion. All original and promotional appointments to a sworn Fire or Dispatcher position shall be tentative and subject to a probationary period of twelve (12) months of active duty from the date of probationary appointment or promotion. Days absent without pay, or leaves with pay exceeding thirty (30) calendar days during the probationary period shall extend the probationary period by the same number of days so as to result in a probationary period of active working duty for the required six (6), twelve (12) or eighteen (18) months of active duty. Employees who transfer to another position in the same classification shall not be required to undergo a new probationary period for the position into which he/she is transferring, provided the employee has completed the probationary period in the classification at the time of transfer. During the initial probationary period, the employee may be released at any time by the City Manager, City Manager's designee, and/or the Department Head with or without cause and with or without prior notice. An employee released during the probationary period has no right to appeal or grieve the release.

By mutual written agreement of the Department Head and the employee, the initial probationary period may exceed twelve (12) months of active duty for non-sworn employees and sworn Fire employees, and eighteen (18) months of active duty for sworn Police employees when in the opinion of the Department Head, and the City Manager additional time is necessary to evaluate the employee's effectiveness in his/her position. The probationary period shall not exceed eighteen (18) months of

active duty for non-sworn employees and sworn Fire employees, or twenty-four (24) months for sworn Police employees.

13.3 Promotional Probationary Period

An employee who has previously completed the requisite probationary period and who is rejected during a subsequent probationary period for a promotional appointment shall be reinstated to the former position from which the employee was appointed. If the employee was dismissed for cause from employment during the promotional probationary period, the employee shall not be entitled to such reinstatement rights. An employee rejected during the promotional probationary period has no right to appeal or grieve the rejection.

14 Performance Evaluation

14.1 Policy and Purposes

It is the policy of the City that regular reports shall be made on all employees regarding efficiency, competency, conduct and merit. The responsibility shall be borne by the City Manager, the department heads, and their subordinate supervisors. It shall be the responsibility of the Human Resources Director to provide and prescribe the forms and procedures to be used in such performance reports and to assist in the training of supervisory personnel, so that performance reporting will be carried out in a sound, effective and timely manner.

Performance evaluations are an important part of the City's personnel policies. They provide an objective, consistent, and fair way to gauge each employee's on-the-job effectiveness. The evaluation process should inform employees of their standing and communicate expected standards of performance. It is also used to discuss City and department goals, employee goals, work standards, areas where improvement is needed, career development potential, and possible opportunities.

14.2 Filing Schedule

Performance evaluation reports shall be provided at least once annually for all regular employees. An employee may be rated at more frequent intervals at the discretion of the City Manager or the Department Head. An employee who receives an overall rating of anything less than meets minimum requirements, or less than competent/satisfactory should be re-evaluated within three (3) months of receiving the original rating and then again at least three (3) months subsequent to that rating.

Performance evaluation reports of all probationary employees should be provided at least quarterly during the probationary period. An employee who has received an overall rating of less than meets minimum requirements, or less than competent/satisfactory should be reported on a monthly basis for at least two (2) months subsequent to receiving the original rating. Nothing in this section shall preclude the City from releasing a probationary employee from employment with or without cause and/or with or without notice at any time.

14.3 Filing Procedures

The Human Resources Director should notify departments approximately one (1) month prior to the due date for performance evaluations.

The immediate supervisor of the employee being evaluated is expected to conduct the performance evaluation using the form prescribed by the Human Resources Director. Where an employee has worked under several supervisors, each supervisor should contribute to the evaluation. Whenever a supervisor is transferred or leaves the City, he/she ideally shall prepare, prior to his/her leaving, a preliminary evaluation of employees working under him/her. Each performance evaluation shall

be discussed with the employee. The employee shall sign the report as a means of acknowledging its content and shall have the opportunity to make his/her own comments. Such signature shall not necessarily mean the employee agrees in total with the contents of said report.

After the evaluation has been completed and signed, a copy shall be given to the employee and the supervisor. The original is to be filed with the Human Resources Department.

14.4 Less than Meets Minimum Requirements Ratings

1. Rating Intervals. An employee who receives an overall performance rating of less than meets minimum requirements, or less than competent/satisfactory should be rated at a more frequent interval, as provided in these Personnel Rules.
2. Promotional Examinations. An employee who receives an overall rating of less than meets minimum requirements, or less than competent/satisfactory shall not be eligible to participate in any promotional examinations until at least an overall meets minimum requirements, or competent/satisfactory rating has been established.
3. Salary Advancements. An employee who receives an overall rating of less than meets minimum requirements, or less than competent/satisfactory shall not be eligible for or receive any salary step advancement until an overall rating of at least meets minimum requirements, or competent/satisfactory has been established.

14.5 Late Performance Evaluations

Performance evaluation reports must be submitted within three (3) months of the employee's classification date. If the supervisor does not provide a performance evaluation within the specified timeframe, then the employee shall receive a salary step increase, if available, and the employee's overall performance shall be assumed to be satisfactory. If a salary step is provided it shall be effective retroactively to the date it was originally due.

14.6 Consideration for Promotion

In promotional examinations and selection of employees, past performance evaluations shall be given consideration.

14.7 Appeal of Ratings

If an employee is dissatisfied with his/her rating or evaluation, such employee shall confer successively with his/her immediate supervisor and Department Head on the matter. If the dissatisfaction is not resolved and if, in the employee's opinion, the prescribed rating procedures have not been followed or the overall rating does not correspond to the documented performance, such employee may file an appeal to the Human Resources Director within thirty (30) days of receipt of the evaluation.

The decision of the Human Resources Director shall be final and no other appeal shall be available. Performance ratings and evaluations shall not be subject to the grievance procedures.

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15 Resignation

15.1 Notification

An employee wishing to leave the City's employment in good standing shall file with the employee's immediate supervisor, Department Head, and the Human Resources Director, at least fourteen (14) days before leaving employment, a written resignation stating the effective date of and reason(s) for leaving. If the Human Resources Director is not copied, the resignation shall be promptly forwarded to him/her. Resignations shall become effective upon receipt by the City, without the necessity of any acceptance.

15.2 Failure to Notify

The Department Head shall immediately notify the Human Resources Director of the resignation of any employee who failed to provide proper notice. Failure of an employee to provide proper notice shall be entered on their service record and may be cause for denying future employment by the City.

15.3 Failure to Report to Work

An employee who fails to report to work and/or fails to call off from work for three or more consecutively scheduled work days is deemed to have voluntarily resigned employment through job abandonment. Said employee may be considered for reinstatement if in the opinion of the appointing authority he/she provides proof of a legitimate reason for the inability to report to and/or call off from work.

15.4 Use of Accrued Leaves

Sick leave may not be used to extend an employee's resignation date beyond the employee's last day worked.

15.5 Rescission of Resignation

An employee who has properly tendered a resignation and subsequently changed his/her mind may request to rescind the resignation. The decision whether or not to allow the employee to rescind the resignation is at the sole discretion of the City.

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16 Layoff

16.1 Layoff Policy

Whenever the City Manager and/or City Council determines in his/her/their sole discretion that it is necessary to abolish any position of employment due to changes in duties or organizational structure, economic conditions, lack of work or funds, or any other reason, the employee holding that position may be laid off, transferred, or demoted without disciplinary action and without the right of appeal.

16.2 Notification

An employee being laid off shall be given at least fourteen (14) days prior written notice.

At the time affected employees are noticed of the layoff, the Human Resources Director will also provide written notice to the bargaining unit representative(s). The City and the bargaining unit representatives will engage in the meet and confer process regarding the impacts of the layoff. Any questions or concerns regarding the order of layoff will be discussed during the impact meeting(s).

16.3 Order of Layoff

In each class, employees shall be laid off according to employment status in the following order: temporary, provisional, regular part-time, probationary full-time, and regular full-time. In this chapter, probationary status means the probationary period required upon the initial employment with the City leading to a regular position.

16.4 Vacancy, Demotion, Retreat, and Seniority

When the City has determined that regular employees are to be laid off, the City Manager shall first demote a regular employee (based upon seniority within the class at the City of Pinole) to a regular position vacancy, if any, in a lower class which the employee previously held. All persons so demoted shall have their names placed on a reinstatement list for a period of one year.

Upon layoff, regular employees have the right to retreat to a lower class in accordance with this layoff policy. In order to retreat to a lower class an employee must have more seniority than at least one of the incumbents in the retreat class and request displacement action in writing to the Human Resources Director within seven (7) days of receipt of notice of layoff. An employee retreating to a lower class shall be placed at the salary step representing the least loss of pay.

For purposes of layoff, seniority shall be defined as an employee's tenure in a class. When an employee retreats to a lower class seniority for that class shall include the tenure of all higher classes.

Seniority includes time accrued in regular full-time and regular part-time service. In this chapter, length of service for regular part-time employment is calculated on a pro-rata basis. Employment in a temporary appointment position does not count in calculating seniority.

16.5 Reinstatement List

The names of all regular and probationary employees laid off, or demoted in lieu of layoff, shall be placed on a reinstatement list for the classification from which they were removed.

Reinstatement list(s) shall remain in effect for twelve (12) months, unless exhausted sooner.

Reinstatement lists shall take precedence over all other employment lists except that employees on such lists shall not have the right to displace working employees.

Failure by a laid off employee to promptly respond to and accept a reinstatement offer in writing within ten (10) days of the date the offer is mailed to his/her last known address shall result in removal of his/her name from the reinstatement list.

Reinstatement will result in removal from the reinstatement list except when reinstatement is in a lower class.

16.6 Reinstatement

A former employee appointed from a reinstatement list shall have the following benefits restored:

1. Accrued but unused sick leave.
2. Seniority at the time of layoff for vacation accrual, future reduction in force, and department purposes as defined within department operating procedures (e.g., work schedule preferences, vacation scheduling preferences).

16.7 Layoff of At-Will Employees

By definition, employment at-will may be terminated by either the employee or the City at any time with or without cause and with or without notice. Nothing in this chapter shall require the City Manager to allow a displaced at-will employee to displace an employee in a lower class or require the City Manager to place the displaced at-will employee on a reinstatement list.

17 Transfer

No person shall be transferred to a position for which he/she does not possess the minimum qualifications. Upon notice to the Human Resources Director, an employee may be transferred by the appointing authority at any time from one position to another position in the same or a comparable class. For transfer purposes, a comparable class is one with the same maximum salary.

If the transfer involves a change from one department to another, both department heads must consent thereto unless the City Manager orders the transfer. Transfers shall not be used to effectuate a reclassification, promotion, demotion, advancement, or reduction, each of which may be accomplished only as provided in the Municipal Code, these Personnel Rules, and/or a collective bargaining agreement.

The decision as to whether or not to transfer an employee shall be at the sole discretion of the appointing authority(ies) and is not subject to any grievance or appeal procedure.

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18 Re-Employment

With the approval of the appointing authority, an employee appointed to a regular position who has completed at least twelve (12) months of continuous service and who has resigned in good standing may be reemployed to a vacant position in the same or comparable class. Reemployment must occur within twelve (12) months following resignation. No credit for former employment shall be granted in computing vacation, sick leave, or other benefits except on the specific approval of the City Manager.

The decision as to whether or not to reemploy a former employee shall be at the sole discretion of the appointing authority and is not subject to any grievance or appeal procedure.

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19 Service Retirement

19.1 Notification

An employee wishing to leave the City's employment in good standing shall file with the employee's immediate supervisor, Department Head, and the Human Resources Director, at least fourteen (14) days before leaving employment, a written notice stating the effective date. If the Human Resources Director is not copied, the notice shall be promptly forwarded to him/her. Retirement shall become effective upon receipt by the City, without the necessity of any acceptance.

19.2 Failure to Notify

The Department Head shall immediately notify the Human Resources Director of the retirement of any employee who failed to provide proper notice. Failure of an employee to provide proper notice shall be entered on their service record and may be cause for denying future employment by the City.

19.3 Contract

Service retirement shall be in accordance with the contract provisions between the City and the California Public Employees' Retirement System (PERS), and applicable laws.

19.4 Use of Accrued Leaves

Sick leave may not be used to extend an employee's retirement date beyond the employee's last day worked.

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20 Disability Retirement or Separation for Non-Safety Employees

20.1 Application

The following procedures shall apply to:

1. Non-safety employees who are permanently disabled and who are eligible to retire for disability under contract provisions between the City and PERS.
2. Those employees who are ineligible to retire for disability under PERS but who are, nonetheless permanently disabled as defined.

20.2 Definition and Determination

Permanent disability is defined as the inability of an employee to perform the essential duties of his/her position, with or without reasonable accommodation, because of an illness or injury that is expected to be permanent or of indefinite duration.

The City Manager shall work with the Human Resources Director to determine if an employee is disabled based upon competent medical evidence. Nothing within this Rule shall limit an employee from directly applying to PERS for disability retirement benefits.

20.3 PERS Disability Retirement for Eligible Employees

If the employee is eligible to retire for disability under PERS, the Human Resources Director shall assist the disabled employee to apply for disability retirement from PERS. In the event the affected employee does not make such an application, the Human Resources Director may do so on his/her behalf. PERS, and not the City, determines eligibility for non-safety employee disability retirement benefits.

20.4 Separation from Service of Non-Eligible Employees

If an employee is permanently disabled, but is ineligible for a PERS disability retirement, and it has been determined that no reasonable accommodation or other City employment is available, the employee shall be separated from City service. A separation from City service on account of disability is not a disciplinary act and there is no right of an administrative appeal.

20.5 Right to Use Accrued Leaves

Except as provided in a collective bargaining agreement or employment agreement, vacation, sick leave, administrative leave, compensatory time off, holiday, paid time off or other accrued leave may not be used to extend an employee's employment separation date beyond the employee's last day of actual work, unless approved by the City Manager. Use of sick leave shall be authorized only upon proper medical verification that the use of such leave complies with the rules pertaining to the use of sick leave.

20.6 Rehire of Employee Retired or Separated for Disability

An employee who is retired or otherwise separated on account of disability may apply for reemployment with the City if the medical condition causing the disability improved such that the employee may perform the essential functions of the position for which he/she is applying, with or without reasonable accommodation.

21 CalPERS Industrial Disability Retirement Procedure

The following procedures shall be utilized following the filing of an application for industrial disability retirement by a local safety member under the California Public Employees' Retirement System (CalPERS):

21.1 Initial Determination

An initial determination will be made by the City upon medical and other available evidence offered by either the applicant or the City to determine whether the applicant is incapacitated from the performance of duty pursuant to the standard for disability retirement under the Public Employees' Retirement Law (PERL) and interpretive case law. The determination shall be made within six (6) months of the date of the request for such determination from CalPERS unless this time requirement is voluntarily waived in writing by the applicant. Said determination shall be made by the City official designated by the City Council to make industrial disability retirement determinations.

1. If it is determined by the City that the applicant is incapacitated, and the incapacity is industrial, the City official will so certify to CalPERS.
2. If it is determined that the applicant is incapacitated but that the cause of incapacity is non-industrial, the City official will so certify to CalPERS.
3. If it is determined that the applicant is incapacitated, but the applicant contends that the cause of disability is industrial, the applicant may petition the Workers' Compensation Appeals Board (WCAB) for a Finding of Fact determination as to causation. Upon the WCAB's determination that the cause of incapacity is either industrial or non-industrial, the City will so certify to CalPERS. The City shall notify the applicant by U.S. Postal Service mail (with at least mail delivery confirmation) or by personal service of his/her right to appeal the City's decision and request a hearing within thirty (30) calendar days of the notice.
4. If the City determines that the applicant is not incapacitated from the performance of his/her work duties, it shall notify the applicant and CalPERS of this determination. The City shall notify the applicant by U.S. Postal Service mail (with at least mail delivery confirmation) or by personal service of his/her right to appeal the City's decision and request a hearing within thirty (30) calendar days of the notice.

21.2 Hearing

If the applicant requests a hearing, the hearing shall be held in conformity with the Administrative Procedures Act. When an applicant requests a hearing, the City will notify CalPERS. The City will also notify the Office of Administrative Hearings and will request a hearing date and a pre-hearing conference with an Administrative Law Judge. The applicant will be informed that the hearing will be held at the time and place designated by the Office of Administrative Hearings, which shall set a hearing date and pre-hearing conference.

1. The hearing shall be conducted before the Administrative Law Judge.
2. An administrative record shall be generated at the hearing pursuant to the Administrative Procedures Act. A Certified Shorthand Reporter shall record all testimony.
3. Following the hearing the Administrative Law Judge will issue a Proposed Decision. The Proposed Decision will include a determination of issues, findings and summary of facts. The Proposed Decision will be reviewed and acted upon by the City Council. One of the following will occur:
 - a. Adopt the Proposed Decision as its own Decision.
 - b. Make changes in the Proposed Decision and adopt it as its own Decision.
 - c. Reject the Proposed Decision and in doing so either:
 - i. Make its own decision without hearing additional evidence; or
 - ii. Make its own decision following the acceptance of additional evidence; or
 - iii. Remand the case back to the Administrative Law Judge to take additional evidence and to issue a new or revised Proposed Decision.

The decision and findings shall be served by the City on the applicant and the applicant's designated representative, if any, by U.S. Postal Service mail (with at least mail delivery confirmation) or by personal service. The City shall also notify CalPERS of the decision.

4. The applicant will be advised that he/she has thirty (30) calendar days to seek judicial review. Such review is by means of filing a Petition for Writ of Mandate in the Superior Court of the appropriate County.

Upon receipt of notice that the applicant has filed a Petition for Writ of Mandate in the Superior Court, or upon expiration of thirty (30) calendar days where applicant has not filed a Petition for Writ of Mandate, PERS will be notified.

Upon receipt of Writ of Mandate in the Superior Court, CalPERS will be notified.

21.3 City Council's Designated Position

The City Council delegates and it does hereby delegate to the incumbent of the office/position of City Manager authority to make determinations under section 21152(c), Government Code, on behalf of the City, of disability and whether such disability is industrial and to certify such determinations and all other necessary information to CalPERS.

The City Council further authorizes that the City Manager to make applications on behalf of the City for disability retirement for all employees and to initiate requests for reemployment of such employees who are retired for disability.

21.4 Rehire of Employee Retired or Separated on Disability

An employee who is retired or otherwise separated on account of disability may apply for reemployment with the City if the medical condition causing the disability improved such that the employee may perform the essential functions of the position for which he/she is applying, with or without reasonable accommodation.

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22 Disciplinary Action

22.1 Disciplinary Action

Disciplinary action proposed and/or imposed against an employee whose position is represented under a collective bargaining agreement shall be governed by the process(es) as defined within that employee's collective bargaining agreement. The City Manager is authorized to develop a disciplinary action process for employees not represented by a collective bargaining agreement; however, such a process shall not waive the at-will employment status of said unrepresented employees.

22.2 Causes for Disciplinary Action

Disciplinary action may be taken for any just cause. Cause for disciplinary action shall include, but shall not be limited to, any of the following:

1. Fraud of any kind; or misstatement or untruths or omissions of any material fact in the application process or in securing appointment or promotion; or falsification or untruths concerning records, fellow employees, or work performed.
2. Incompetence, inefficiency or carelessness in the performance of required duties; Less than satisfactory performance.
3. Neglect of or inattention to job duties, including the conduct of personal affairs during working hours.
4. Insubordination - willful disobedience, or failure to obey any proper direction made and given by a superior officer or supervisor.
5. Misconduct - willful or wanton disregard of the interests of the City, or deliberate violation or disregard of behavioral norms/expectations
6. Conduct unbecoming an employee of the City.
7. Any acts or omissions, which are either incompatible with or unfavorable to the public service, or which tend to bring reproach or discredit to the City.
8. Discourteous or non-cooperative treatment of the public, City elected officials, employees, or volunteers; Offensive or obscene language in public, or towards the public, City elected officials, or employees.
9. Dishonesty or immorality on the job.
10. Endangering self or others, or failure to follow adopted safety practices, or failure to properly use required personal protective gear or equipment.

11. Reporting for duty or being on duty under the influence of any intoxicant or absenting oneself from duty or rendering oneself unfit to perform fully one's duties for reasons attributable to or produced by intoxicants; Failure to notify a supervisor, in writing, when the employee is taking prescription medication that can impair judgment or performance.
12. Failure to report to work as scheduled or failure to notify supervisor, in accordance with department standards, of one's inability to report to work; Abuse of sick leave privileges.
13. Failure to immediately report a vehicle accident.
14. Intimidation or interference with the rights of any employee; Fighting, assault and/or battery on the public, City elected officials, employees or volunteers.
15. Failure to maintain the necessary license or certification required by the class specification.
16. Sleeping on the job, except as authorized for Fire Fighter personnel.
17. Conviction of a crime, the nature of which has a direct bearing on continued employment.
18. Unauthorized leave of absence; failure to report to work after an authorized leave of absence has expired or after a requested leave of absence has been disapproved, revoked or canceled; or any other unauthorized absence from work.
19. Misuse or misappropriation of City property or funds; carelessness or negligence with the monies or other property of the City; appropriating to the employee's own use any property of the City, or loaning, selling or giving away such property without legal authorization.
20. Theft or sabotage of City property or funds.
21. Using or attempting to use political influence in attempting to secure promotion, leave of absence, transfer, change of rate of pay or character of work.
22. Inducing or attempting to induce a City employee to commit an unlawful act in violation of any lawful department or official regulation or order.

23. Taking for personal use, from any person, a fee, gift or other valuable thing in connection with official work when such fee, gift or other valuable thing is given in the expectation of receiving favored treatment.
24. Violation of or failure to abide by any condition of employment stipulated in the Municipal Code, Personnel Rules, any City Policies and Procedures, collective bargaining agreement (if any), administrative memorandum, or lawful official regulation or order of the City.
25. Failure to cooperate in an official inquiry or investigation into an alleged violation of these Personnel Rules.
26. Working overtime without supervisory authorization.
27. Engaging in outside employment without supervisory authorization.
28. Bringing a gun or any other dangerous weapon onto City property, unless such item is specifically required as part of the employee's job duties.

22.3 Forms of Discipline

- A. Written Reprimand
- B. Suspension
- C. Reduction in Step
- D. Involuntary Demotion (Note: Termination of an incentive pay or assignment pay is not considered demotion.)
- E. Termination

22.4 Authority of Disciplinary Action

The Department Head has authority to take disciplinary action. The immediate supervisor has the authority to issue a written reprimand. The Human Resources Director shall be notified of any proposed or pending disciplinary action, beyond a written reprimand. The decision of the City Manager or designee shall be final and not subject to review by or appeal to the City Council.

22.5 Procedures for Written Reprimand

Employees may request a review by the Department Head regarding a written reprimand by submitting a written request within ten (10) days from the date of the written reprimand. The Department Head shall review the employee's submission, may meet with the employee within ten (10) days of the filing of the request and shall issue written findings within ten (10) days of the review/meeting. The employee shall be entitled to representation, but is not entitled to an evidentiary hearing or to present witnesses. Written reprimands are not subject to the discipline procedures set forth in Sections 22.6, 22.7 or 22.8, or the Grievance Procedure.

In the event the written reprimand was issued by the Department Head, the employee may request a review by the Human Resources Director, per the procedure outlined above.

22.6 Notice of Intended Discipline

- A. Prior to receiving any suspension, reduction in step, involuntary demotion or termination, the employee shall receive written notice of the proposed disciplinary action containing the following:
1. The proposed disciplinary action;
 2. The grounds on which the proposed discipline is based;
 3. A summary of the reasons for the proposed action;
 4. The documents, or access to the documents, upon which the proposed action is based;
 5. Notice to the employee of the right to respond to charges orally and/or in writing within seven (7) days from the service of the notice.
- B. An employee who desires to respond orally may do so by appearing at the time and place agreed upon by the employee and the Department Head. The employee is entitled to representation, but is not entitled to an evidentiary hearing or to present witnesses. If the employee demonstrates good cause why he/she cannot respond within seven (7) days, the City may grant a continuance.

22.7 Notice of Discipline

No disciplinary action against an employee, excluding probationary and other at-will employees, shall be imposed unless such action is recommended by the City in a written notice of disciplinary action. This notice shall be served on the employee (with a copy to the Union representative, if involved) and filed with the Human Resources Department no later than seven (7) days after the date of such action. The notice shall include:

1. A statement of the disciplinary action;
2. The effective date of the action;
3. The grounds on which the discipline is based;
4. A summary of the reasons for the proposed action;
5. The documents, or access to the documents, upon which the proposed action is based;
6. A statement addressing the responses to the charges by the employee or designated representative, if any;
7. Notice to the employee of the right to appeal.

22.8 Post-Disciplinary Appeal

The following post-disciplinary appeal procedures to suspensions, reductions in step, demotions and terminations:

1. Within seven (7) days of the receipt of written notice of final disciplinary action, the disciplined employee may appeal the disciplinary action to the City Manager by filing a written request with the City Manager and providing a copy of the request to the Human Resources Director. Failure by the employee or the employee's representative to initiate the appeal within the prescribed time limits shall waive the right of the employee and the employee's representative from appealing the discipline.
2. The City Manager or designee and the employee or employee's representative shall select a hearing officer who shall conduct an administrative hearing within sixty (60) days. The hearing officer shall be selected from among a list of names not to exceed ten (10) names provided by the California State Mediation and Conciliation Service. The method of selection from said list shall consist of the following process:

After a toss of coin to decide which party shall move first, the City Manager or designee and the employee or employee's representative shall alternatively strike one name from the list until one name remains and such person shall act as the hearing officer. The next to the last name stricken shall be the alternate hearing officer to serve in the event the first hearing officer is not available. The procedure shall be followed until there is an available arbitrator.
3. The fees and expenses of the hearing officer and court reporter (if any) shall be shared equally by the City and the Recognized Employee Organization. In the event the employee is not represented by a Recognized Employee Organization, these fees shall be borne by the City. All other expenses shall be borne by the party incurring them and no party shall be responsible for the expenses of witnesses called by another party. Parties shall bear their own cost of any requested hearing transcript.

4. The hearing officer shall make a recommendation to the City Manager to sustain, modify or reverse the disciplinary action. A copy of the recommendation shall be given to the employee. The City Manager will then issue a final written decision within fifteen (15) days of receiving the recommendation, and may, but is not required to, accept the hearing officer's recommendation.

In the event the disciplined employee reports directly to the City Manager, or the City Manager initiated the disciplinary action as described within this section, the hearing officer shall make a recommendation to the City Attorney. The City Attorney's decision shall be final and not subject to review by or appeal to the City Council.

22.9 Waiver of Steps or Time Limits

Any time limit or stage of the Discipline Procedure may be waived if all involved parties consent in writing.

22.10 Public Safety Officers Procedural Bill of Rights

Nothing in these Personnel Rules supercedes the City's obligations under the Public Safety Officers Procedural Bill of Rights Act.

22.11 Firefighters Procedural Bill of Rights

Nothing in these Personnel Rules supercedes the City's obligations under the Firefighters Procedural Bill of Rights Act.

23 Grievances

23.1 Grievance Definition

A grievance is any dispute which involves the claimed violation, the (mis)interpretation or (mis)application of these Personnel Rules, Memorandums of Understanding, or department rules and regulations, resolutions, or ordinances. A grievant may be an employee, or any group of employees, or a represented bargaining unit. Disciplinary actions, performance evaluations, and other proceedings for which there are alternative appeal procedures or statutory remedies are not grievable.

23.2 Grievance Procedure

A grievance shall be processed in the following manner:

Step 1.

Within fourteen (14) days of the event or discovery of the event giving rise to the grievance, the grievant will discuss the grievance verbally with the grievant's immediate supervisor. The grievant will clearly state that a grievance is being initiated, and the parties will discuss the matter and attempt to resolve the grievance. For good and sufficient reason, the grievant may initiate the grievance at Step 2.

Step 2.

If the grievance is not resolved in Step 1, the grievance shall be reduced to writing and presented to the department head within fourteen (14) days (28 days of the event or discovery of the event giving rise to the grievance). The written grievance shall contain the following:

1. name of grievant(s);
2. mailing address(es);
3. a clear statement of the nature of the grievance (citing applicable sections of rules, regulations, resolutions, ordinances or existing practices);
4. the date(s) on which the event(s) giving rise to the grievance occurred;
5. a proposed resolution to the grievance;
6. the date of execution of the grievance letter/memo;
7. the signature of the grievant(s);

8. the signature of the bargaining unit representative, if such a representative is representing the grievant(s);
9. the date of the discussion meeting in Step 1 and the name of the supervisor involved.

The department head will investigate the grievance and confer with the grievant(s) in an attempt to resolve the grievance. The department head will issue his/her decision regarding the grievance in writing within fourteen (14) days of receipt of the written grievance.

Step 3.

If the grievance is not resolved by the department head's decision in Step 2, the grievant(s) may appeal the written grievance to the City Manager or designee (other than the supervisor and/or department head involved) within fourteen (14) days of receipt of the department head's decision in Step 2. The City Manager or designee will investigate the grievance, confer with persons affected and their representatives, if any, to the extent he/she deems necessary and render a decision within fourteen (14) days of receipt of the written appeal. The City Manager's or designee's decision shall be final.

23.3 General Conditions of Grievances

1. The Human Resources Director will act as a central repository for all Step 2 and Step 3 grievance records.
2. Any time limit may be extended only by mutual agreement in writing.
3. An aggrieved employee may be represented by another individual at any stage of the proceedings at his/her request. Both employee and representative (if employed by City) will be entitled to attend proceedings without loss of compensation, should such proceeding conflict with employee's and/or representative's normal working hours.
4. Proposals to add to or change these Personnel Rules shall not be considered under this section, and no proposal to modify, amend, or terminate any Memorandum of Understanding between the City and a collective bargaining unit may be considered under this section.

5. Failure by the grievant or grievant's representative to initiate or appeal a grievance within the prescribed time limits shall waive the right of the grievant, the grievant's representative, and the grievant's collective bargaining unit (if any) to initiate or appeal a grievance. In the case of an appeal, the last answer to the grievance shall be deemed to be the resolution to the grievance. Failure of the City to respond to a grievance within the prescribed time limits shall be cause for the grieving party to automatically move the grievance to the next step.

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24 Employee Conflict of Interest

24.1 Purpose

The purpose of this rule is to establish guidelines for ethical standards of conduct which shall govern City employees in the performance of City business and the duties of their respective jobs. This rule is intended to provide positive direction to City employees in order to prevent potential conflicts of interest.

This rule is not all-encompassing in its definition of conflict of interest. Action deemed inappropriate by a reasonable person, whether specifically cited in this rule or not, will be subject to inquiry and may be grounds for disciplinary action.

This policy is in addition to the City's Conflict of Interest Code, which is pursuant to Government Code Sections 87300 et seq (the Political Reform Act).

24.2 Conflicts of Interest

No City employee shall engage in any act which is in conflict, or creates an appearance of unfairness or conflict with the performance of official duties. An employee shall be deemed to have a conflict if the employee:

1. Has any financial interest in any sale to the City of any goods or services when such financial interest was received with prior knowledge that the City intended to purchase the property, goods, or services.
2. Solicits, accepts, or seeks a gift, gratuity, or favor from any person, firm, or corporation involved in a contract or transaction which is or may be the subject of official action by the City.
 - a. Recognizing that personal friendships often precede and can evolve from official contact between employees and persons engaged in business with the City, an employee should preclude his/herself from any decision which may cause a conflict of interest or be perceived as collusive.
 - b. The employee will be guided in interpretation of this section by the distinction between a gift, gratuity, or favor given or received which has significant monetary value and is offered or accepted in expectation of preferential treatment, and expression of courtesy. Example of acceptable courtesies include: a meal or social event; exchanges of floral offerings or gifts of food to commemorate events such as illness, death, birth, holidays, promotions; a sample promotional gift of nominal value (nominal value shall be defined by the City Manager).

3. Except for courtesies as provided in item "2b" above, no employee shall, directly or indirectly, give or receive, or agree to receive any compensation, gift, reward, commission or gratuity from any source except the City for any matter directly connected with or related to his official services as such employee with this City.
4. Participates in his/her capacity as a City employee in the issuing of a purchase order or contract in which he/she has a private pecuniary interest, direct or indirect, or performs in regard to such contract some function requiring the exercise of discretion on behalf of the City.
5. Engages in, accepts employment from, or renders services for private interest for any compensation or consideration having monetary value when such employment or service is incompatible with the proper discharge of official duties or would tend to impair independence of judgment or action in performance of official duties, or give the appearance of the above. An employee should not make a unilateral decision, if there is any doubt about his/her private employment. The appointing authority should be consulted.
6. Discloses or uses without authorization confidential information concerning property or affairs of the City to advance a private interest with respect to any contract or transaction which is or may be the subject of official action of the City.
7. Has a financial interest or personal interest in any legislation coming before the City Council and participates in discussion with or gives an opinion to the City Council on the matter while serving in his/her official capacity.
8. Fails to comply with the provisions of the Political Reform Act, as regulated by the Fair Political Practices Commission, or any other state or federal laws governing conflict of interest matters.

The City Manager and his/her designee is permitted to accept a gift, gratuity, or favor on behalf of the City and may distribute such gift, gratuity, and favor as he/she deems appropriate to City employees and elected officials in accordance with Fair Political Practices Commission regulations. (Examples may include sporting events tickets or cultural events tickets.)

24.3 Employee Conflict of Interest Definitions

24.3.1 Interest

Interest is any direct or indirect monetary or material benefit received by a City employee as a result of a contract or transaction which is or may be the subject of an official act or action by or with the City (except for such transactions which would confer similar benefits to all other persons and/or property similarly situated).

Interests include: a) interests in an employee's family, b) any business entity in which stock or legal beneficial ownership is in excess of one percent (1%) of the total stock, or legal ownership as controlled or owned directly or indirectly by the employee, c) interest in any business entity in which the City employee is an officer, director, or employee, d) interest in any person or business entity with whom a contractual relationship exists with the employee; provided that a contractual obligation of less than five hundred dollars (\$500) or a commercially reasonable loan or purchase made in the course of ordinary business shall not be deemed to create a conflict of interest. Such interests as are prohibited under the Political Reform Act, or other state or federal regulations that prohibit financial conflicts of interest.

24.3.2 Immediate Family

Family includes spouse, domestic partner, child, parent, parent-in-law, brother, sister, grandparent, son-in-law, daughter-in-law, and grandchildren. Family also includes other persons residing in the employee's residence or who are financially dependent upon the employee.

24.3.3 Contract

Contract shall include any contract or agreement, sale, lease, purchase, or purchase order.

24.4 Use of Public Property

No employee of the City shall request, use, or permit the use of City-owned vehicles, clothing, equipment, materials, or other property for unauthorized personal convenience, for profit, for private use, or as part of secondary employment. Use of such City property is to be restricted to such services as are available to the City generally and for the conduct of official City business.

24.5 Political Activities

1. No employee may use City time or property in any manner to promote any political issue or candidate, or to solicit funds for any political purpose or to influence the outcome of any election.

2. No employee shall be eligible for appointment or election to any public office (including appointment to a City Board, Commission or Committee) when the holding of such office or position would be incompatible or would substantially interfere with the discharge of official duties.

24.6 Moonlighting

All employees holding or considering second jobs, whether self employment or otherwise, must provide written notice to their department head prior to beginning work in order to ensure that the job will not create a conflict of interest or interfere with the proper performance of their duties.

Prior notice is to include at a minimum: the name of the employer; the nature of employment; the number of hours to be worked; whether the outside employer will provide workers' compensation and liability insurance during said outside employment; and confirmation that the outside employment will not utilize any city owned/controlled facilities, equipment, information, records, supplies, and/or uniforms. .

Outside employment is defined to mean any employment, activity or enterprise outside of an employee's normal City working hours wherein the employee is compensated for specific hours or duties on a regular basis. Outside employment does not include sporadic employment or occasional employment unless the employee is required to perform work related to his/her position with the City or utilize any City owned/controlled facilities, equipment, information, records, supplies, and/or uniforms.

Secondary employment may be prohibited, if:

1. outside employment involves the employee's use for private gain or advantage the City's owned/controlled facilities, equipment, information, records, supplies, and/or uniforms; or
2. outside employment involves the employee's use of work time compensated for by the City (work time does not include vacation or compensatory time off); or
3. outside employment involves the employee's receipt of money, or other consideration for performance of work which the employee would normally be required to perform in their regular course of work for the City; or
4. outside employment requires the employee to do work which may later be subject, directly or indirectly, to the control, inspection, review, audit, or enforcement by any other employee or officer of that same department; or

5. outside employment would require such demands on the employee's time that their ability to perform their City work would be adversely impacted.

Any employee who engages in outside employment while on sick leave shall be subject to discipline up to and including dismissal.

24.7 Procedures

24.7.1 Interpretation

Interpretations of this policy shall be referred to the City Manager and Human Resources Director.

24.7.2 Investigation

The City Manager or designee shall investigate, or refer the matter to an outside agency for an investigation, all allegations and written complaints of unethical conduct.

Complaints or allegations that may be criminal in nature may be referred to an appropriate outside agency for investigation.

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25 Leave of Absence Without Pay

25.1 Statements of Policy

The City will consider requests for unpaid leaves of absence for regular employees who have at least one (1) year of continuous City service in emergency cases or upon good and sufficient reason where such absence would not be contrary to the best interests of the City. The City shall not grant a leave of absence to an employee so the employee may accept employment with another employer.

Nothing in this policy prevents the City from abolishing any position during the period of leave under this policy. In the case of the abolishment of any position, then the layoff provisions as specified within these Personnel Rules shall apply.

25.2 Authorized Leaves of Absence

Upon written request of an employee setting forth the reasons for the request, and upon the recommendation of the department head, the City Manager may grant an employee holding a regular position appointment a leave of absence for a period not to exceed twelve (12) months. Absences due to Family Medical Leave shall be consecutive to, and not concurrent with, leaves of absence without pay. Approval for leaves of absences shall be in writing.

25.2.1 Department Authorized Leaves of Absence

Department heads may grant an employee holding a regular position appointment a leave of absence without pay for a period not to exceed thirty-one (31) calendar days per calendar year. Such leave shall be reported to the Human Resources Director immediately.

25.2.2 Long Term Authorized Leaves of Absence

Authorized leaves of absence without pay in excess of thirty-one (31) calendar days per calendar year for an employee holding a regular position appointment may be granted upon written request of the employee and recommendation of the department head and approval of the City Manager.

25.2.3 Status during Authorized Leaves of Absence

Authorized leaves of absence without pay shall not be construed as breaks in service, except for probationary employees. Rights accrued at the time leave is granted shall be retained by the employee. However, vacation credits, sick leave credits, holidays, health and welfare benefits, normal salary advancement, and other similar benefits shall not accrue to an employee during such granted period of the leave of absence.

25.3 Return from Authorized Leaves of Absence

Upon expiration of an authorized leave of absence, the employee shall be reinstated to the position held at the time leave was granted. Such employee shall retain the same status and shall be placed at the same salary step, with the same accumulated time towards advancement to the next step as obtained at the time leave was granted.

25.3.1 Early Return from Authorized Leaves of Absence

An employee may request permission from the City Manager to return from an authorized leave of absence prior to expiration of such leave. Such a request may be approved, or denied, at the sole discretion of the City Manager.

25.3.2 Failure to Return from Authorized Leaves of Absence

Failure on the part of an employee to report back to work within three (3) days of the expiration of an authorized leave of absence shall be cause for dismissal from employment unless such leave was extended in accordance with the provisions of this section.

26 Pregnancy Disability Leave

26.1 Eligibility and Leave Purposes

An employee who is disabled due to pregnancy, childbirth or related medical condition may request an unpaid pregnancy disability leave. There is no length of City service requirement before an employee disabled by pregnancy is entitled to a pregnancy disability leave.

An employee is “disabled” due to pregnancy if, in the opinion of her health care provider, she is unable to work at all, or is unable to perform any one or more of the essential functions of her job, or to perform these functions without undue risk to herself, the successful completion of her pregnancy, or to other persons. An employee is also considered to be “disabled” if she is suffering from severe morning sickness or needs to take time off for prenatal care.

26.2 Duration of Leave

Subject to the conditions of this policy, eligible employees may take a maximum of four (4) months of pregnancy disability leave as defined by law. An employee who is physically and mentally capable of returning to work before the expiration of four (4) months of pregnancy disability leave is not entitled to a full four (4) months of pregnancy disability leave.

For employees who are also eligible for family and medical leave, the first twelve (12) weeks of pregnancy disability leave is considered family and medical leave in that:

1. To the extent that the employee receives health insurance from the City, the health insurance will continue to be provided by the City on the same terms, and conditions assuming the employee has not already taken the maximum amount of family and medical leave; and
2. Pregnancy disability leave counts against the amount of leave required to be provided under the Federal Family and Medical Leave Act, but not under the California Family Rights Act. As a result, the employee still may be eligible for an additional twelve (12) weeks of family and medical leave under the California Family Rights Act and the City’s family and medical leave policy at the conclusion of her pregnancy disability leave.

Leave may be taken intermittently or on a reduced work schedule if the employee’s health care provider determines that it is medically advisable for the employee to take such leave. Intermittent leave may also be taken for prenatal care appointment and for morning sickness.

26.3 Requirements Regarding the Use of Paid Leave

The employee must use accrued sick leave (if any) during a pregnancy disability leave for any portion of the leave that is otherwise unpaid. After the employee's sick leave is exhausted, she may elect to use accrued vacation time, compensatory time and administrative leave (if any) in order to continue to receive pay during the leave.

26.4 Notification Requirements

An employee requesting pregnancy disability leave must provide proper notification to the Human Resources Director. If the leave is foreseeable, the employee must provide notice at least thirty (30) days before the leave is needed. If thirty (30) days advance notice is not practicable or the need for the leave is not foreseeable (due to, for example, a lack of knowledge of when leave will be required, a change in circumstances, or a medical emergency), notice must be given as soon as practicable. A failure to comply with these notification requirements may result in a denial or postponement of the requested leave until the employee complies with these requirements. However, if the need for a pregnancy disability leave results from an emergency or is otherwise unforeseeable, the leave will not be denied for failure to provide advance notice.

26.5 Certification by Health Care Provider

Employees must provide the Human Resources Director with a certification issued by the employee's health care provider verifying the need for the leave, the date leave is to begin, and its expected duration.

26.6 Benefits and Seniority

If the employee is eligible for leave under the Family and Medical Leave Act and participates in the City's group health insurance, the City will continue to provide health insurance to the employee for the period of the designated leave (up to twelve [12] weeks maximum within a twelve [12] month period) under the same terms and conditions that coverage is provided to the employee if the employee had not gone on leave. If the employee is responsible for paying all or a portion of the premiums before the leave, the employee remains responsible for such payment during the leave. Employees may choose to continue other benefits at their own expense. Benefits and seniority do not accrue during an unpaid pregnancy disability leave.

26.7 Transfers

If an employee requests intermittent leave or reduced schedule leave that is foreseeable based on planned medical treatment, the employee may be transferred to an alternative position providing equivalent pay and benefits for the duration of the leave (unless the employee's health care provider disapproves of the transfer for medical reasons).

In addition, an employee may request a transfer to a less strenuous or hazardous position or to less strenuous or hazardous duties. Such a request must be based on the certification of the employee's health care provider that the transfer is medically advisable. The City will grant the transfer request if it can be reasonably accommodated. First priority will be made to transfer the employee within her current department.

26.8 Return to Work

Except as provided by law, the employee will return to the same position she occupied when the leave commenced or, if the position is no longer available, the employee will return to a comparable position, if one is available. Except as provided by law, upon a timely return to work the employee will return to the same position she occupied when the leave commenced or, if the position is no longer available, the employee will return to a comparable position, if one is available. However, an employee has no greater right to reinstatement than if the employee had been continuously employed in her position during the leave period.

As a condition of returning to work, an employee must provide a certification from her health care provider verifying her ability to return to work, including any work restrictions.

If the employee fails to return to work within three (3) days after the approved leave expires, the employee will be considered to have voluntarily resigned employment.

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27 Family Medical Leave

27.1 Policy Statement

As provided by the 1993 Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA), all eligible employees shall be entitled to take up to twelve (12) or twenty six (26) weeks of unpaid, job-protected leave during any twelve (12) month period for specified family and medical reasons.

27.2 Covered Family and Medical Reasons

1. An eligible employee shall be entitled to take up to twelve (12) weeks of unpaid leave during a twelve (12) month period for one or more of the following reasons:
 - a. The birth or placement of a child for adoption or foster care.
 - b. For any “qualifying exigency” arising from the employee’s spouse, son, daughter or parent being a covered military member on active duty (or having been notified of an impending call or order to active duty). (29 CFR § 825.100[a])
 - c. To care for an immediate family member (spouse, domestic partner, child, or parent) with a serious health condition.
 - d. To take medical leave when the employee is unable to work because of a serious health condition.

A serious health condition shall be defined as an illness of a serious and long-term nature resulting in recurring or lengthy absences. Treatment of such an illness would occur in an inpatient situation at a hospital, hospice, or residential medical care facility, or would consist of continuing care provided by a licensed health care provider.

2. An eligible employee shall be entitled to take up to twenty-six (26) weeks of unpaid leave during a twelve (12) month period to care for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness. (29 CFR § 825.100[a], 29 CFR § 825.127)

27.3 Employee Eligibility

An employee shall be entitled to family leave when he/she meets the following criteria:

1. The employee has worked for at least twelve (12) months for the City. The twelve (12) months need not have been consecutive. (If the employee was on the payroll for part of a week, the City will count the entire week. The City considers fifty-two [52] weeks to be equal to twelve [12] months.)
2. The employee has to have worked for the City for at least one thousand two hundred fifty (1,250) hours over the twelve (12) months immediately preceding the commencement of the leave.
3. When both spouses are employed by the City, they are jointly entitled to a combined total of twelve (12) work weeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

27.4 Calculation of Leave

Eligible employees can use up to twelve (12) weeks of leave during any twelve (12) month period, or twenty-six (26) weeks of leave during any twelve (12) month period for military caregiver leave. The City will use a rolling twelve (12) month period measured backward from the date an employee uses any FMLA/CFRA leave. Each time an employee uses leave, the City computes the amount of leave the employee has taken under this policy, subtracts it from the twelve (12) weeks, and the balance remaining is the amount the employee is entitled to take at that time. For example, if an employee has taken five (5) weeks of leave in the past twelve (12) months, the employee could take an additional seven (7) weeks (or twenty-one (21) weeks for military caregiver leave) under this policy.

27.5 Maintenance of Benefits

An employee shall be entitled to maintain group health, dental, and vision insurance benefits (if any) on the same basis as if he/she had continued to work for the City. To maintain uninterrupted coverage, the employee will have to continue to pay his/her share of insurance premium payments, if any. This payment shall be made either in person or by mail to the Finance Department by the fifteenth (15th) day of each month. The coverage will be dropped by the City if the employee's payment is more than thirty (30) days overdue.

If the employee informs the City that he/she does not intend to return to work at the end of the leave period the City's obligation to provide health, dental and vision insurance benefits (if any) ends. If the employee chooses not to return to work for reasons other than a continued serious health condition, the City will require the employee to reimburse the City the amount the City contributed towards the employee's health, dental, and vision insurance benefits (if any) during the leave period.

If the employee contributes to a life insurance or disability plan, the City will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the City will require that the employee continue to make those payments. If the employee does not continue these payments, the City will recover the payments at the end of the leave period, in a manner consistent with the law.

Other benefits such as the accrual of seniority will not continue during leave. However, the use of family or medical leave will not be considered a break in service when vesting or eligibility to participate in benefit programs is being determined.

27.6 Job Restoration

An employee who utilizes family or medical leave under this policy will be restored to the same classification or a classification with equivalent status, pay, benefits and other employment terms. An employee has no right to be reinstated to their former position and has no greater right to reinstatement than if the employee had been continuously employed in his or her position during the leave period.

The City may choose to exempt certain highly compensated, "key" employees from this job restoration requirement and not return them to the same or similar position at the completion of FMLA/CFRA leave. Employees who may be exempted will be informed of this status when they request leave. If the City deems it necessary to deny job restoration for a key employee on FMLA/CFRA leave, the City will inform the employee of its intention and will offer the employee the opportunity to return to work immediately.

27.7 Use of Paid and Unpaid leave

If the employee has accrued paid leave available, then the employee shall use paid leave first and if insufficient to cover the entire Family Medical Leave absence in full, the balance of the leave shall be in an unpaid status.

If an employee uses leave because of his/her own serious medical condition or the serious health condition of an immediate family member, the employee shall first use all sick leave, paid vacation, or compensatory time off, administrative leave, and other available paid leaves, and then will be eligible for unpaid leave.

An employee using leave for the birth of a child will use paid sick leave for physical recovery after childbirth. The employee then shall use all paid vacation, compensatory time off, administrative leave, and other available paid leaves, and then will be eligible for unpaid leave for the remainder of the twelve (12) or twenty-six (26) weeks.

An employee using leave for the adoption or foster care of a child shall use all paid vacation, compensatory time off, administrative leave, and other available paid leaves, and then will be eligible for unpaid leave for the remainder of the twelve (12) or twenty-six (26) weeks. The use of sick leave is not permitted.

If an employee participates in State Disability Insurance (SDI), he/she may integrate his/her sick leave with the disability payment. If the employee elects the integration, all payments from SDI to the employee must be surrendered to the City's Finance Department.

27.8 Intermittent Leave and Reduced Work Schedules

In certain cases, intermittent use of the twelve weeks of family or medical leave or a reduced work week may be allowed by the City. Employees wishing to use leave intermittently or to utilize a reduced work week for birth or adoption purposes will need to request and gain approval for such use from the employee's department head and the Human Resources Director.

Employees may also use family or medical leave intermittently or as a part of a reduced work week whenever it is medically necessary. If the need to use leave is foreseeable and based on preplanned and prescheduled medical treatment, then the employee is responsible to schedule the treatment in a manner that does not unduly disrupt the City's operations. This provision is subject to the approval of the health care provider.

In some cases, the City may temporarily transfer an employee using intermittent or a reduced work week to a different job with equivalent pay and benefits if another position would better accommodate the intermittent or reduced schedule.

27.9 Procedures

27.9.1 Procedure for Requesting Leave

All employees requesting leave under this policy must complete the Family Medical Leave form available from the Human Resources Director.

When an employee plans to take leave under this policy, the employee must give the City thirty (30) days notice. If it is not possible to give thirty (30) days notice, the employee must give as much notice as is possible.

While on leave, employees are requested to report monthly to the City regarding the status of the medical condition, and their intent to return to work.

27.9.2 Procedure for Notice & Certification of Serious Health Condition

The City may require the employee to provide certification of an employee's or immediate family member's serious health condition by a qualified health care provider. The employee should respond to such a request within seven (7) days of the request, or provide a reasonable explanation for the delay.

Qualified health care providers include: licensed doctors of medicine or osteopathy, podiatrist, dentists, clinical psychologists, optometrists, chiropractors, physician assistants, nurse practitioners and nurse-midwives authorized to practice under State law and performing within the scope of their practice under State law; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and any health care provider recognized by the City or the City's health plans.

When seeking certification of a serious medical condition, an employee should ensure that the certification contains the following:

1. Date when the condition began and expected duration.
2. If employee is seeking medical leave for his/her own medical condition, certification should also include a statement that the employee is unable to perform the essential functions of the employee's position.
3. For a seriously ill family member, the certification should include a statement that the patient requires assistance and that the employee's presence would be beneficial or desirable.
4. If taking intermittent leave, or working a reduced schedule, certification should include dates and duration of treatment and a statement of medical necessity for taking intermittent leave or working a reduced schedule.

If deemed necessary, the City may ask for a second opinion. The City will pay for the employee to get a certification from a second doctor, which the City will select. If there is a conflict between the original certification and the second opinion, the City may require the opinion of a third doctor. The City and the employee will jointly select the third doctor, and the City will pay for the opinion. The third opinion is considered final.

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28 Harassment and Discrimination Policy and Complaint Procedure

28.1 Policy Statement

The City of Pinole strives to provide a professional work environment where all employees can work together comfortably and productively, free from harassment and discrimination. The City of Pinole ("City") prohibits harassment and discrimination based on an individual's race, religion, color, creed, national origin, gender, sexual orientation, marital status, age, or physical or mental disability, regardless of whether that harassment is targeted specifically to an employee or independent contractor.

Prohibited harassment based on an employee's/contractor's membership in a protected category may include, but is not limited to, epithets, slurs, derogatory comments or jokes, intimidation, negative stereotyping, threats, assault (directed at individuals, their relatives, friends or associates) or any physical interference with the employee's or independent contractor's normal work or movement. Harassment may also include written or graphic material placed on walls, bulletin boards or elsewhere on City premises or circulated in the workplace that denigrates, shows hostility or aversion towards an individual or group because of the characteristics identified above.

While the legal standards and consequences of sexual harassment are still evolving, the City's policy has been and remains more all encompassing than the law requires. This is because the City's policy rests on the fundamental precept that each individual treat all others with respect, dignity and professionalism. Deviation from that fundamental precept will not be tolerated.

Whether or not the individual means to offend or believed his or her comments or conduct were welcome is not significant. Rather, the City's policy is violated when other employees, whether recipients or mere observers are, in fact, offended by comments or conduct based on race, religion, color, creed, national origin, gender, sexual orientation, marital status, age, disability, or comments or conduct of a sexual nature.

Our workplace is not limited to the City's facilities, but may also include client and vendor facilities, as well as anywhere a City business-related function is taking place.

Employees have an obligation to comply with this Harassment and Discrimination Policy and Complaint Procedure.

28.2 Sexual Harassment

The City of Pinole is also committed to providing a workplace free of sexual harassment. Sexual harassment is defined as unwelcome sexual conduct of any nature that is sufficiently severe or pervasive to create an offensive or hostile work environment or unwelcome sexual situation that is made a condition of working at the City.

Prohibited sexual harassment includes, but is not limited to, unwelcome sexual conduct such as:

1. Verbal harassment (examples include sexual requests, comments, jokes, slurs); and
2. Physical harassment (examples include touching, kissing, staring); and
3. Visual harassment (examples include posters, photographs, calendars, cartoons or drawings of a sexual nature).

28.3 Complaint Procedure

If an individual believes that any City employee, vendor, client or other business contact has harassed him or her, then the individual should immediately report the incident to his or her supervisor and/or department head.

If the immediate supervisor and/or department head is involved in the reported conduct or, for some other reason, the individual feels uncomfortable about reporting to that supervisor and/or department head, then the individual should report directly to the Human Resources Director.

If the individual feels uncomfortable about reporting to the Human Resources Director, then the individual should report directly to the City Manager, who may refer the employee to his/her designee.

If the individual feels uncomfortable about reporting to his or her immediate supervisor, department head, Human Resources Director, or City Manager, then the individual should report through the "Employee Reporting Line."

The "Employee Reporting Line" is a toll-free, confidential means for an employee to report workplace wrongdoing. An employee who calls this line shall not be required to provide his or her name but should provide enough information so that appropriate follow-up action can be taken. The Employee Reporting Line shall be available 24 hours a day, seven days a week and managed by an independent third party vendor. The independent third party vendor shall transcribe the employee's call and send the transcription to the staff member designated to receive these

confidential reports (the designated employee shall be in either the City Manager's Office or the Human Resources Department). The City Manager, or designee, shall publicize to all employees the Employee Reporting Line's telephone number.

Any supervisor, including department heads, who sees or learns of conduct that may constitute harassment under this policy, shall immediately advise the Human Resources Director of the incident and actions taken. Supervisors shall also contact their divisional manager (command staff) or department head. If the supervisor or department head feels uncomfortable reporting to the Human Resources Director, then the supervisor or department head should report to the City Manager or City Attorney.

28.4 No Retaliation

The City of Pinole will not retaliate, nor will it tolerate retaliation, against individuals who complain in good faith about harassment in the workplace. The City will investigate any such report and will take whatever corrective action is deemed necessary, including disciplining and dismissing from employment any individual who is found to have violated these prohibitions against harassment and/or retaliation. All employees and supervisors have a duty to cooperate in the City's investigation of alleged harassment and/or alleged retaliation. Failure to cooperate or deliberately providing false information during an investigation shall be grounds for disciplinary action, up to and including dismissal from employment.

28.5 Corrective Actions

Corrective actions, including discipline up to and including dismissal, shall be governed by the applicable provisions of the City's Municipal Code, employee's collective bargaining agreement and, the City's Personnel Rules and Regulations.

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29 Workplace Violence Policy

29.1 Policy Statement

The City recognizes that workplace violence is a concern among employers and employees across the country. The City is committed to providing a safe, violence-free workplace. In this regard, the City strictly prohibits employees, consultants, customers, visitors, and anyone else on City premises or engaging in a City-related activity from behaving in a violent or threatening manner. Moreover, as part of this policy, the City seeks to prevent workplace violence before it begins and reserves the right to deal with behavior that suggests a propensity towards violence even prior to any violent behavior occurring.

29.2 Workplace Violence Defined

Workplace violence includes, but is not limited to, the following:

1. The actual or implied threat of harm to an individual, group of individuals, or relatives of those individuals. These threats may be made in person, over the telephone, through the mail, by electronic communication, or through other methods of communication.
2. The possession, on City property (including but not limited to City offices, work locations, City-owned and City-leased vehicles, and parking lots) or while conducting City business a weapon of any kind, unless specifically authorized by the Police Chief or Fire Chief, or the brandishing of any object which could reasonably be construed as a weapon.
3. Loud, disruptive or angry behavior or language that is clearly not part of the typical work environment.
4. Blatant or intentional disregard for the safety or well-being of others.
5. Willful destruction of City or personal property.
6. Commission of a violent felony or misdemeanor on City property.
7. Any other act that may be perceived as constituting a threat of violence.

29.3 Reporting

If any employee observes or becomes aware of any of the above-listed actions or behavior by an employee, customer, consultant, visitor, or anyone else, he/she should immediately report the information/incident to the Human Resources Director and Supervisor. In the event immediate Police assistance is needed call the Police Department by dialing 9-1-1. The Police Department will notify the Human Resources Director upon the receipt of any reported workplace violence.

Further, employees should notify the Police Department and the Human Resources Director if any restraining order is in effect, or if a potentially violent non work-related situation exists that could result in violence in the workplace.

29.4 Investigation

All reports of workplace violence will be taken seriously and will be investigated promptly and thoroughly. In appropriate circumstances, the City will inform the reporting individual of the results of the investigation. To the extent possible, the City will maintain the confidentiality of the reporting employee and the investigation but may need to disclose results in appropriate circumstances; for example, in order to protect individual safety. The City will not tolerate retaliation against any employee who reports workplace violence.

29.5 Corrective Action and Discipline

If the City determines that workplace violence has occurred, the City will take appropriate corrective action and will impose discipline on offending employees, up to and including dismissal from employment.

If the violent behavior is from a non-employee, the City will take appropriate corrective action in an attempt to ensure that such behavior is not repeated.

Under certain circumstances, the City may forego disciplinary action on the condition that the employee takes a medical leave of absence. In addition, the City may request that the employee participate in counseling, either voluntarily or as a condition of continued employment.

30 Alcohol and Drug-Free Workplace

30.1 Policy

The City is committed to protecting the health and safety of its employees and the public. The City is also committed to promoting efficiency in the workplace and to providing the highest quality services for the public.

In keeping with these commitments and in recognition of the harmful effects of the abuse of alcohol and drugs, the City requires that all employees report for work fit to perform their jobs and prohibits the use, possession, manufacture, dispensation or distribution of alcohol, illegal drugs or controlled substances while at work or in a manner that will affect their work performance.

The City shall encourage employees affected by substance abuse or addiction to seek professional help voluntarily at an early stage. Some options include the Employee Assistance Program (EAP), private insurance and the like. However, if an employee is found to be using or under the influence of alcohol, illegal drugs, or found to be abusing legal or prescribed medication in the workplace, the employee will be required to participate in an alcohol or drug abuse assistance or rehabilitation program and/or will be subject to appropriate disciplinary action up to and including dismissal from employment.

30.2 City Responsibilities

1. The City shall publish and distribute the Alcohol and Drug-Free Workplace Policy (Rules 30 and 31) notifying employees that unlawful manufacture, distribution, dispensation, possession or use of alcohol, illegal drugs or controlled substances is prohibited.
2. The City shall publish and distribute the Alcohol and Drug-Free Workplace Policy notifying employees that if they are found to be using or under the influence of alcohol or drugs in the workplace, they will be required to participate in an alcohol or drug-abuse assistance or rehabilitation program and/or will be subject to appropriate disciplinary action up to and including dismissal from employment.
3. The City shall publish and distribute the Alcohol and Drug-Free Workplace Policy notifying every employee who works on a state contractor grant that they must abide by the Drug-Free Workplace Policy as a condition of employment on the contract or grant.
4. The City shall establish an Alcohol and Drug-Free Awareness Program to inform current and new employees of the following:
 - a. The dangers of alcohol and drug abuse in the workplace.

- b. The City's policy of maintaining an alcohol and drug-free workplace.
- c. Any available counseling, rehabilitation and employee assistance programs.
- d. Penalties that may be imposed upon employees for alcohol or drug abuse violations.

30.3 Employee Responsibilities

1. An employee must not report to work or be subject to duty while his/her ability to perform job duties is impaired due to on or off duty alcohol or drug use.
2. An employee must not possess (except in the performance of his/her job duties) or use alcohol or impairing drugs (illegal drugs and/or prescription drugs without a prescription) during working hours or while subject to duty, on breaks, during meal periods, or at anytime while on City property.
3. An employee directly or through a third party, must not sell or provide drugs (illegal drugs and/or prescription drugs without a prescription) or alcohol to any person, including any employee, while either employee or both employees are on duty or subject to being called.
4. An employee must notify his/her supervisor, before beginning work, when taking any medications or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of City equipment. See Rule 31 for Prohibited Activities, Testing Requirements and Violation Consequences.

31 Alcohol and Controlled Substances Testing

31.1 Purpose

The City is committed to providing the following: a safe work environment for employees, the fostering of the well-being and health of its employees, a work environment which reduces to the extent possible risk to City employees and the general public (with affiliated risk of liability to the City), and the appearance to the public of an alcohol-free and drug-free work force. The City is also required, when it receives State and/or Federal grant funds, to enforce the State and/or Federal Drug-Free Workplace Acts (California Government Code Section 8350 *et seq.*, and 41 U.S.C. Chapter 10, respectively). Those commitments and responsibilities are jeopardized when an employee: 1) uses alcohol or controlled substances during working hours; 2) comes to work under the influence of alcohol or a controlled substance; or 3) engages in the use, possession, manufacture, dispensing, distribution, or sale of alcohol or a controlled substance in the workplace. Therefore, the City has established the policy set forth herein.

It is the goal of this policy to balance respect for individuals with the need to maintain a safe, productive, and drug-free workplace and to comply with State and Federal Drug-Free Workplace legislation as well as legislation governing testing to detect and deter the use of alcohol and controlled substances. The City makes available an Employee Assistance Program (EAP) to provide a helping hand to those who need it. The City also intends to send a clear message that the use or possession, or impairment of job performance by the use of, controlled substances and/or alcohol in the workplace is incompatible with any employment by the City. The City has determined if drivers operating motor vehicles use alcohol or controlled substances, it creates a situation where their employment constitutes a direct threat to the property or safety of the City and the citizens of Pinole.

Employees and applicants who are covered by this policy will be requested, under Federal Department of Transportation (“DOT”) Policy Guidelines, to test for drug or alcohol misuse. Refusing to take or failing a drug or alcohol test for trainees in a covered position or pre-employment drug or alcohol testing will prevent the person from being considered for the covered position. An employee who refuses or fails a drug or alcohol test may not perform the duties of a covered position.

This policy is intended to summarize federal regulations for covered safety drivers and individuals performing safety sensitive job functions. This policy is not a substitute for the applicable regulations and in cases of conflict the applicable federal regulations shall govern. Questions regarding application of this policy should be referred to the Human Resources Director or the City Attorney.

31.2 Scope

This policy applies to all contractors, employees, and volunteers of the City, and refers to alcohol and all substances, legal or illegal, that have the capacity to impair an individual's ability to effectively and safely perform the functions of his/her job.

This Table is for Informational Purposes Only This Policy Applies To:			
	Safety Drivers	Safety Sensitive Positions	All Others
31.4 Prohibited Conduct	X	X	X
31.5 Disciplinary Actions for Violation of this Policy	X	X	X
31.6 One-Time Disciplinary Waiver	X	X	X
31.7 Conviction Under a Drunk Driving or Criminal Drug Statute	X	X	X
31.8 Employee Assistance	X	X	X
31.9 Reasonable Suspicion Testing	X	X	X
31.10 Random Testing Requirements	X	X	
31.11 Post-Accident Testing	X	X	
31.12 Refusal to Submit to Testing Procedures	X	X	X

31.3 Definitions

31.3.1 Alcohol Use: As used in this policy, the term "alcohol use" means the consumption of any beverage, mixture, or preparation, including any medication containing alcohol.

31.3.2 Collection Site: As used in this policy, the term "collection site" means a place where individuals present themselves for the purpose of providing body fluid or tissue samples to be analyzed for specific controlled substances and/or alcohol.

31.3.3 Contractor(s): As used in this policy, the term "contractor(s)" shall include individuals under contract with the City to provide goods or services. The term "contractor" shall include owners, agents, subcontractors, and employees of any entity (corporation, partnership, sole proprietorship, et

cetera) under contract with the City to provide goods or services. This policy applies to contractors while performing activities under a contract.

31.3.4 Controlled Substance: As used in this policy, the term “controlled substance” shall mean those controlled substances set forth in 49 C.F.R. §40.85 including marijuana metabolites, cocaine metabolites, amphetamines, opiate metabolites and phencyclidine (PCP).

31.3.5 Conviction: As used in this policy, the term “conviction” shall mean a finding of guilt (including a plea of *nolo contendere*) or imposition of a sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

31.3.6 Criminal Drug Statutes: As used in this policy, the phrase “criminal drug statutes” shall mean a federal or state criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

31.3.7 Days: As used in this policy, the term “days” shall mean calendar days, unless otherwise stated.

31.3.8 Employee(s): As used in this policy, the term “employee(s)” shall include all individuals employed by the City and all individuals employed by a joint powers authority and working at City workplaces.

31.3.9 Federal Testing Requirements: As used in this policy, the phrase “federal testing requirements” means the requirements set forth in 49 C.F.R. part 40 and 49 C.F.R. part 391, subpart H and any other applicable federal regulations.

31.3.10 Illegal Drugs: Illegal drugs shall include the unlawful use of controlled substances and the unlawful use of prescription medication.

31.3.11 Medical Review Officer: As used in this policy, the term “Medical Review Officer” shall mean a licensed doctor of medicine or osteopathy with knowledge and clinical experience of drug and alcohol abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed results, that is employed or used by the City to conduct drug and alcohol testing in accordance with this policy.

31.3.12 Post-Accident Testing: As used in this policy, the phrase “post-accident testing” means the testing of a driver after an accident if any of the following occurs: (1) a fatality; (3) there is reasonable cause (pursuant to Rule 31.3.14) to believe either that the driver has been operating a motor

vehicle while under the influence of drugs or alcohol, or that the driver was at fault in the accident and drug or alcohol use may have been a factor; or (2) the driver receives a citation for a moving traffic violation arising from the accident (within eight hours for alcohol testing or thirty-two hours for controlled substances testing), AND (4) an individual required on-site medical care and/or medical transport; OR (5) disabling damage to any involved vehicles.

31.3.13 Random Selection Process: As used in this policy, the phrase “random selection process” means that drug and alcohol testing is unannounced and that every person has an equal chance of being selected for testing.

31.3.14 Reasonable Suspicion/Cause: As used in this policy, the term “reasonable suspicion or cause” means that a supervisor has a reasonable suspicion or belief that an employee is under the influence of alcohol or drugs. Reasonable suspicion or cause must be based on specific, contemporaneous, or particular observations concerning the appearance, behavior, speech or body odors of the employee. The observation of suspected alcohol and/or drug use must be made by a supervisor trained to make such observations during, just preceding, or just after the workday. Examples of performance indicators of probable alcohol or drug use sufficient to lead a prudent supervisor to suspect that an employee is under the influence of alcohol and/or drugs, include, but are not limited to:

1. Direct observation of on-the-job alcohol or drug use.
2. Visible signs of possible intoxication or influence of drugs or alcohol.
3. A pattern of abnormal conduct or erratic behavior consistent with the use of drugs and/or alcohol.
4. Possession of alcohol, suspected illicit or unauthorized drugs, or drug paraphernalia when any one or more of these items are found on the employee or in an area or vehicle controlled, occupied, or used by the employee.
5. Established history of drug/alcohol abuse on the job.
6. Arrest or conviction for a drug-related offense or driving under the influence.
7. Newly discovered evidence that an employee has tampered with a previous drug or alcohol test.

8. Information provided either by reliable and credible sources or independently corroborated of on-duty use of alcohol or on-duty or off-duty use of illegal drugs.
9. Smell of alcohol on breath or body.
10. Loss of equilibrium (unsteady standing, walking, or movement).
11. Slurred speech.
12. Bloodshot eyes.
13. Observation of substandard performance.
14. Following a serious accident or incident in which safety precautions were violated or unusually careless acts were performed.
15. Discovery of evidence tending to support the suspicion of alcohol and/or drug use.
16. Employee is found in possession of alcohol and/or drugs.
17. Alcohol and/or drugs are found in an area controlled or used exclusively by the employee such as the employee's locker, desk, or a vehicle.
18. Absenteeism.
19. Indications of the chronic and withdrawal effects of alcohol and/or drugs.

These examples may or may not each be a sole indicator, but will be considered in the totality of the situation/circumstance.

31.3.15 **Safety Driver:** As used in this policy, the phrase "safety driver" shall include any City employee whose position requires that he/she operate a motor vehicle (1) that requires a commercial driver's license (Class A or B), (2) has a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds, (3) of any size that is engaged in transporting hazardous materials in amounts requiring placarding under applicable regulations, or (4) that is designed to transport sixteen (16) or more passengers, including the driver.

31.3.16 Safety Sensitive Job Function: As used in this policy, the phrase “safety sensitive job function” shall include driving the vehicle, performing maintenance on the vehicle, inspecting the vehicle, loading and/or unloading the vehicle, and supervising or assisting the loading/unloading of a vehicle.

31.3.17 Supervisor: As used in this policy, the term “supervisor” means any City official or employee having management or supervisory responsibility over any other employee. Supervisor includes lead persons, supervisors, superintendents, assistant department heads, and department heads.

31.3.18 Under the Influence of a Controlled Substance: As used in this policy, the phrase “under the influence of a controlled substance” shall mean any measurable quantity of a controlled substance in an individual.

31.3.19 Volunteer: As used in this policy, the term “volunteer” shall include all individuals who donate their time to the City without compensation.

31.3.20 Working Hours: For employees, the phrase “working hours” shall mean those hours of the day that an employee is expected to be on duty to perform services for the City and shall include meal periods, rest periods, and being in any City vehicle. For contractors, the phrase “working hours” shall mean those hours when a contractor is performing activities pursuant to a contract with the City. For volunteers, the phrase “working hours” shall mean those hours when a volunteer is performing volunteer activities for the City.

31.3.21 Workplace: As used in this policy, the term “workplace” shall include all offices, buildings and locations owned, rented, leased, or controlled by the City and occupied (during working hours) by employees of the City. The term “workplace” shall also include any work site where an employee is present performing services as part of his/her employment with the City (including field work). “Workplace” includes any City vehicle including City vehicles that are used by employees to commute from home to a City employee’s place of work or from a City place of work to a home.

31.4 Prohibited Conduct

In order to maintain an alcohol-free and drug-free workplace, the following behavior is prohibited, whether on the part of employees, contractors, or volunteers.

1. Alcohol Use or Possession
 - a. Employees, contractors, or volunteers are prohibited from the manufacturing, distributing, dispensing, possession, sale, trade, or use of alcohol in any and all workplaces of the City. Alcohol includes alcohol in closed or sealed cans, bottles, or other containers.

- b. No individual shall report for duty, remain on duty, or perform a safety sensitive function while having an alcohol concentration of 0.04 or greater.
- c. No individual shall be on duty or operate a commercial motor vehicle while possessing alcohol, unless alcohol is part of the shipment.
- d. No individual shall use alcohol while performing safety sensitive functions.
- e. No individual required to take a post-accident test shall use alcohol for eight (8) hours following the accident or until undergoing required testing for alcohol consumption, whichever occurs first.
- f. No driver shall refuse to submit to required alcohol testing.
- g. No supervisor having actual knowledge that (1) a driver is using alcohol while performing safety sensitive functions; (2) has an alcohol concentration of 0.04 or greater; or (3) has used alcohol within four hours; shall permit a driver to perform or continue to perform safety sensitive functions.

2. Controlled Substances (Drug Use or Possession)

- a. Employees, contractors, or volunteers are prohibited from the manufacturing, distributing, dispensing, possession, sale, trade, or use of a controlled substance in any and all workplaces of the City.
- b. Employees, contractors, or volunteers are prohibited from reporting to the workplace while under the influence of a controlled substance.
- c. Employees, contractors, or volunteers are prohibited from the unlawful use of prescription medication.
- d. No individual shall refuse to submit to controlled substance testing as is herein required.
- e. No individual shall report for duty, remain on duty, or perform a safety sensitive function while using a controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect his/her ability to safely perform their job duties. Should a question of fitness for duty

arise, the employee shall provide the Medical Review Officer (MRO) with his/her prescription and physician contact information. The MRO will then determine fitness and advise the Human Resources Director.

- f. No safety driver shall be on duty or operate a commercial motor vehicle when using any controlled substance pursuant to the instructions of a physician without first informing the employer of any therapeutic drug use. The reporting shall be accomplished by advising the MRO of the use and providing the prescription bottle to the MRO prior to reporting for duty. Fitness for duty shall be determined by the MRO.
- g. The lawful use of prescription medication is permitted, unless such medication impairs the functioning of an employee, contractor, or volunteer to the extent that he/she cannot safely and effectively perform his/her duties. If the function of an employee or volunteer appears impaired to the extent that he/she cannot safely and effectively perform his/her duties, the City reserves the right, to be exercised at the discretion of the employee's or volunteer's department head or designee, or the Human Resources Director, to require that the employee obtain medical clearance prior to performing further work duties.
- h. No supervisor having actual knowledge that a driver has used a controlled substance shall permit the safety driver to perform or to continue to perform safety sensitive functions.

3. A Supervisor's Reporting Responsibility

A supervisor who has reasonable cause to suspect that any individual is violating or has violated any provision of this policy shall report that suspected violation immediately to his/her immediate supervisor and simultaneously to their Department Head. The Department Head shall immediately notify the Human Resources Director. A supervisor's failure to immediately report the suspected violation is prohibited conduct of the supervisor and may lead to disciplinary action against the supervisor. The purpose of this section is to allow the City to conduct testing and inspection immediately.

4. Important Guidelines for Supervisors

Upon suspicion that an individual is violating or has violated any provision of this policy, and upon notification as described above, supervisors shall follow the steps below:

- a. Request one other trained employee (see rule 31.8.5 – preferably a Human Resources staff member) observe and document the employee's behavior in an effort to confirm reasonable suspicion.

If reasonable suspicion exists:

- b. Quietly move the employee from the work area to a private location.
- c. Engage in a dialog with the employee notifying them that reasonable suspicion exists, and that they are subject to drug and alcohol testing per Rule 31.9. The second observer shall witness this communication, and assist in documenting the event.
- d. The second observer shall remain with the employee at all times. Do not permit the employee to leave the work site or operate a motor vehicle.
- e. Contact a Human Resources staff member to escort the employee to the City's Occupational Health facility for a reasonable suspicion drug/alcohol test.
- f. If the employee requests Union representation, they may contact their Union representative. However, the City will not wait for the Union representative to arrive before leaving for the test site. The Union representative may meet the employee at the test site if necessary.

If the employee tests positive for alcohol:

- g. Human Resources will drive the employee home directly from the test site. The employee shall be placed on paid administrative leave until disciplinary action is taken.

If the employee tests negative for alcohol:

- h. Human Resources will drive the employee back to the work site and the employee shall return to their regular shift.

Following a reasonable suspicion drug test:

- i. Human Resources will drive the employee home directly from the test site. The employee shall be placed on paid administrative leave until test results return.
- j. If the test is negative, the employee shall return to work the next scheduled work shift. If the test is positive, the employee shall remain on paid administrative leave until disciplinary action is taken.

31.5 Disciplinary Actions for Violation of this Policy

Violation of this policy by an employee shall constitute just and sufficient cause for discipline of an employee up to and including dismissal from employment. Discipline of an employee will be in accordance with the provisions outlined in the current employee bargaining agreement and, if none, the Personnel Rules. Volunteers in violation of this policy are subject to "termination," meaning that the volunteer will no longer be permitted to provide services to the City either on a temporary and/or ongoing basis.

31.6 One-Time Disciplinary Waiver/Reduction

An employee with a substance abuse problem (including the abuse of illegal drugs and/or alcohol) who is facing disciplinary action for behavior relating to such substance abuse may, subject to City approval/discretion, on a one-time basis, receive a waiver or reduction of such discipline under the following conditions:

1. The employee seeks qualified assistance through the Employee Assistance Program (EAP), or a qualified provider of the individual's choice, and the City and the employee allow the EAP or qualified provider to conduct an evaluation of the problem with a recommendation for a "Get Well Program." This is defined as a program designed to provide the employee with a means of receiving treatment while being allowed to keep his/her job.
2. The employee shall meet all the conditions and requirements of the "Get Well program" subject to verification by the City.
3. The employee will be subject to random testing for a period not to exceed three (3) years. A positive test during this period will constitute the equivalent of a voluntary resignation.
4. For safety drivers or individuals performing safety sensitive job functions, any return to work program must comply with DOT regulations.

31.7 Conviction Under a Drunk Driving or Criminal Drug Statute

31.7.1 Employee's Obligation: An employee shall notify the Human Resources Director in writing of that employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction.

In addition, any safety driver or individual in a safety sensitive job function shall notify the Human Resources Director in writing of any conviction for driving under the influence of drugs or alcohol and/or suspension of driving privileges no later than five (5) days after such conviction or suspension. Failure to make such notification shall constitute a violation of this policy.

Any safety employee shall notify the Human Resources Director in writing of any conviction under a criminal drug statute, conviction for driving under the influence of drugs or alcohol, or suspension of driving privileges no later than five (5) days after such conviction or suspension. Failure to make such notification shall constitute a violation of this policy.

31.7.2 City's Obligation: Within thirty (30) days after receiving notice from an employee of a conviction under a criminal drug statute or conviction of driving under the influence, the City shall take appropriate personnel action against the employee, up to and including dismissal from employment (in accordance with the provisions outlined in the current employee bargaining agreement or, if none, the Personnel Rules and Regulations), or require that the employee participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

31.8 Employee Assistance

Everyone shares in the responsibility of maintaining a safe work environment, and drug and alcohol abuse are recognized as treatable conditions.

31.8.1 City's Responsibility: It is the responsibility of supervisors to inform, advise, and refer/offer employees the Employee Assistance Program (EAP) whenever they see changes in performance or behavior that suggest an employee has a drug and/or alcohol problem. Although it is not the supervisor's job to diagnose personal problems, the employee should be encouraged to seek help, and the supervisor should provide information concerning available resources.

31.8.2 Employee Assistance Program (EAP): The EAP is available to assist employees who may have a drug and/or alcohol problem. Employees are urged to seek confidential assistance from the EAP.

While the City will be supportive of those who voluntarily seek help, the City will be equally firm in identifying and disciplining those who abuse drugs and/or alcohol and fail to seek assistance or those who continue such abuse after assistance has been provided.

31.8.3 Treatment/Rehabilitation: In the event the City has knowledge of an employees' substance abuse problem (including abuse of illegal drugs and/or alcohol), and the employee has not been subject to any form of disciplinary action for this reason, a one-time medical leave of absence may be granted upon prior approval of the City Manager. The City shall not take adverse action against an employee seeking assistance as long as the employee has not self-identified in order to avoid testing under federal regulations or the City's policies. Individuals performing safety sensitive job functions must self-identify prior to reporting for duty or performing safety sensitive functions. Medical leave will be for the sole purpose of participation in a City-approved treatment/rehabilitation program, will be without pay unless the employee elects to use his/her paid leave banks, must have the recommendation of the department head, and will be for a maximum of ninety (90) days. An agreement will be executed by the employee and the City known as a "Back to Work Agreement" that will spell out the conditions and terms for said leave.

31.8.4 Post Rehabilitation: The City reserves the right to conduct follow-up testing as a condition of employment for an employee returning from a rehabilitation program (as defined in 31.8.3) for a period of three (3) years following completion of the program and return to work. Failure to adhere to the terms and conditions of the "Back to Work Agreement" or a violation in any other manner of the conditions outlined in this policy will result in dismissal from employment. For safety drivers and individuals performing a safety sensitive job function, the City shall conduct return to work and follow-up testing in accordance with federal regulations.

31.8.5 Supervisory Training: All supervisors shall receive training on alcohol misuse and on controlled substances misuse. The training will be used by supervisors to determine whether reasonable suspicion exists to require an employee to undergo testing. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and misuse of controlled substances.

31.9 Reasonable Suspicion Testing

1. Upon reasonable cause/suspicion, the City shall require any employee, contractor, or volunteer to be tested for the use of controlled substances and/or alcohol. An employee, contractor, or volunteer shall submit to testing,

upon reasonable cause, for the use of controlled substances and/or alcohol when requested to do so by the City.

2. The conduct giving rise to the suspicion shall have been witnessed by a supervisor, who shall document the reasons for the reasonable suspicion testing within twenty-four (24) hours of the observed behavior or before the results of the tests are released, whichever is earlier. In addition, if conduct giving rise to the reasonable suspicion consists of visible signs of possible intoxication or influence of drugs or alcohol, or a pattern of abnormal conduct or erratic behavior consistent with the use of drugs or alcohol, then the witness must have received training in the identification of actions, appearance, or conduct that are indicative of the use of controlled substances and alcohol.
3. If the City directs an employee to undergo drug or alcohol testing based on a reasonable suspicion, the employee will be a) immediately transported to a collection site for the collection of a urine sample (drug testing) and/or breath test (alcohol testing), and b) placed on paid administrative leave from the time of the initial testing until the results are received and reviewed by the City. In the event the results are positive, the employee will be in violation of this policy and may be subject to disciplinary action. The City shall ensure that all reasonable suspicion tests are performed in conformance with Federal testing requirements (DOT Rule 49 CFR Part 40).
4. When reasonable suspicion exists concerning a safety employee, applicable provisions of the Public Safety Officers Procedural Bill of Rights Act or Firefighters Bill of Rights shall be observed.

31.10 Random Testing Requirements

The City shall use a scientifically valid random selection process to select and request safety drivers and individuals in a safety sensitive job function to be tested for the use of controlled substances and/or alcohol. The number of tests conducted shall equal or exceed standards set by the federal Department of Transportation. Any safety driver or individual in a safety sensitive job function so selected shall submit to controlled substance and/or alcohol testing upon notification by the City. The sample shall consist of a urine sample (drug testing) and/or breath test (alcohol testing), and the test shall be performed in conformance with federal testing requirements (DOT Rule 49 CFR Part 40). This section does not apply to sworn Police and sworn Fire employees (see matrix in 31.2).

31.11 Post-Accident Testing

Following an accident involving a City vehicle, the City may require a safety driver or individual in a safety sensitive job function to provide a urine sample to be tested for the use of controlled substances and/or a breath test for the use of alcohol as soon

as possible, but not later than 32 hours (drug testing) or 8 hours (alcohol testing), after an accident. If the driver is seriously injured and cannot provide a specimen at the time of the accident he/she shall provide necessary authorization for obtaining hospital reports and other documents that would indicate whether or not there were any controlled substances and/or alcohol in his/her system. (See Post-Accident Testing definition Rule 31.3.12.)

Although it is permitted for an alcohol test to occur later than two (2) hours after an accident, any such test must be document why the test did not occur within the first two (2) hours.

31.12 Refusal to Submit to Testing Procedures

Any employee who refuses to be tested under the provisions of this policy shall be treated as if he or she has submitted a positive test, and the employee shall be subject to disciplinary action. In addition, any safety driver or individual in a safety sensitive job function who refuses to be tested under the provisions of this policy shall not be permitted to operate a City vehicle or to perform any safety-sensitive job function.

31.13 Notification of Test Results

1. The Medical Review Officer shall report to the City whether an employee's, contractor's, or volunteer's test was positive or negative and, with regard to controlled substances, identify if possible the specific controlled substance for which the test was positive.
2. The City shall notify the employee, contractor, or volunteer if the test results of any random, reasonable suspicion, or post-accident testing is verified positive, including identification of the substance(s) that was verified as positive.

31.14 Record Keeping

1. The City shall ensure that all records related to the administration and results of the testing program shall be maintained for a period of five (5) years except for individual negative test results, which will be discarded after twelve (12) months.
2. The Human Resources Department shall maintain the following information in separate files for each employee, contractor, and volunteer: the type of testing the driver took (alcohol and/or controlled substances), the date and location of collection, the identity of the persons or entities performing the collection and the analysis of the specimen, the identify of the Medical Review Officer, whether the test finding was positive or negative, and if positive, the substance identified in the test, and the reason the test was provided (i.e., random, reasonable suspicion, post-accident).

3. For safety-sensitive functions/drivers, the City shall permit any Department of Transportation agency and the Federal Highway Administrator to examine all records related to the administration and results of the testing pursuant to this policy.

31.15 Confidentiality

All controlled substance or alcohol test results shall be kept confidential and not subject to disclosure except as provided in this policy or otherwise required by state or federal law.

31.16 Alcohol and Drug-Free Awareness

The City shall distribute and explain this policy to all current employees, new employees, volunteers, and contractors.

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32 Driver's Licenses

All employees who may be assigned work entailing the operation of a City vehicle will be required to submit to a Department of Motor Vehicles driving records check as a condition of employment. Such checks shall be processed by the Human Resources Director. A report indicating a suspended or revoked license status or indicating an unsafe driving record may be cause to deny or terminate employment.

Periodic checks of employee's drivers' licenses through visual and formal Department of Motor Vehicles review checks shall be made by the Human Resources Director or his/her designee. Any employee who does not hold a valid driver's license will not be allowed to operate a City vehicle until such time as he/she obtains a valid license and may be subject to disciplinary action.

Any employee performing work which requires the operation of a City vehicle must notify his/her immediate supervisor in those cases where his/her license is expired, suspended or revoked and/or who is unable to obtain an occupational permit from the Department of Motor Vehicles. Any employee who fails to report such revocation or suspension to his/her supervisor and continues to operate a City vehicle shall be subject to the full range of disciplinary action, up to and including dismissal from employment.

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33 Use of Motor Vehicles

33.1 General

Except as otherwise provided in this policy, City owned and City-leased motor vehicles are to be used only for City business, and are to be stored in prescribed locations when not in use.

33.2 Responsibility

Every City-owned and City-leased vehicle shall be assigned by the City Manager into the custody of a department head, who shall be responsible for the proper use and safeguarding of that vehicle.

33.3 Operation

City-owned and City-leased vehicles are to be operated only by City employees. Persons not having business with the City shall not be permitted to ride in City-owned and City-leased vehicles.

33.4 Special Licenses

Employees operating City vehicles are to comply with applicable federal, state and local laws governing the safe operation of said vehicles. If the use of City vehicles requires the operator to secure special licenses and/or permits, the City will pay for those licenses and/or permits. If medical costs are incurred in the acquisition of said licenses and/or permits, the City shall pay that portion not covered by the employee's City-paid health insurance.

33.5 Long-Term Assignments

The City Manager may assign certain City-owned vehicles on a long-term basis to certain named City employees. Such assignment may be revoked with or without prior notice by the City Manager.

33.6 Private Vehicles

Employees may be required to operate their personal vehicles in conducting City business. Employees so required by the department head shall maintain vehicular insurance consistent with the requirements of State law for such business-related use. Employees conducting City business in their personal vehicle shall carry only those persons associated with said business and shall comply with all laws governing safe vehicle operation. In consideration of the costs associated with personal vehicle operation for City business, the City shall reimburse such employees on a per mile basis using the current IRS mileage reimbursement rate.

The mileage reimbursement, whether or not requested by the employee, is for the full reimbursement of the private vehicle use to include, but not be limited to, gasoline, general wear and tear, insurance, deductibles, and any and all accidents and repair costs.

33.7 Smoking in Vehicles

Employees shall not smoke or use any tobacco products while in or operating any City-owned or City-leased vehicle.

34 Safety

The City wants employees to work in a safe environment. To this end, the City Manager has adopted the Injury and Illness Prevention Plan. This Plan describes the City's overall safety commitment as well as the safety responsibilities of all employees. A copy of the Injury and Illness Plan shall be made available to all employees. Each employee is responsible for maintaining a safe work environment and following the Injury and Illness Prevention Plan. Failure to obey on-the-job safety standards will result in discipline up to and including dismissal from employment.

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35 Public Employees as Disaster Service Workers

Government Code Section 3100 *et seq.* declares public employees as disaster service workers and requires employees to report to work (and if not possible, then to the next closest public employer) following the effects of natural, manmade, or war-caused emergencies. The City shall establish and maintain a method, or methods, of informing employees of their disaster service worker status. Employees who fail, without good cause, to honor their obligations as disaster service workers shall be subject to disciplinary action up to and including dismissal from employment.

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36 Standard Hours of Work and Overtime

36.1 Work Periods Defined

Regular employees shall normally work forty (40) hours in a seven (7) day period on such days and at such times as the department head may prescribe. Typically, the work period is comprised of five (5) eight (8) hour shifts. When the efficiency of City services is benefited by variations to the "5/8", the department heads are authorized to prescribe such variations after meeting and conferring regarding the impacts of the work period change with the appropriate recognized employee organization. Except as provided elsewhere in this Rule, variations shall not exceed forty (40) hours in a consecutive seven (7) day period.

36.2 Changes in Working Schedules

The workdays and hours to which employees are assigned shall be stated on the department work schedule(s). Should it be necessary in the interest of efficient operations to establish schedules departing from the normal workday or workweek, the City will give notice of such change to the individual as far in advance as is reasonably practical.

36.3 Overtime Policy

Overtime shall be assigned by the department head or designee to meet essential operating needs. Overtime by Fair Labor Standards Act (FLSA) non-exempt employees must be approved in advance. Employees will be compensated for all overtime, whether pre-approved or not, but the failure to seek approval may be grounds for discipline. Employees are expected to report all hours worked in a work-reporting period.

36.4 Overtime Defined

Straight Overtime: If a non-exempt employee reports more than forty (40) hours per work week, and the hours over forty (40) are equal or less than the number of leave hours taken in that work week, then the employee will be compensated for the hours above forty (40) hours on a straight-time basis (i.e., hour for hour). For example, if an employee has not physically worked forty (40) hours but has used vacation, sick leave, compensatory time off, or holiday to generate a total of forty (40) hours, then any hours reported in excess of forty (40) hours will be compensated at the employee's straight time rate up to the amount of leave time taken in that work week.

Premium Pay: If a non-exempt employee physically works more than forty (40) hours per work week, then the hours above forty (40) hours will be compensated at the premium overtime rate of one and one-half times the employee's straight time rate.

36.5 Compensatory Time Off

Compensatory time off at the straight time rate of pay may be scheduled by the department head or designee within the same work week in which overtime is earned to avoid hours of actual work in excess of forty (40) in that work week. Accrued hours of straight-time overtime shall be paid at the employee's rate of pay at the time of payment.

The method of compensation (either compensatory time off or pay) shall be at management discretion. For employees not subject to a collective bargaining agreement, a compensatory time off agreement must be signed by the employee prior to being eligible to work overtime. Employees must be permitted to use compensatory time off within a reasonable period after making a request, if the use of compensatory time off does not unduly disrupt operations of the department.

No more than eighty (80) hours of compensatory time off may be accrued.

Temporary employees are not eligible for compensatory time off.

37 Sick Leave Protocols

37.1 Sick Leave Proper Use

Sick leave is not a right which may be used at the discretion of an employee, but a privilege which shall be exercised only for one of the following purposes:

1. Illness or physical disability of the employee that prevents the employee from working; or
2. Visits to a medical doctor, chiropractor, acupuncturist, dentist, optometrist, optician, psychiatrist or psychologist, medical or clinical laboratory on order of a doctor, or other licensed medical provider; or
3. Attend to a seriously ill spouse, domestic partner, child, parent, grandparent or ward of the employee, including attendance at medical appointments.

Use of sick leave for other than the above listed purposes, except where specifically authorized by a collective bargaining agreement or law, is cause for discipline up to and including dismissal.

37.2 Sick Leave Notice

An employee must notify his/her immediate supervisor prior to the beginning of any working shift, which the employee will not report for work and for which he/she desires to use sick leave.

An employee is to request prior authorization for any absence due to attendance at any medical appointment. For the purpose of this section, "request prior authorization" shall mean that the employee has notified his/her supervisor with at least one (1) work day's advance notice.

37.3 Sick Leave Verification of Illness

An employee may be required to provide a health care provider's statement verifying the employee's absence from work in the following instances:

- When an employee returns to work after three (3) days of absence on sick leave; or
- In the case of frequent use of sick leave; or
- When a pattern of sick leave use has been identified; or
- When a supervisor otherwise has an objective reason to believe that sick leave is being abused.

37.4 Sick Leave Coordinated with Workers' Compensation Benefits

An employee who is collecting workers' compensation temporary disability benefits as a result of a City on-the-job illness or injury shall automatically use sick leave, if any, in addition to the provided workers' compensation benefits so that the employee receives his/her full salary. If the employee does not have sufficient sick leave available, then other available paid leaves shall be used. An employee who files written notice to the Human Resources Director may decline to use available sick leave and/or other available paid leaves. This section shall not apply to an employee who is receiving State Labor Code 4850 benefits.

38 Miscellaneous Leaves

38.1 Jury Leave

A regular employee whose absence from work is required because of jury duty will be considered an excused absence with pay. To receive full salary and benefits, the regular employee shall notify his/her supervisor three (3) days prior to jury duty and turn in to the Finance Department any payment for jury duty, excluding pay for travel and meals.

38.2 School or Day Care Attendance Leave

The City shall permit an employee who is the parent or guardian of a child in kindergarten or grades one (1) through twelve (12), or attending a licensed day care facility, up to forty (40) hours off per calendar year for the purpose of participating in activities of the school or licensed day care facility.

An employee is permitted to use accrued leaves (such as vacation, compensatory time off, or administrative leave; but not sick leave) when taking time off under the provisions of this Personnel Rule; otherwise, such time off shall be without pay.

Documentation from the school or licensed day care facility as proof that the employee participated in the activity on a specific date and at a specific time shall be provided by the employee to his/her supervisor upon request, upon returning to work. An employee who fails to provide said documentation may be subject to discipline.

Except in cases of emergency, employees must provide notice to their supervisor or the department head prior to utilizing leave under this policy.

38.3 Child's Suspension Leave

An employee who is the parent or guardian of a child who has been suspended from school shall be granted time off work if requested to appear at the school in connection with that child's suspension. The employee must give reasonable notice to the City of the request for leave.

An employee is permitted to use accrued leaves (such as vacation, compensatory time off, or administrative leave; but not sick leave) when taking time off under the provisions of this Personnel Rule; otherwise, such time shall be without pay.

Documentation from the school or licensed day care facility as proof that the employee appeared at the school on a specific date and at a specific time shall be provided by the employee to his/her supervisor upon request, upon returning to work. An employee who fails to provide said documentation may be subject to discipline.

Except in cases of emergency, employees must provide notice to their supervisor or the department head prior to utilizing leave under this policy.

38.4 Military Leave

Authorized leaves of absence for military duty shall be granted in accordance with the provisions of Federal and State law. An employee entitled to military leave shall give the City Manager or designee an opportunity within the limits of the military regulations to determine when such leave shall be taken. Extensions of unpaid leave beyond Federal and State law are to be determined by the City Manager.

Notwithstanding other provisions of this section, Federal and State law shall apply in determining benefits for those employees returning from an authorized leave of absence for military duty.

Except in cases of emergency, employees must provide notice to their supervisor or the department head prior to utilizing leave under this policy.

38.5 Emergency Duty Leave

An employee who is an "emergency rescue personnel" for an entity other than the City shall be permitted to take temporary leaves of absence to perform emergency duty. An employee is permitted to use accrued leaves (such as vacation, compensatory time off, or administrative leave; but not sick leave) when taking time off under the provisions of this Personnel Rule; otherwise, such time off shall be without pay.

"Emergency rescue personnel" is defined as any person who is an officer, employee, or member of a fire department or fire protection or firefighting agency of the federal government, State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of California, or of a sheriff's department, police department, or a private fire department, whether that person is a volunteer or partly paid or fully paid, while he/she is actually engaged in providing emergency services.

Except in cases of emergency, employees must provide notice to their supervisor or the department head prior to utilizing leave under this policy.

Additionally, an employee who is a volunteer firefighter shall be permitted to take temporary leaves of absence, not to exceed an aggregate of fourteen (14) days per calendar year, to engage in fire or law enforcement training.

38.6 Time Off for Voting

If an employee does not have sufficient time outside of working hours to vote in a statewide election, he/she may, without loss of pay, take off up to two (2) hours of working time to vote. Such time must be at the beginning or end of the regular working shift, whichever allows the most free time for voting and the least time off from working, unless otherwise mutually agreed. The employee must notify the employee's supervisor at least two (2) working days in advance to arrange a voting time.

38.7 Lactation Leave

The City shall provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. If possible, the break time should coincide with the employee's paid rest time.

The City shall make a reasonable effort to provide the employee with the use of a room or other location (other than a toilet stall) in close proximity to the employee's work area so that the employee may express milk in private.

38.8 Workers' Compensation

Employees and volunteers injured in the performance of their duties shall be eligible for all rights, privileges and compensations provided for under the City's workers' compensation plan.

Salary continuation shall be provided to regular status employees as outlined below:

1. Safety Employees – up to a total cumulative period of one year for each injury as provided in State Labor Code, Section 4850.
2. Miscellaneous Employees – up to one-hundred-twenty (120) calendar days.

Salary continuation is the difference between the employee's regular salary at the time of injury and the temporary disability payment provided by the Worker's Compensation Plan in effect. All payments from Worker's Compensation to employees must be surrendered to the City's Finance Department. Sick leave and vacation shall continue to accrue during any period of qualifying salary continuation.

If an employee is unable to return to work after the expiration of the appropriate salary continuation period, he/she may use sick leave, vacation or compensatory time balances to supplement his/her temporary disability payment. The use of these accumulated leaves for this purpose is solely at the employee's discretion, however, if the employee does not notify Human Resources of their preference, leave balances will automatically be used in this manner.

38.9 Leave for Victims of Domestic Violence or Sexual Assault

The City shall not discipline, discriminate or retaliate against an employee who is the victim of domestic violence or the victim of sexual assault and who takes time off to ensure his/her health, safety or welfare, or that of his/her child to:

1. Obtain a temporary restraining order, a restraining order, or other court assistance; or
2. Seek medical attention for injuries caused by domestic violence or sexual assault; or
3. Obtain services from a domestic violence shelter, program, or rape crisis center; or
4. Obtain psychological counseling related to an experience of domestic violence or sexual assault; or
5. Participate in safety planning and take other actions to increase safety from future domestic violence, including temporary or permanent relocation.

An employee is permitted to use accrued leaves (such as vacation, compensatory time off, or administrative leave; but not sick leave unless sick leave is otherwise consistent with the City's sick leave policy) when taking time off under the provisions of this Personnel Rule; otherwise, such time off shall be without pay.

Except in cases of emergency, employees must provide notice to their supervisor or the department head prior to utilizing leave under this policy.

39 Reports and Records

39.1 Objectives of Adequate Records and Reports Maintenance

All necessary forms, records, documents, rosters and operating procedures shall be maintained by the Human Resources Director for the following reasons:

1. So that all legal, regulatory, and procedural requirements as well as any provisions of these Rules, any City Ordinance, or policy related to personnel administration may be accomplished;
2. To provide a basis for the decision-making in personnel actions and operations;
3. To provide a basis for reports on personnel activities.

39.2 Medical Records

An employee's medical records shall be stored separately from the rest of the personnel file and maintained in confidentiality in accordance with applicable state and federal law. The City Manager, City Attorney and legal representatives, Human Resources Director and department head are authorized to access such medical information on a case-by-case basis only as authorized by state or federal law. All persons with such authorization shall maintain such information according to the same standards of privacy and protection from unauthorized access as is maintained by the Human Resources Director. Violations of this policy may result in discipline, up to and including dismissal from employment. Nothing in this policy is intended to extend or expand the scope of employee or applicant privacy rights beyond the limits of HIPAA or any other existing law.

39.3 Recruitment Records

Records gathered during any recruitment process shall be filed and maintained in confidentiality. The City Manager, City Attorney and legal representatives, Human Resources Director, and department heads are authorized to access such records. All persons with such authorization shall maintain such information according to the same standards of privacy and protection from unauthorized access as is maintained by the Human Resources Director. Violations of this policy may result in disciplinary action, up to and including dismissal from employment. Nothing in this policy is intended to extend or expand the scope of employee or applicant privacy rights beyond the limits of existing law.

39.4 Payroll Records

The Finance Director shall maintain such records that are necessary for payroll and retirement system purposes. The Human Resources Director or City Manager may inspect such records from time to time in fulfilling his/her duties including, but not limited to, the purpose of administering these rules.

39.5 Change of Status Report

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

39.6 Employee Address and Telephone Number

Each employee shall notify his/her department head, the Human Resources Director, and the Finance Department of any change of home address and/or home telephone number.

39.7 Department Records

Each department may keep and maintain such working and supervisor records as may be deemed necessary for the purpose of carrying out the provisions of these rules and the functions of the department. The department head and employee shall make available to the Human Resources Director all department reports, records and documents dealing with personnel matters as are appropriate. Such department records are considered confidential records.

39.8 Employee Review of Personnel File

Employees have the right to review their personnel file pursuant to the provisions of state law. Employees must schedule an appointment with the Human Resources Director or designee to review their personnel file during normal business hours. In accordance with the provisions of this Personnel Rule and state law, all portions of the employee's personnel file may not be available to the employee for his/her review.

39.9 Destruction of Records

All records relating to personnel, including correspondence, applications, examination reports, and all other personnel records, may be destroyed pursuant to the laws of the State of California and the City's Retention Policy as it may be adopted and amended by the City Council.