

# City of Sierra Madre

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## Personnel Rules and Regulations

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|--|------------|
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## Section 01. INTRODUCTION

### 01.01. ADOPTION OF PERSONNEL SYSTEM

In order to establish a uniform procedure for dealing with personnel matters, the personnel system set forth in these rules and regulations (hereafter “rules”) is hereby adopted. These rules shall supersede any prior rules and regulations and may be changed only upon approval of the City Council. However, where an applicable memorandum of understanding (MOU) between the City and a recognized employee organization contains provisions contrary to those contained in these rules, the language contained in the MOU shall govern. These rules do not create any contract of employment express or implied, or any rights in the nature of a contract. Nor shall these rules be interpreted to create a property interest in employment with the City.

### 01.02. EQUAL EMPLOYMENT OPPORTUNITY

The City affords equal employment opportunity for all qualified employees and applicants as to all terms of employment, including compensation, hiring, training, promotion, transfer, discipline and termination. The City prohibits discrimination against employees or applicants for employment on the basis of race, color, religion, sex, gender, gender identity, gender expression, national origin, ancestry, citizenship, age, marital status, physical or mental disability, medical condition, genetic information, sexual orientation, military and veteran status, or any other basis protected by law. Employees who believe they have experienced any form of employment discrimination are encouraged to report this immediately using the complaint procedure provided.

### 01.03. OFFICERS AND EMPLOYEES TO WHICH RULES AND REGULATIONS ARE APPLICABLE

Unless otherwise specified in the rules, in an employment contract, or applicable MOU, these rules shall apply to all persons employed or volunteering for the City.

### 01.04. DEFINITION OF TERMS

Unless otherwise specified, the following terms shall be given the following definitions for purposes of these rules.

**Acting Appointment:** An appointment of an employee by the Personnel Officer to perform the duties of another position on a temporary basis. An acting appointment is subject to revocation at any time with or without cause and without right of appeal, grievance or hearing in the sole discretion of the Personnel Officer.

**Administrative Leave:** Temporary removal from a job assignment where an employee continues to receive pay and benefits during the leave.

**Advancement:** A salary increase within the limits of the pay range established for classifications provided on the salary schedule.

**Appointing Authority:** The Personnel Officer or his/her designee.

**Applicant:** An individual who has applied for a vacant position with the City.

**Appointment:** The selection of a person to fill a position of employment.

**Authorized Position:** A position approved and funded by the City Council.

**Base Salary:** The salary range and step established in a salary schedule exclusive of any overtime, incentive or other type of premium pay an employee may receive.

**Call-back Duty:** Occurs when an employee is unexpectedly ordered by his/her department to return to duty, following the conclusion of the employee's normal work shift or workweek, because of unanticipated work requirements.

**City:** The City of Sierra Madre, California.

**Classification:** A group of positions sufficiently similar in duties, authority, and responsibilities, as well as minimum qualifications for employment so as to permit combining the group under a single title, as well as the application of common standards of selection and compensation.

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

**Classification Series:** The series of classification levels within the City including part-time/seasonal, classified, confidential-exempt, and management employees.

**Compensatory Time-Off:** Accrued time which may be taken off from work with pay received in lieu of overtime pay.

**Classified Service:** Means all full-time positions in the City service except those specifically excluded by Municipal Code section 02.52.030.

**Cost of Living Adjustment (COLA):** An adjustment to a salary range to compensate employees for increases/decreases in the cost of living. Such salary adjustments are not related to merit or performance.

**Day:** Calendar day unless otherwise noted.

**Demotion:** The voluntary or involuntary reduction of an employee from a position in one classification to a position in another classification having a lower maximum salary rate.

**Dismissal:** The involuntary separation of an employee from City service.

**Eligibility List:** A list of names of persons who successfully completed the examination process for a position with the City who may be appointed to a vacant position in the City as provided by these rules.

**Examination:** Any test or analysis conducted by the City to determine the fitness of an individual for employment in a position. Examinations apply to tests and analyses conducted before and during employment with the City.

**Exempt Employee:** Employees not entitled to receive overtime compensation in accordance with the provisions of the Fair Labor Standards Act.

**Federal:** The United States Government, or pertaining to the United States Government or its agencies.

**Fair Labor Standards Act (FLSA):** Means the Fair Labor Standards Act of 1937 as enacted or amended by the United States Congress; 29 U.S.C. §201 et seq.

**Formal Recruiting Process:** The pre-employment process for hiring an employee that follows all City administrative policies and rules and that is the process used under normal conditions.

**Layoff:** The dismissal of an employee from City service for reasons of economy, efficiency or other non-disciplinary reason.

**Leave Bank:** The accumulation of hours by type (vacation, sick, compensatory time, management, holiday or floating holiday) available for an employee to use to continue receiving pay during periods of absence. Since each leave bank has its own requirements for use, leave banks are generally referred to with the accompanying type of leave (for example: vacation leave bank).

**Management Leave:** Paid leave provided to exempt employees which may be taken with the approval of the Personnel Officer.

**Merit Salary Increase:** Means the increase of an employee's salary within the established salary range based on the employee's work performance.

**Non-Exempt Employee:** Employees entitled to receive overtime compensation in accordance with the provisions of the Fair Labor Standards Act.

**Part-time Employee:** An employee who generally works no more than 960 hours per fiscal year. Part-time employees are at-will employees and subject to dismissal with or without cause.

**Personnel Officer:** The City Manager or his/her designee.

**Position:** A combination of duties and responsibilities assigned to a single employee and performed on either a full-time or part-time basis.

**Probationary Appointment:** A working test period that is part of the selection process during which a new or promoted employee is required to demonstrate fitness for the duties of the position by actual job performance.

**Promotion:** The advancement of an employee from one position to another that has a higher maximum salary range and a greater level of skills and/or responsibility.

**Provisional Appointment:** An employee who is appointed in the absence of an eligibility list. All provisional appointees must successfully compete in and complete the normal recruitment process within twelve (12) months of appointment, unless otherwise appointed by the Personnel Officer.

**Reclassification:** A significant change in duties and responsibilities resulting in a change of classification, title and salary in a classification series. Such changes must be the result of tasks assigned or directed by the City to be performed and do not include duties voluntarily assumed by the employee. An employee may be reclassified without competitive exam if the Personnel Officer determines that the employee has met the minimum qualifications of the reclassification position and has performed the duties of the reclassified position for a minimum period of six (6) months. Reclassification shall not be used for the purpose of avoiding competitive selection processes.

**Rejection:** Either the dismissal from City service of an employee who has not successfully completed the initial probationary period, or the return of a regular employee to a position in which the employee has previously acquired regular status who did not successfully complete a promotional probationary period.

**Reinstatement:** The reappointment of an employee to a position in a same or comparable classification within twelve (12) months of his/her separation in good standing (as determined at the discretion of the appointing authority). Credit shall be granted for prior service in terms of benefits accrued and seniority. Upon reinstatement, the employee shall serve a probationary period, if one is required for original appointments.

**Resignation:** The voluntary separation of an employee from City service.

**Salary Evaluation Date:** The date on which a probationary or regular employee's performance is evaluated and the date upon which the employee is eligible, on the basis of job performance for a prescribed period, for a merit salary increase within the established salary range.

**Seasonal Employee:** An employee hired on a temporary basis to work only part of the year, e.g., summer.

**Separation:** The termination of an employee from City service.

**Service Anniversary Date:** The original date of hire as a salaried employee for purposes of accruing benefits and determining years of service with the City.

**Specifications:** The detailed description of the job requirements, including but not limited to minimum education, experience, licensing, skills, certifications and abilities an individual needs to perform the duties of a position and the general description of the job duties of a position.

**State:** The State of California, or pertaining to the State of California.

**Suspension:** Means the temporary separation of an employee from City service for disciplinary purposes. Suspension shall be without pay unless the employee is notified otherwise.

**Temporary Appointment:** An appointment to a temporary or regular position for a period of not more than six (6) months (unless extended in writing by the Personnel Officer). Temporary appointees accrue no fringe benefits and are not eligible for salary increases unless explicitly authorized by the Personnel Officer in writing. Temporary employees may be removed from the position they are filling without cause and without right of appeal, grievance or hearing. Regular employees temporarily assigned to another position in City service shall not be considered temporary employees within the meaning of this section.

**Transfer:** A change of an employee from one position to another position in the same classification or another class having the same maximum salary range, involving the performance of similar duties, and requiring substantially the same minimum qualifications.

**Vacancy:** An authorized position that is not occupied by a current City employee.

**Work Week:** A fixed and regularly recurring period of 168 hours — seven consecutive 24-hour periods - used in calculating overtime per the FLSA identified by individual positions within each department, except the authorized safety personnel under the FLSA 7(k) exemption who work a 28 day FLSA work period and receive overtime for hours over 171 (police) or 212 (fire) in a work period.

**Y-Rated Position:** A position which is paid above the maximum of the salary range for the position's classification resulting in the incumbent's salary being frozen until adjustments to the salary range cause the incumbent's salary to fall within the range.

### 01.05. PERSONNEL OFFICER – POWERS AND DUTIES

Pursuant to Municipal Code section 02.52.040, the City Manager shall be the Personnel Officer of the City. He/she shall:

- Administer all provisions of these rules;
- Prepare and recommend to the City Council revisions and amendment to these rules;
- Prepare and recommend to the City Council a position classification plan and revisions thereto, including position specifications and revisions;
- Prepare and recommend to the City Council a plan of compensation for all classifications in the classified service; and
- Be custodian of all personnel records.

### 01.06. SEVERABILITY

If a court of competent jurisdiction shall hold any provision or provisions of these rules invalid, the remaining provisions shall not be affected thereby and shall remain in full force and effect.

## Section 02. EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS

### 02.01. GENERAL PROVISIONS

#### 02.01.01. Statement of Purpose

This policy passed by Resolution 06-97 on December 12, 2006, implements Government Code sections 3500 et seq. by providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations. However, nothing contained herein shall be deemed to supersede the provisions of state law, City municipal code, ordinances, resolutions and rules which establish and regulate the merit and civil service system, or which provide for other methods of administering employer-employee relations. Resolution 06-97 was intended, instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communications between employees, employee organizations and the City. The purpose of the Resolution was to provide procedures for meeting and conferring in good faith with recognized employee organizations regarding matters that directly and significantly affect and primarily involve the wages, hours and other terms and conditions of employment of employees in appropriate units and that are not preempted by federal or state law. However, nothing herein shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy, which include among others the exclusive right to: determine the mission of its constituent departments, commissions, and boards; set standards of service; determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other lawful reasons; determine the content of job classifications; subcontract work; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

#### 02.01.02. Definitions

As used in this policy, the following terms shall have the meanings indicated:

**Appropriate unit** means a unit of employee classifications or positions established pursuant to the procedures within this policy.

**City** means the City of Sierra Madre, and, where appropriate herein, refers to the City Council or any duly authorized City representative as herein defined.

**Confidential Employee** means an employee who, in the course of his or her duties, has access to confidential information relating to the City's administration of employer-employee relations.

**Consult/Consultation in Good Faith** means to communicate orally or in writing with affected employee organizations, whether exclusively recognized or not, for the purpose of presenting



and obtaining views or advising of proposed actions in a good faith effort to reach a consensus; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of such meet and confer process, does not involve an exchange of proposals and counterproposals with an exclusively recognized employee organization in an endeavor to reach agreement in the form of a Memorandum of Understanding, it is not subject to the Impasse Procedures within this policy.

**Day** means calendar day unless expressly stated otherwise.

**Exclusively Recognized Employee Organization (EREO)** means an employee organization which has been formally acknowledged by the City as the sole employee organization representing the employees in an appropriate representation unit, having the exclusive right to meet and confer in good faith concerning statutorily required subjects pertaining to unit employees, and thereby assuming the corresponding obligation of fairly representing such employees.

**Impasse** means that the representatives of the City and an Exclusively Recognized Employee Organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a Memorandum of Understanding, and concerning which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

**Management Employee** means an employee having responsibility for formulating, administering or managing the implementation of City policies and programs.

**Personnel Officer** means the City Manager or his/her duly authorized representative.

**Proof of Employee Support** means: (1) an authorization card recently signed and personally dated by an employee, or (2) a verified authorization petition or petitions recently signed and personally dated by an employee, or (3) an employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as proof of employee support for any employee organization. The only authorization which shall be considered as proof of employee support hereunder shall be the authorization most recently signed by an employee. The words "recently signed" shall mean within ninety (90) days prior to the filing of a petition.

**Supervisory Employee** means any employee having authority, in the interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

## 02.02. REPRESENTATION PROCEEDINGS

### 02.02.01. Filing of Recognition Petition by Employee Organization

An employee organization which seeks to be formally acknowledged as an Exclusively Recognized Employee Organization representing the employees in an appropriate unit shall file a petition with the Personnel Officer containing the following information and documentation:

- Name and address of the employee organization.
- Names and titles of its officers.
- Names of employee organization representatives who are authorized to speak on behalf of the organization.
- A statement that the employee organization has, as one of its primary purposes, the responsibility of representing employees in their employment relations with the City.
- A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national or international organization, and, if so, the name and address of each such other organization.
- Certified copies of the employee organization's constitution and bylaws.
- A designation of those persons, not exceeding two in number, and both their mailing addresses as well as electronic mail address, to whom notice sent by either regular United States mail or electronic mail will be deemed sufficient notice on the employee organization for any purpose.
- A statement that the employee organization has no restriction on membership based on race, color, religion, creed, sex, national origin, ancestry, age, sexual orientation, mental or physical disability or medical condition.
- The job classifications or position titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.
- A statement that the employee organization has in its possession proof of employee support as herein defined. If the employee organization provides written proof to establish that a majority of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City, then such written proof shall be submitted for confirmation to the Personnel Officer or to a mutually agreed upon disinterested third party. If, however, the employee organization has support of less than a majority but at least thirty (30) percent, then Section 02.02.05 of this document applies.

- A request that the Personnel Officer formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith. The Petition, including the proof of employee support and all accompanying documentation, shall be declared to be true, correct and complete, under penalty of perjury, by the duly authorized officer(s) of the employee organization executing it.

#### 02.02.02. City Response to Recognition Petition

Upon receipt of the Petition, the Personnel Officer shall determine whether:

- There has been compliance with the requirements of the Recognition Petition, and
- The proposed representation unit is an appropriate unit in accordance with section 02.02.06. If an affirmative determination is made by the Personnel Officer on the foregoing two matters, he/she shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit and shall take no action on said request for thirty (30) days thereafter. If either of the foregoing matters is not affirmatively determined, the Personnel Officer shall offer to consult thereon with such petitioning employee organization and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefore in writing. The petitioning employee organization may appeal such determination in accordance with section 02.02.10 of this Policy.

#### 02.02.03. Open Period for Filing Challenging Petition

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the exclusively recognized employee organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some, but not all the classifications or positions set forth in the recognition petition being challenged), by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Section 02.02.01. If such challenging petition seeks establishment of an overlapping unit, the Personnel Officer shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the Personnel Officer shall determine the appropriate unit or units in accordance with the standards in Section 02.02.06. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the Personnel Officer to amend their petitions to conform to such determination or to appeal such determination pursuant to Section 02.02.10.

#### 02.02.04. Granting Recognition without an Election

If the proof of support shows that a majority of the employees in the appropriate unit has designated the petitioning employee organization to represent them, and if no other employee organization has filed a challenging petition, the petitioning employee organization and the

Personnel Officer shall request the California State Mediation and Conciliation Service, or another agreed upon neutral third party, to review the count, form, accuracy and propriety of the proof of support. If the neutral third party makes an affirmative determination, the Personnel Officer shall formally acknowledge the petitioning employee organization as the Exclusive Recognized Employee Organization for the designated unit.

#### 02.02.05. Election Procedure

The Personnel Officer shall arrange for a secret ballot election to be conducted by a party agreed to by the Personnel Officer and the concerned employee organization(s). All employee organizations who have duly submitted petitions which have been determined to be in conformance shall be included on the ballot. The ballot shall also reserve to employees the choice of representing themselves individually in their employment relations with the City. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election. An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where self-representation is one of the choices and where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast. The rules governing an initial election should be applicable to a run-off election. There shall be no more than one valid election under these rules pursuant to any petition in a 12-month period affecting the same unit.

In the event that the parties are unable to agree on a third party to conduct an election, the election shall be conducted by the California State Mediation and Conciliation Service. Any costs of conducting elections shall be borne in equal shares by the City and by each employee organization appearing on the ballot.

#### 02.02.06. Procedure for Decertification of Exclusively Recognized Employee Organization

A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Personnel Officer only during the month of March of any year following the first full year of recognition or during the thirty (30) day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later. A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

*Section 02. Employer-Employee Organization Relations*

- The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
- The name of the established appropriate unit and of the incumbent Exclusively Recognized Employee Organization sought to be decertified as a representative of that unit.
- An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.
- Proof of employee support that at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization. Such proof shall be submitted for confirmation to the Personnel Officer or to a mutually agreed upon disinterested third party within the time limits specified in the first paragraph of this Section.

An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a Petition under this Section in the form of a Recognition Petition that evidences proof of employee support of at least thirty (30) percent, that includes the allegation and information required under Section 02.02.06, and otherwise conforms to the requirements of Section 02.02.01.

The Personnel Officer shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this section 02.02. If his/her determination is in the negative, he/she shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefore in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 02.02.10. If the determination of the Personnel Officer is in the affirmative, or if his negative determination is reversed on appeal, he/she shall give written notice of such Decertification or Recognition Petition to the incumbent Exclusively Recognized Employee Organization and to unit employees.

The Personnel Officer shall thereupon arrange for a secret ballot election to be held in or about fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with section 02.02.05.

During the "open period" specified in the first paragraph of this Section 02.02.06, the Personnel Officer may on his/her own motion, when he/she has reason to believe that a majority of unit employees no longer wishes to be represented by the incumbent Exclusively Recognized Employee Organization, give notice to that organization and all unit employees that he/she will arrange for an election to determine that issue. In such event any other employee organization

may within fifteen (15) days of such notice file a Recognition Petition in accordance with this section 02.02.06, which the Personnel Officer shall act on in accordance with this section 02.02.06.

If, pursuant to this Section 02.02.06, a different employee organization is formally acknowledged as the Exclusively Recognized Employee Organization, such organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

#### 02.02.07. Policy and Standards for Determination of Appropriate Units

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

Factors to be considered shall be:

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

Notwithstanding the foregoing provisions of this section, managerial, supervisory and confidential responsibilities, as defined in section 02.01.02 of this Policy, are determining factors in establishing appropriate units hereunder, and therefore such managerial, supervisory and confidential employees may only be included in units that do not include non-managerial, non-supervisory and non-confidential employees. Managerial and confidential employees may not represent any employee organization which represents other employees.

The Personnel Officer shall, after notice to and consultation with affected employee organizations, allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate or delete modified classifications or positions from units in accordance with the provisions of this section. The decision of the Personnel Officer shall be final.

#### 02.02.08. Procedure for Modification of Established Appropriate Units

Requests by employee organizations for modifications of established appropriate units may be considered by the Personnel Officer only during the period specified in section 02.02.06. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in section 02.02.01, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in section 02.02.07. The Personnel Officer shall process such petitions as other Recognition Petitions under section 02.02.

The Personnel Officer may on his/her own motion propose that an established unit be modified. The Personnel Officer shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter the Personnel Officer shall determine the composition of the appropriate unit or units in accordance with section 02.02.07, and shall give written notice of such determination to the affected employee organizations. The Personnel Officer's determination may be appealed as provided in section 02.02.10. If a unit is modified pursuant to the motion of the Personnel Officer hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Exclusively Recognized Employee Organization for such new appropriate unit or units pursuant to section 02.02.01.

#### 02.02.09. Procedure for Processing Severance Requests

An employee organization may file a request to become the recognized employee organization of a unit alleged to be appropriate that consists of a group of employees who are already a part of a larger established unit represented by another recognized employee organization. The timing, form and processing of such request shall be as specified in section 02.02.08 for modification requests.

#### 02.02.10. Appeals

An employee organization aggrieved by an appropriate unit determination of the Personnel Officer; or an employee organization aggrieved by a determination of the Personnel Officer that a Recognition Petition (section 02.02.01), Challenging Petition (section 02.02.03), Decertification Petition (section 02.02.06), Unit Modification Petition (section 02.02.08) --- or employees aggrieved by a determination of the Personnel Officer that a Decertification Petition (section 02.02.06) --- has not been filed in compliance with the applicable provisions of this section, may, within ten (10) days of notice of the Personnel Officer's final decision, request to submit the matter to mediation by the State Mediation and Conciliation Service, or may, in lieu thereof or thereafter, appeal such determination to the City Council for final decision within fifteen (15)

days of notice of the Personnel Officer's determination or the termination of mediation proceedings, whichever is later.

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

### 02.03. ADMINISTRATION

#### 02.03.01. Submission of Current Information by Recognized Employee Organizations

All changes in the information filed with the City by an Exclusively Recognized Employee Organization under section 02.02.01 shall be submitted in writing to the Personnel Officer within fourteen (14) days of such change.

#### 02.03.02. Employee Organization Activities -- Use of City Resources

Access to City work locations and the use of City paid time, facilities, equipment and other resources by employee organizations and those representing them shall be authorized only to the extent provided for in Memoranda of Understanding and/or administrative procedures, shall be limited to lawful activities consistent with the provisions of this Resolution that pertain directly to the employer-employee relationship and not such internal employee organization business as soliciting membership, campaigning for office, and shall not interfere with the efficiency, safety and security of City operations.

#### 02.03.03. Administrative Rules and Procedures

The City Manager is hereby authorized to establish such rules and procedures as appropriate to implement and administer the provisions of this Resolution after consultation with affected employee organizations.

### 02.04. IMPASSE PROCEDURES

#### 02.04.01. Initiation of Impasse Procedures

If the meet and confer process has reached impasse as defined in section 02.01.02 of this policy, either party may initiate the impasse procedures by filing with the other party a written request for an impasse meeting, together with a statement of its position on all issues. An impasse meeting shall then be scheduled promptly by the Personnel Officer. The purpose of such meeting shall be:

- To review the positions of the parties in a final effort to reach agreement on a Memorandum of Understanding; and



- If the impasse is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.

#### 02.04.02. Impasse Procedures

Impasse procedures are as follows:

If the parties agree to submit the dispute to mediation, and agree on the selection of a mediator, the dispute shall be submitted to mediation. All mediation proceedings shall be private. The mediator shall make no public recommendation or take any public position at any time concerning the issues.

If the parties agree to, and do participate in mediation, and if mediator is unable to effect settlement of the controversy, the employee organization may present a request to the City and the Public Employment Relations Board (PERB) to submit the impasse to fact-finding. This request by the employee organization to submit the impasse to fact-finding must be made no sooner than thirty (30) days, but no later than forty-five (45) days, following the selection of a mediator by the parties.

If the parties do not agree to participate in mediation, the employee organization may present a request to the City and PERB to submit the impasse to fact-finding no later than thirty (30) days following the date that either party has provided the other a written notice of declaration of impasse.

Within five (5) working days after PERB's determination that the request for fact finding is sufficient, a fact-finding panel of three (3) shall be appointed in the following manner: One member of the panel shall be appointed by the Employee Relations Officer and one member shall be appointed by the Exclusively Recognized Employee Organization. PERB shall, within five (5) working days after making its determination that the request for fact-finding is sufficient, submit the names of seven persons, drawn from the list of neutral fact-finders established pursuant to Government Code section 3541.3(d). PERB shall thereafter designate one of the seven persons to serve as the chairperson unless notified by the parties within five (5) working days that they have mutually agreed upon a person to chair the panel in lieu of a chairperson selected by PERB.

The following constitute the jurisdictional and procedural requirements for fact-findings:

1. The panel shall, within ten (10) days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. The panel shall have subpoena power with regard to hearings, investigations and inquiries.
2. Subject to the stipulations of the parties, the fact-finders shall consider, weigh and be guided by the following measures and criteria in arriving at their findings and recommendations:
  - State and federal laws that are applicable to the employer.

- Local rules and regulations, or ordinances.
  - Stipulations of the parties.
  - The interests and welfare of the public, and the financial ability of the public agency.
  - Comparison of the wages, hours, and conditions of employment of the employee involved in the fact-finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
  - The consumer price index for goods and services, commonly known as the cost of living.
  - The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
  - Any other facts not confined to those specified in the above information, inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations, including, but not limited to:
    - Maintaining appropriate compensation relationships between classifications and positions within the City;
    - Other legislatively determined and projected demands on agency resources (i.e. budgetary priorities as established by the governing body);
    - Allowance for equitable compensation increases for other employees and employee groups for the corresponding fiscal period(s);
    - Revenue projections not to exceed currently authorized tax and fee rates for the relevant fiscal year(s);
    - Assurance of sufficient and sound budgetary reserves; and
    - Constitutional, statutory, and Municipal Code/Charter limitations on the level and use of revenues and expenditures.
3. Within thirty (30) days after the appointment of the fact-finding panel, or, upon agreement by both parties within a longer period, the panel shall make written findings of fact and advisory recommendations for the resolution of the issue in dispute, which shall be presented in terms of the criteria and limitations specified above. Any member of a fact-finding panel shall be accorded the right to file dissenting written findings of fact and recommendations. The fact-finder or chairperson of the fact-finding panel shall serve such finding and recommendations on the Personnel Officer and the designated representative of the Exclusively Recognized Employee Organization before they are made available to the public.

If these parties have not resolved the impasse within ten (10) days after service of the findings and recommendations upon them, the City shall make them public by submitting them to the City Council per Municipal Code section 02.48.080.

After any applicable mediation and fact-finding procedures have been exhausted, but no earlier than ten (10) days after the fact finders' written findings of fact and recommended terms of settlement have been submitted to the parties, the City Council may hold a public hearing regarding the impasse, and take such action regarding the impasse as it in its discretion deems appropriate as in the public interest, including implementation of the City's last, best and final offer. Any legislative action by the City Council on the impasse shall be final and binding.

#### 02.04.03. Costs of Impasse Procedures

The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's resume on file with PERB. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and PERB. The parties shall make their respective payment directly to the chairperson. The cost for a fact-finding panel member selected by each party, and other separately incurred costs, shall be borne by such party.

Any other mutually incurred costs shall be borne equally by the parties. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

### 02.05. MISCELLANEOUS PROVISIONS

#### 02.05.01. Construction

Nothing herein shall be construed to deny to any person, employee, organization, the City, or any authorized officer, body or other representative of the City, the rights, powers and authority granted by federal or state law.

These rules shall be interpreted so as to carry out their purpose as set forth in section 02.01.

Nothing herein shall be construed as making the provisions of California Labor Code Section 923 applicable to City employees or employee organizations, or of giving employees or employee organizations the right to participate in, support, cooperate or encourage, directly or indirectly, any strike, sickout or other total or partial stoppage or slowdown of work. In consideration of and as a condition of initial and continued employment by the City, employees recognize that any such actions by them are in violation of their conditions of employment except as expressly otherwise provided by legally preemptive state or contrary local law. In the event employees engage in such actions, they shall subject themselves to discipline up to and including termination, and may be replaced, to the extent such actions are not prohibited by preemptive law; and employee organizations may thereby forfeit rights accorded them under City law or contract.

**02.05.02. Severability**

If any provision of this Policy, or the application of such provision to any persons or circumstances, shall be held invalid, the remainder of this Policy, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

## **Section 03. CLASSIFICATION PLAN AND SELECTION PROCESS**

The Personnel Officer shall develop a classification plan for City employment. The plan shall classify positions with similar overall levels of responsibilities into groups or classifications of employees. Within each employee classification shall be individual positions. The Personnel Officer shall establish specifications for each classification.

### **03.01. CLASSIFICATION PLAN**

The Personnel Officer shall ascertain and record the duties and responsibilities of all positions in the City and, after consultation with department heads, shall recommend a classification plan for the positions. The classification plan shall consist of classifications of employees defined by specifications, including title, description of typical duties and responsibilities of each classification, and a statement of the desirable training, experience and other qualifications of applicants for positions in each classification. The classification plan shall be developed and maintained so that all positions substantially similar with respect to duties, authority, and character of work are included within the same classification, and that the same schedules of compensation may be made to apply under like working conditions to all positions in the classification.

In the preparation of the classification plan, the Personnel Officer shall allocate every position to one of the classifications established by the plan. Before the classification plan or any part thereof shall become effective, it shall first be approved by the City Council. Upon adoption by the Council by resolution, the provisions of the classification plan shall be observed in the handling of all personnel actions and activities. The classification plan shall be amended or revised as occasion requires in the same manner as originally established.

When a new position is authorized, the Personnel Officer shall place it in an appropriate classification.

When the duties of a position have changed materially so as to necessitate reclassification, the position shall be allocated to a more appropriate classification, whether new or already established, in the same manner as originally classified and allocated.

### **03.02. AUTHORIZATION FOR RECRUITMENT**

When a department head would like to open a recruitment he/she must complete a "Request for Recruitment" form and have it signed first by the Director of Human Resources and then by the City Manager. The form will then be turned to the Personnel Office before the recruitment begins.

### 03.03. JOB ANNOUNCEMENTS

Whenever an open competitive examination is to be utilized to fill a position, upon authorization of the Personnel Officer, an appropriate flyer shall be posted on the City's website and as otherwise deemed appropriate by the Personnel Officer. The announcement shall include:

- The title and pay for the position,
- The nature of the work to be performed,
- The minimum qualifications,
- A statement whether the position is at-will,
- The time and place of the examination, if known, and/or if a psychological examination, and/or a drug screen will be required following a conditional offer of employment, and
- Such other information as determined in the discretion of the Personnel Officer.

In instances where posting a job announcement would detrimentally delay the filling of a vacancy, the City, in its sole discretion, may dispense with this requirement and fill the position from immediately available sources.

### 03.04. APPLICATION FORMS

Applications shall be made on forms authorized by the Personnel Officer. Such forms shall require information covering training, experience, and other pertinent information as deemed necessary by the Personnel Officer. Defective, incomplete, or untimely applications may be returned to the applicant with notice to amend and re-file, provided that the time for receiving applications has not expired. Whenever an application is rejected, notice of such rejection shall be mailed or emailed to the applicant by the Personnel Officer or his/her designee. Applications received at times other than following announcements as set forth above shall be destroyed or returned to the applicant at the discretion of the Personnel Officer.

Applicants may attach supplementary information, including but not limited to:

- Resumes,
- Licenses,
- Certifications,
- Diplomas,
- Letters of recommendation, and
- References.

Such supplementary information may be used in evaluating an individual applicant's qualifications, but will not substitute for a completed application form. Should an applicant be appointed to a vacant position, the attachments will become a part of the individual's permanent employment records.

### 03.05. DISQUALIFICATION

The Personnel Officer may reject any application which is not properly completed or which indicates on its face that the applicant does not meet the minimum qualifications for the position.

Applications may also be rejected for reasons including, but not limited to:

- The applicant has been convicted of a crime, excluding those whose consideration is prohibited by the Labor Code, which may have an adverse impact on the ability to perform the job for which the applicant is applying;
- The applicant is not legally permitted to work within the United States; or
- The applicant has made any false statement of any material fact or practiced or attempted to practice any deception or fraud in making application for employment.

Whenever an application is rejected, the Personnel Officer shall mail or email notice of such rejection to the applicant. Defective applications may be returned to the applicant with notice of the defect, provided the time limit for receiving applications has not expired when the defect is detected. Although the Personnel Officer is not required to return defective applications, all defective applications during any recruitment must be treated identically.

### 03.06. SUBJECT AND METHOD OF EXAMINATIONS

The Personnel Officer will determine the manner and methods of administering examinations. All examinations shall be job-related.

Examinations shall be competitive and may consist of written tests, oral tests, performance tests, evaluations of prior training and performance, experience and education, interviews, style assessments, file review, or any combination thereof. Tests shall be administered in a manner that provides all qualified applicants a fair and reasonable opportunity to demonstrate their skills, as those skills relate to the vacant position. Some positions may require a background check. The Personnel Officer will determine what is fair and reasonable as it relates to this paragraph.

The content of all examinations designed to differentiate between qualified applicants shall be kept confidential prior to the administration of the examination. The nature of the examination (oral, written, or practical) shall be communicated to all applicants so that each applicant may come to the examination prepared to demonstrate their skills, as those skills relate to the vacant position. The method of communication shall be similar for all applicants.

Appointment to certain positions may be made contingent upon the applicant/employee passing a job-related medical and/or psychological examination to the satisfaction of the Personnel Officer following a conditional offer of employment. Such examination shall only be required after a conditional offer of employment has been made.

Applicants who receive a conditional offer of employment may need to complete drug and alcohol testing successfully prior to their initial employment by the City.

Any medical records will be kept confidential and will be kept separately from non-medical personnel records. Such records are accessible only by the Personnel Officer, the City's legal counsel, first aid and safety personnel in case of emergency, and supervisors who are responsible for identifying reasonable accommodations.

No person shall be denied employment or failed on a pre-employment medical and/or psychological examination because of a physical or mental disability if such person can perform the essential functions of the job for which they received a conditional offer of employment with or without reasonable accommodation unless the applicant/employee cannot perform the job without presenting a direct threat to the health and safety of himself/herself or others or without creating undue hardship for the City.

An applicant or employee who is required to pass a medical and/or psychological examination will be notified of his/her right to obtain a second opinion at his/her expense and that he/she may submit such second opinions for consideration before a final determination on disqualifications is made. The applicant/employee will submit such opinion for consideration within 30 days of mailing of the notification that the employee/applicant has failed the City's examination.

### 03.07. QUALIFYING GRADE AND RATING EXAMINATIONS

The selection process involves testing the qualifications of candidates fairly through achievement and aptitude tests, other written tests, personal interviews, performance tests, physical agility tests, work samples, medical tests, successful completion of prescribed training, or any combination of these or other tests so indicated in these rules.

After the time limit for receiving applications for a particular position has expired, the Personnel Officer or designee shall determine the total number of applicants who meet the minimum qualifications for the positions. If there are more than twenty (20) qualified applicants for a particular position and the Personnel Officer or designee determines that giving an examination of the nature and type appropriate to all the qualified applicants would unnecessarily burden the City, the Personnel Officer or designee may rank the applications submitted for qualifying purposes only, on the basis of the applicants' experience, education, training and working history as related to the particular position and may choose at least twenty (20) applicants whom he or she determines would best fit the position. Only the chosen applicants shall then be given further examination in order to obtain a score and ranking on the eligibility list.

Failure in one part of the examination or to meet established standards described in the job announcement may be grounds for declaring such applicant as failing the entire examination or as disqualified for subsequent parts of an examination. A candidate's final score in a given examination shall be the average of the scores on each competitive part of the examination on which the applicant qualified weighted as shown in the examination announcement.



### 03.08. ELIGIBILITY LISTS

After completion of an open or promotional examination, the Personnel Officer or designee shall prepare an eligibility list consisting of the names of candidates who passed the examination arranged in order of final score from the highest to the lowest (or arranged alphabetically). Notwithstanding any other provision of these rules, if there are less than three (3) names on an eligibility list, the Personnel Officer or designee may declare such list void and fill the position (s) by any method permitted by these rules, including but not limited to, undertaking new recruiting and testing procedures. Eligibility lists shall become effective upon the certification by the Personnel Officer or designee and remain in effect for 12 months.

### 03.09. REMOVAL OF NAMES FROM ELIGIBILITY LISTS

The Personnel Officer or designee shall remove the name of any person appearing on an eligibility list if the eligible candidate so requests in writing, or fails to respond to a notification of an opening from the Personnel Officer or designee. It shall be the responsibility of the eligible candidate to keep the Personnel Officer informed of their current address and telephone number.

### 03.10. NOTIFICATION OF RESULTS

An applicant may request and receive his/her examination results, including the final score earned and ranking on the eligibility list if applicable.

### 03.11. RELATIVES WORKING FOR THE CITY

No employee, prospective employee, or applicant shall be improperly denied employment or benefits of employment based on marital status or relationship to another employee or official of the City. For the purpose of this Section, marital status is defined as an individual's state of marriage, non-marriage, domestic partnership, divorce or dissolution, separation, widowhood, annulment or other marital state. For the purpose of this article, a relative shall be defined as a member of the immediate family. Immediate family is defined to mean spouse, domestic partner, children, parents, brothers, sisters, grandparents, grandchildren of the employee, and the corresponding relationships by affinity.

For the purposes of this section, "relationship" shall refer to both marital status and a member of the immediate family, as defined above.

Notwithstanding the above provisions, the City retains the right:

- To refuse to place one party to a relationship under the direct or indirect supervision of the other party to the same relationship.
- To refuse to place both parties to a relationship in the same department, division, or facility where there is a potential for creating adverse impact on supervision, safety, security, or morale, or involves potential conflicts of interest.

*Section 03. Classification Plan and Selection Process*

- To disqualify one party to a relationship for a position privy to confidential personnel matters where that party has a relative already in the City's employment when the relationship may compromise confidential information.

## Section 04. APPOINTMENTS

### 04.01. FILLING VACANCIES

The Personnel Officer shall make all appointments.

The Personnel Officer shall decide in what manner a vacancy shall be filled. Vacancies may be filled by reinstatement, promotion, transfer, demotion, appointment of hourly employees, or from an appropriate eligibility list if available. No specific list shall have priority over other lists.

An eligible applicant may be appointed to a position other than for the one which the applicant originally applied.

When a position is to be filled from a promotional or open eligibility list, the Personnel Officer shall choose from the specified list one of the top three (3) candidates on the eligibility list. If no person among the top three (3) candidates indicates a willingness to accept the appointment, the Personnel Officer or designee may make the appointment from among the remaining names on the eligibility list, may request a new examination and establish a new eligibility list, or may fill the position by any other method authorized by these rules.

The person accepting appointment shall report to the Personnel Officer or designee on the date designated by the Personnel Officer. Otherwise, the applicant shall be deemed to have declined the appointment.

### 04.02. PROBATIONARY APPOINTMENT

All original and promotional appointments to positions other than at-will positions shall be tentative and subject to a probationary period of one (1) year of actual and continuous service. The probationary period shall automatically be extended by the number of days the probationer is absent from work, including any periods of paid and unpaid leave. The Personnel Officer may extend the probationary period for an additional period of up to twelve (12) months of actual and continuous service. Peace officers employed by the City shall serve whatever probationary period is mandated by law. However, the probationary period for peace officers may also be extended for an additional period of up to 12 months of actual and continuous service.

The probationary period shall be regarded as a part of the testing process and shall be utilized for closely observing the employee's work to determine the employee's fitness for the position. During the probationary period, an employee may be rejected at any time without cause and without the right of appeal.

An employee serving in a probationary promotional position does not acquire regular status in the promotional position until the successful completion of the probationary period. If the employee fails to complete the probationary period in the promotional position satisfactorily the employee may be entitled to return to the position held prior to promotion at the range and step

held prior to promotion, if there is a vacancy in the prior position. However, should the position no longer be available, the employee may be terminated.

A probationary employee is not entitled to notice or hearing if rejected during probation.

Probationary periods for positions covered by a collective bargaining memorandum of understanding (MOU) will be governed by the MOU in effect on the date the appointment is made.

#### 04.03. REGULAR APPOINTMENT

Employees who successfully complete their probationary period (if one is required) and who regularly work a minimum of forty (40) hours per work week shall become full-time regular employees.

#### 04.04. ACTING APPOINTMENT

When the service demands of the City are such that an open competitive recruitment process is not practical and/or in the absence of an eligibility list, the appointing authority may make an acting appointment.

- Any person appointed in an acting status shall meet the minimum qualifications for the position to which he/she is being appointed.
- No person shall remain in the acting appointment status for more than twelve (12) months.
- An acting appointee who is subsequently appointed to a permanent position shall be entitled to credit for the time served in the provisional status toward completion of his/her probationary period.
- An acting employee shall be entitled to the same salary and benefits as a permanent employee.

#### 04.05. TEMPORARY APPOINTMENTS

Temporary appointments may be made to a person who is not a regular employee of the City by the Personnel Officer for a period not to exceed six months, unless extended by the Personnel Officer, in writing, for a period not to exceed six additional months. Temporary employees shall not be entitled to sick leave, vacation leave with pay, holiday pay or other benefits. No credit shall be allowed upon an application or in the giving of an examination for service rendered under a temporary appointment.

If a temporary appointment is converted to a probationary appointment without interruption of service, the period of temporary service may be credited toward the completion of the probationary period in the Personnel Officer's sole discretion. No accrual of sick or vacation leave will be allowed for the period of service that the temporary appointee has served and received

compensation for as provided in these rules. Temporary employees serve at the will and pleasure of the Personnel Officer and may be dismissed without cause and without right of appeal, grievance, or hearing.

#### 04.06. REINSTATEMENT

With the approval of the Personnel Officer, an employee who has resigned or retired in good standing may be reinstated within twelve (12) months to his/her former position, if vacant, or to a vacant position in the same or comparable classification. Employees resigning or retiring must adhere to the following policy to ensure that they are "Terminated in Good Standing" and are eligible for rehire.

- Submit a written resignation (notification) to the immediate supervisor stating the employee's intent and reason for termination.
- Notice of resignation should be submitted a minimum of two weeks in advance. However, the City encourages employees aware of their intent to resign from employment with the City to let the Personnel Officer know as far in advance as possible.
- Return all City property to the Personnel Officer or the immediate supervisor prior to receiving the final paycheck.
- Clear any existing financial obligations with the City.

A reinstated employee shall be credited with the amount of sick leave which had been accrued at the time of separation, less hours liquidated under the "sick-leave buy-back" Wellness Program provision described in section 07.03.07. Credit shall be granted for prior service in terms of benefits accruals. A reinstated employee, other than one serving in an at-will position, shall serve a new probationary period as defined in these rules and will be subject to release without cause or notice as if a newly hired employee. An individual requesting reinstatement may still be required to pass a medical and/or psychological examination and any other qualifying tests or procedures as in the case of a new employee.

#### 04.07. LOYALTY OATH

All City employees except employed noncitizens, must sign an oath of allegiance before he or she enters upon the duties of his or her employment. If a noncitizen becomes a naturalized citizen, an oath must then be obtained and filed. The oath is effective for the duration of continuous employment.

As required in Government Code Section 3100 and 3102, all public employees and all disaster service volunteers must sign an oath of allegiance before entering upon the duties of their employment or volunteer service. The signed oath shall be filed in the employee's/volunteers personnel file within 30 days of the date the oath was executed. Additionally, failure to sign the oath may result in no compensation or reimbursement for expenses incurred by the public

employee or any disaster service volunteer unless such employee or volunteer has taken and subscribed to the oath of allegiance.

Administering the oath will be conducted by the Personnel Officer, a notary public or an employee with the following title:

Assistant City Manager  
Human Resources Director  
Assistant to the City Manager

#### 04.08. MANDATED REPORTING REQUIREMENTS

A mandated reporter is an individual who is obligated by law to report suspected cases of child abuse and neglect. In general, any individual who, in the ordinary course of their employment, has contact with children is a mandated reporter. Mandated reporters include child care workers, teachers and coaches. (California Penal Code § 11165.7.)

If an employee's job duties include contact with children, he or she are a Mandated Reporter. Prior to commencing employment and as a prerequisite of that employment, California law requires that all Mandated Reporters sign a statement to the effect that the employee has knowledge of the provisions of the Mandated Reporter Law, and will comply with those provisions. (California Penal Code § 11166.5.)

The following are the Mandated Reporter responsibilities under California law.

- The following situations trigger mandatory reports: a) Physical Abuse (willful harming of a child); b) Sexual Abuse including sexual assault, child exploitation, pornography, and trafficking; c) Severe or General Neglect; and d) Extreme Corporal Punishment (resulting in injury). (Cal. Pen. Code § 11165 et seq.) Employees may, but are not required to, report suspected Emotional Abuse. (Cal. Pen. Code § 11165.05.)
- If an employee reasonably suspects that a child is being abused, he/she must immediately make a telephone report. He/she must follow up with a written report within 36 hours. This report may be made to local law enforcement, or County Sheriff's Department, Probation Department or Child Welfare Agency. (Cal. Pen. Code § 11166(a).)
- If an employee reasonably suspects that a child is being abused, he/she may consult with his/her supervisor or management. The supervisor and employee may agree to file a joint report, but even if my supervisor disagrees with the employee, if the employee reasonably suspects that a child is being abused, he/she must make a report. (Cal. Pen. Code § 11166(h).)
- Employees are not required to, but may, share information about suspected abuse with his/her supervisor or management or the parents of the alleged victim.
- When an employee makes a mandated report, he/she will be required to give his/her name. However, the employee's identity will be kept confidential unless he/she either consents to disclosure or if disclosure is made pursuant to a court order. Further, agencies investigating

the mandated report may disclose the employee's identity to one another. (Cal. Pen. Code § 11167(d).) The following agencies and individuals receiving or investigating mandated reports may disclose the employee's identity to one another:

- Prosecutors in a criminal prosecution or in an action initiated under section 602 of the Welfare and Institutions Code arising from alleged child abuse;
  - Counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code;
  - The county counsel or prosecutor in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code;
  - A licensing agency when abuse or neglect in out-of-home care is reasonably suspected. (Cal. Pen. Code § 11167.5.)
- 
- Employees may not be disciplined, dismissed, retaliated against, discriminated against or harassed for making a mandated report of reasonably suspected child abuse.
  - As a Mandated Reporter, employees have civil and criminal immunity when making a report. (Cal. Pen. Code § 11172.)
  - As a Mandated Reporter, it is a misdemeanor to fail to comply with Mandated Reporting laws and employees can be held criminally liable for failing to report suspected abuse. The penalty for this is up to six months in County jail, a fine of not more than \$1000, or both. (Cal. Pen. Code § 11166(c).)

## **Section 05. COMPENSATION AND BENEFITS**

The Personnel Officer shall periodically submit to the City Council a proposed Compensation Plan. The City Council may, in its discretion, adopt the proposed plan and/or make amendments thereto.

### **05.01. APPLICATION OF RATES**

An employee shall be paid a salary within the range established for the classification to which he/she has been appointed.

### **05.02. SALARY EVALUATION DATE**

An employee's salary evaluation date shall be the date of appointment to the employee's current position, or the date upon which an employee successfully completes the probationary period that is required for the position, whichever is later. Upon written notice to the Personnel Office, a Department Head may modify the salary evaluation date so long as the employee does not go more than twelve months without a salary evaluation.

### **05.03. SALARY AT APPOINTMENT**

New employees shall be normally appointed at the first step of the salary range for the particular position in which the appointment is made. When, in the discretion of the Personnel Officer, qualified applicants cannot be recruited at the first-step of the salary range for a given position, the Personnel Officer may authorize an appointment at a higher Step 1.

An initial hiring salary above the first-step requires the approval of the Personnel Officer. The rationale for an appointment higher than the first-step must be documented and will become a part of the applicant's permanent employment records.

### **05.04. SALARY ON PROMOTION**

An employee appointed to a position allocated to a higher salary range than the employee's present position shall receive the nearest higher monthly salary which is at least five (5%) higher than the employee's previous base salary, but in no case more than the top step of the new salary range. Payment in the new salary range shall commence at the beginning of the pay period in which the appointment became effective as indicated on the City Personnel Action Form. The effective date of the promotional appointment shall determine the employee's new salary evaluation date. Promoted employees shall be evaluated twelve (12) months from the date of promotion and may be eligible for a merit increase based on his/her performance. This provision does not preclude evaluations that are more frequent.

### **05.05. SALARY ON TRANSFER**

After notice to the Personnel Officer, an employee may be transferred by the department head at any time from one position to another position in the same or comparable classification.

An employee who is transferred from one position to another in the same classification or to another position in a classification having the same salary range shall be compensated at the



same step in the salary range as previously received. The employee's salary evaluation date shall remain the same as it was before the transfer.

#### 05.06. SALARY ON RECLASSIFICATION

An employee whose position changes as a result of reclassification shall be placed on the salary step no less than the dollar amount of the one he/she previously held, provided however that if the salary step closest to the former salary is less than the former salary, the employee shall be Y-rated. The employee's salary evaluation date shall not change as a result of reclassification.

#### 05.07. SALARY ON DEMOTION

The salary of an employee who is demoted to a position allocated to a lower salary range than the employee's current position shall be reduced to the nearest lower monthly salary rate in the salary range for the position to which the employee has been demoted. An employee demoted for cause will be compensated at the nearest lower monthly salary rate in the salary range for the position to which he/she has been demoted. A demoted employee shall not be required to serve a probationary period in the lower position unless the employee has not completed a probationary period as required by these rules, in which case the probationary period shall be completed in the lower position. The effective date of a demotion shall establish a new salary evaluation date.

#### 05.08. SALARY UPON APPOINTMENT TO A POSITION IN AN ACTING CAPACITY

Employees who by written assignment performed the duties of a position with a higher salary classification than that in which they are regularly employed shall receive the compensation specified for the position to which assigned, if performing the duties thereof for a period of thirty (30) or more consecutive workdays. The increased compensation shall be at such step within the higher classification as will accord the employee an increase of at least five percent over his or her current regular compensation.

The affected department head shall advise the Personnel Officer in writing of the required performance of duties in the higher position. No employee shall be required to perform any of the duties of a higher position unless the employee is deemed by the Personnel Officer, as recommended by the affected department head, to possess the minimum qualifications of the higher position.

A person appointed in an acting capacity shall be eligible to receive merit increases in his/her regular position during the acting appointment but shall not be entitled to merit increases in the position held in an acting capacity. However, in no case shall the acting pay be less than 5% higher than the regular rate. If successful in being promoted, the period of time of service in the higher position shall be credited to the promoted employee toward the required period of probation for the higher position.

### 05.09. OVERTIME

Non-exempt employees may be required to work overtime at the discretion of the supervisor.

Overtime for non-exempt employees is defined as hours assigned to be worked and actually worked (except for authorized rest periods) in excess of forty (40) hours in the designated seven (7) day work week, except in the case of authorized safety personnel under the FLSA 7(k) exemption. For those under the 7(k) exemption overtime is granted after 171 hours for sworn police employees, and 212 hours for firefighters have been worked in a 28-day period. Any leave time taken during the work period, including sick leave, is not considered as hours worked.

Non-exempt employees working overtime when not expressly pre-approved to do so by their supervisor shall be subject to discipline up to and including termination. Overtime shall be compensated per the FLSA.

Subject to any applicable MOU, a represented employee may request, and a supervisor shall have the discretion to approve or not approve, compensation in the form of accrued compensatory time-off providing the department can accommodate the use of compensatory time off on the day requested without undue disruption. Request by an employee for the use of accrued compensatory time shall be subject to the convenience of the City to the extent authorized by law. Non-represented employees may not request compensatory time-off in lieu of overtime payment. Accrued compensatory time will not be carried over in the case that a represented employee becomes an unrepresented employee; at this time the employee will receive payment for any accrued compensatory time.

Employees working out of classification and being compensated for such in an overtime-exempt status shall not receive overtime compensation.

Subject to any applicable MOU, emergency call back duty for employees will be paid at time and one-half (1.5) regardless of whether the employee works more than forty (40) hours within the work week. Employees shall receive a minimum of two hours call back, on-call or standby compensation as approved by the City Council. In an emergency situation, the Personnel Officer may authorize up to time and one-half pay or paid time-off for other personnel who are not normally eligible for such pay.

### 05.10. CERTIFICATION PAY

Subject to any applicable MOU, the Personnel Officer may approve certification pay of up to 5% of an employee's regular salary to an employee based on advanced certifications or degrees relevant to the employee's position.

### 05.11. BENEFITS

The City may alter the array of benefits offered to employees. Any significant decreases in benefits offered will be negotiated through the meet and confer process, as appropriate.

#### 05.11.01. California Public Employees' Retirement System

All employees of the City who work at least 1000 hours per fiscal year are covered by the City's contract with the California Public Employees' Retirement System (PERS). All provisions of PEPRAs will be applied to applicable employees. Employees who join CalPERS on or after January 1, 2013 and are considered "new members" as defined by PERS will have an alternate retirement benefit level of 2.7% at 57 for the safety employees and 2% at 62 for miscellaneous employees. New CalPERS members must pay at least 50% of "normal cost" as determined by CalPERS. New members are not eligible for EPMC. Final compensation will be determined by the highest 36 consecutive month period.

For employees considered to be "classic" members of PERS, the City shall pay the employer share of the CalPERS retirement contribution as actuarially determined by CalPERS for each fiscal year covered by the Agreement for the 2.5% at 55 retirement benefit level for miscellaneous employees and 3% at 55 for safety employees. The City will not provide any contribution to the employee's share of the retirement contribution.

#### 05.11.03. Health and Welfare

All employees who are employed on a full-time basis shall be eligible for health, dental, life, and vision insurance coverage. Part-time employees who have worked more than 1,000 hours and volunteer members of the SMFD can purchase benefits under the City's group plans.

The City contributes amounts toward the above coverage based on actual premiums, coverage levels, and memoranda of understanding with employee associations. Employees may also elect to participate in the credit union, deferred compensation, and tuition reimbursement programs. Certain employee bargaining groups have additional benefits available to employees. The City's limited participation in these benefits is described in the memoranda of understanding between the City and the sponsoring association and/or in resolutions adopted by the City Council.

#### 05.11.04. Vehicle Usage

Unless receiving an auto allowance, employees are eligible for mileage reimbursement when using personal vehicles for City related business when a City vehicle is not available. The employee's immediate supervisor and department head must approve the vehicle use and reimbursement. Certain employees have assigned City vehicles. Policies covering the business and personal use of both a personal vehicle and an assigned City vehicle are described in the Vehicle Usage Policy.

#### 05.11.05. Facility and Park Rentals

Employee discounts for City facility or park rentals are available to City of Sierra Madre employees and their immediate family. The employee shall receive facility and park rates listed under "non-profit" activity. The employee is responsible for payment of all applicable charges and deposits and must be present at the function for which use is authorized.

## 05.12. TUITION REIMBURSEMENT PROGRAM AND EDUCATIONAL COSTS ASSISTANCE PROGRAM

The Tuition Reimbursement Program and Educational Costs Assistance Program are intended to encourage full-time employees in good standing to enroll in college level undergraduate, graduate, and post-graduate courses and/or study majors that bear a reasonable and rational relationship to the job classification held by the employee at the time of such enrollment. Both programs are subject to availability of funds in the City's annual operating budget and prior approval of the Personnel Officer. Both programs may be utilized to earn certifications related to an employee's current position.

### 05.12.01. Tuition Reimbursement Program

Requirements for participation in the Tuition Reimbursement Program are as follows:

- Employees must have prior approval of the Personnel Officer in order to be eligible and participate in the program.
- Full-time employees shall be considered eligible to participate in this program after completing 24 months of satisfactory City service. Employees who have been placed on a Performance Improvement Plan are not eligible to participate in this program until successful completion of the Performance Improvement Plan.
- No employee shall receive greater than \$10,000 of tuition reimbursement during his/her cumulative term of employment with the City.
- The precise amount of tuition reimbursement shall be based upon all criteria stated herein, including the grade received by the employee in the class(es) for which reimbursement is sought. If an employee receives a grade sufficient to receive credit towards the completion of their degree then the employee shall be eligible for 100% tuition reimbursement as described above. If the employee does not receive a grade sufficient to receive credit towards degree completion, no reimbursement from the City shall be provided.
- Tuition reimbursement is contingent upon the employee's submission to the Personnel Officer of official college transcripts or comparable documentation indicative of the employee's grade(s) as well as written documentation of what grade consists of receiving full credit in the class.
- An employee seeking tuition reimbursement for eligible class(es) shall submit the official transcript documentation to the Personnel Officer or designee in conjunction with a City provided form for said use. The Personnel Officer or designee shall conduct any necessary investigation to verify the employee's eligibility for the tuition reimbursement. The decision of the Personnel Officer shall be final and binding and shall not be subject to administrative or judicial appeal.

#### 05.12.02. Request for Budget Approval

Employees must submit a written estimate of their tuition reimbursement and/or their educational costs assistance program expenses to the Personnel Officer or designee, through their Director, per the deadlines as determined during the budget process; prior to the fiscal year in which they will attend the course(s). If an employee submits for tuition reimbursement for courses that were not submitted prior to the deadline, reimbursement may or may not be granted depending upon the availability of funds in the City's annual operating budget and approval by the Department Director and Human Resources.

#### 05.12.03. Impact of Separation from City Employment upon Restitution to the City of Funds Distributed Pursuant to the Tuition Reimbursement Program

In the event that an employee is not an employee of the City for any reason for at least one year from the date of receiving tuition reimbursement, then the employee agrees by participation in the tuition reimbursement program to fully reimburse the City for said amount no later than 90 calendar days after the effective date of the employee's separation (e.g. retirement, resignation, layoff or termination). Upon the employee's request, this amount can be deducted from the employee's final paycheck. If the City commences litigation to recover said monies, then the employee agrees that any judgment for the amount to be reimbursed shall also include attorney's fees and costs expended by the City in said litigation.

#### 05.12.04. Educational Costs Assistance Program

The Educational Costs Assistance Program is intended to provide assistance towards the costs of all approved expenditures in relation to the eligible employee's enrollment in college level undergraduate, graduate, and post-graduate courses and/or study majors that bear a reasonable and rational relationship to the job classification held by the employee at the time of such enrollment.

Requirements for participation in the Educational Costs Assistance Program are as follows:

- Employees must have prior approval of the Personnel Officer in order to be eligible and participate in the program.
- Full-time employees shall be considered eligible to participate in this program after completing 24 months of satisfactory City service.
- No employee shall receive greater than \$5,000 of educational cost assistance during his/her cumulative term of employment with the City.
- Educational costs assistance may occur prior to completion of the course. In the event the employee does not complete the course, then the employee agrees by participation in the Educational costs assistance program to fully reimburse the City for the assistance amount received no later than 90 calendar days after the end of the term/semester/quarter of the course taken.

- Should the employee discontinue progress towards the degree for a period of greater than six (6) months, the employee agrees to fully reimburse the City for the assistance amount received no later than 90 calendar days after the six-month discontinuance has elapsed.
- Assistance is contingent upon the employee's submission to the Personnel Officer or designee of official college documentation indicative of the employee's enrollment in the course. The Personnel Officer or designee shall conduct any necessary investigation to verify the employee's eligibility for the assistance program. The decision of the Personnel Officer shall be final and binding and shall not be subject to administrative or judicial appeal.

#### 05.12.05. Request for Budget Approval

Employees must submit a written estimate of their tuition reimbursement and/or their educational costs assistance program expenses to the Personnel Officer or designee, through their Director, per the deadlines as determined during the budget process; prior to the fiscal year in which they will attend the course(s). If an employee submits for the educational costs assistance program for courses that were not submitted prior to the deadline, assistance may or may not be granted depending upon the availability of funds in the City's annual operating budget and approval by the Department Director and Human Resources.

#### 05.12.06. Impact of Resignation upon Restitution to the City of Funds Distributed Pursuant to the Educational Costs Assistance Program

In the event that an employee resigns or retires from City employment within two years or is not an employee of the City for at least two years from the date that assistance is received by the employee, then the employee agrees by participation in the educational costs assistance program to fully reimburse the City for the assistance amount received with interest at the Local Agency Investment Fund (LAIF) prevailing interest rate no later than 90 calendar days after the effective date of the employee's separation. Upon the employee's request, this amount can be deducted from the employee's final paycheck. If the City commences litigation to recover said monies, then the employee agrees that any judgment for the amount to be reimbursed shall also include attorney's fees and costs expended by the City in said litigation.

#### 05.12.07. Educational Costs and Assistance Program Forgiveness

24 months after successful completion of degree, all monies received through the Educational Cost Assistance Program shall be forgiven and no amount owed to the City.

### 05.13. EMPLOYEE PERSONAL COMPUTER PURCHASE PROGRAM

Full-time employees in good standing have the option to participate in the Employee Personal Computer Purchase Program ("Program") in order to purchase a personal computer and certain related equipment and software ("Equipment") by participating in the financing arrangement offered under the Program.

Through this program the City agrees to make a loan to the participant in an amount not to exceed \$3,000 to purchase equipment specified in the Computer Loan Application. The participant authorizes the City to deduct an equal amount from the employee's pay each pay period. The interest rate for the first year of the loan will be 0%, the second year 6%, and any subsequent years 12%. The participant may elect to pay the remaining unpaid balance at any time prior to the last payroll deduction.

If the participant is given a cash advance for the equipment, the participant agrees to refund to the City all excess funds that are the difference between the estimated price and the actual purchase price, along with the receipt for the purchased computer and/or computer equipment and software within 30 days of distribution of the check to the participant. If the City does not receive the excess funds and a receipt within the specified time, then the participant will be required to pay off the loan within six months at a rate of 12% annual interest.

The participant agrees not to sell, trade or otherwise dispose of the equipment until the loan has been paid in full. The participant also agrees the usage of the equipment will be limited to the participant's own use and that of his/her immediate family. Any reassignment or transfer of the equipment will result in cancellation of the Computer Loan. Violation of these provisions will require the participant to pay to the City the remaining balance on the loan immediately.

Upon termination of participant from employment of the City for any reason, the remaining amount to be paid to the City under the agreement will become immediately due and payable. Upon the employee's request, this amount can be deducted from the employee's final paycheck. If the City commences litigation to recover said monies, then the employee agrees that any judgment for the amount to be reimbursed shall also include attorney's fees and costs expended by the City in said litigation.

All warranties and service or maintenance contracts shall be between the vendor and the participant. The employee shall deal directly with the vendor and in no event shall the participant look to the City for any claim relating to warranty, service or maintenance.

#### 05.13.01. Benefit Eligibility

Permanent and full-time employees shall be considered eligible to participate in this program after completing 6 months of satisfactory City service.

## Section 06. PERFORMANCE EVALUATION

### 06.01. EMPLOYEE PERFORMANCE EVALUATION

The Personnel Officer shall provide a method of reporting individual employee performance, which relates to quantity and quality of work, ability, reliability, attendance, and other factors for full-time employees. The Personnel Officer shall prescribe forms for such performance evaluations and shall be responsible for assuring that such evaluations are adequate to provide information to both the employee and the City for the purposes set forth in this section. Deficiencies in performance by an employee may result in withholding salary increases, a decrease in salary, suspension, demotion, or dismissal. Each Department Head can choose to utilize these same methods or to utilize other methods for part-time employees and volunteers.

Performance evaluations shall be completed at least once annually for each employee (or as otherwise provided in these rules), but may be completed at more frequent intervals at the discretion of an employee's supervisor. Annual performance evaluations should be completed on or before an employee's salary evaluation date.

Evaluation intervals for positions covered by a memorandum of understanding (MOU) will be governed by the MOU in effect on the date the evaluation becomes due.

Unless changed in accordance with these rules, these evaluation dates shall constitute the employee's performance evaluation date for purposes of eligibility for merit salary increases. However, the employee shall continue to receive performance evaluations on said date after the employee has reached the top of the applicable salary range. In addition, a performance evaluation may be prepared at any other time at the discretion of the employee's supervisor.

Prior to discussing a performance evaluation with the employee being evaluated, the department head and Personnel Officer must review and sign the evaluation and any merit step increases planned to be awarded.

Each employee shall be informed in such reports of his/her strengths and weaknesses. Each performance report shall be discussed with the employee. The employee shall sign the report to acknowledge its contents, though an employee shall not be considered to have agreed with the contents of the report by virtue of having signed it. If the employee refuses to sign the report, that fact shall be noted on the report by the supervisor. No employee shall be entitled to grieve and/or appeal any performance review. An employee may submit a written response to any performance review, which will be placed in the employee's file with the evaluation.

Evaluation reports shall be prepared with a copy to the employee and to the Personnel Officer for retention in the employee's personnel file. No other copies of employee evaluations shall be made or retained by any City staff.



The content of each employee evaluation report is confidential and shall not be discussed with or by any person except the employee being evaluated, his/her immediate supervisor, the department head, and the Personnel Officer. Should an employee want to have information in a performance evaluation released to another individual or organization, the employee must request the release of information in writing on the form approved by the Personnel Officer.

#### 06.02. ADVANCEMENT WITHIN SALARY RANGE BASED ON PERFORMANCE EVALUATION

Regular employees holding positions allocated to a salary range may be eligible for advancement within a salary range on their salary evaluation date. Such advancement must be earned based on job performance. Job performance below the level of “meets or exceed standards,” as reflected by the employee’s annual performance evaluation, shall not warrant salary advancement. No salary advancement shall be made which will exceed the maximum rate established for the classification. However, employees may be eligible for one-time, lump sum bonuses based on performance.

No advancement shall be made until it is clearly deserved. Length of service alone will not be considered as an adequate explanation for recommendation or approval of a salary adjustment.

No less than forty-five (45) calendar days prior to each employee’s salary evaluation date, the Personnel Officer shall advise the department head in writing of the employee’s pending eligibility for a merit salary increase. By submitting a completed Personnel Action Form, the department head shall advise the Personnel Officer of any recommendation for step advancement.

Upon recommendation of the department head, the Personnel Officer may authorize the advancement of an employee to a higher step in the salary range earlier than would normally be attained if the Personnel Officer believes exceptional performance by the employee warrants advancement.

#### 06.03. POSTPONEMENT OF MERIT SALARY INCREASE

A department head may recommend postponement of a merit increase pending further review of the employee’s job performance for a period not to exceed six (6) months. Such recommendations shall include the reasons for the postponement. If, during or at the conclusion of the period of postponement, the department head recommends that the employee be advanced to a higher salary step, the Personnel Officer shall complete PAF and such notification constitutes authorization to make payment to the employee at the specified higher rate. Such payment shall commence at the beginning of the pay period in which the recommendation is made and that date shall be the new salary evaluation date.

#### 06.04. RETROACTIVITY OF RECOMMENDED SALARY INCREASE

If a salary increase is recommended after an employee's salary evaluation date, the salary increase shall be retroactive to the salary evaluation date and payment shall be made accordingly.

#### 06.05. ERROR IN DETERMINATION OF CORRECT SALARY RATE OR OTHER ERROR IN COMPENSATION

If an employee is moved to a step in the salary range for which he or she was not recommended, such error shall be corrected by the next payroll period following discovery of the error. If an employee was underpaid as a result of such error, or any other error in calculating the employee's compensation, then the employee shall be reimbursed by the next payroll period following discovery of the error. Overpayment of wages may be corrected by withholding by written agreement of the employee, or through obtaining of a court order.

Should the employee terminate before full reimbursement to the City has been made, arrangements shall be made to repay the City by direct payment or upon the employee's request, this amount can be deducted from the employee's final paycheck. If the City commences litigation to recover said monies, then the employee agrees that any judgment for the amount to be reimbursed shall also include attorney's fees and costs expended by the City in said litigation. All arrangements for reimbursement of an overpayment shall be in writing and signed by the employee. These procedures shall apply to any other type of pay or benefit error or irregularity.

Employees shall review each of their paychecks and related benefit information to determine whether he or she was paid correctly. If the employee believes an error or irregularity has occurred, the employee must bring this to the attention of the Finance Officer immediately.

## Section 07. ATTENDANCE

Each department's successful operation depends in large part upon the attendance of each of its employees. Each member of the City has an important job that fits into a pattern of service. Unnecessary and unexcused absences, therefore, are undesirable because they affect not only operations but the way in which fellow employees are able to do their jobs. It is important to have a uniform attendance policy to avoid any misunderstanding regarding attendance expectations.

### 07.01. DEFINITIONS

"Abuse of Leave" is a claim of entitlement to leave when the employee does not meet the requirements for taking the leave, and may be grounds for discipline, up to and including termination. In the case of sick leave, it can mean the misrepresentation of the actual reason for taking sick leave, using sick leave for unauthorized purposes, failure to report sick leave, and may include chronic, persistent, or patterned use of sick leave. Should the City suspect that there is an abuse of leave by an employee, the City may require that the employee submit a physician's certificate to support the absence.

"Authorized Absence" is permission to be absent from duty for a specified purpose, with the right to return before or upon the expiration of the leave.

"Tardiness" is the failure of the employee to report to work at the commencement of the scheduled shift or workday or the failure to return to work at the scheduled time following a meal break, rest period, or when called back to the station. "Excessive Tardiness" occurs when an overtime-eligible employee who, without authorization, is late to work or late to return from breaks more than three times during any 30-day period.

"Unexcused Absences" are those that have not been approved in accordance with agency policy, such as being absent without calling in or leaving work early without prior approval.

### 07.02. LEAVE COUNSELING

Employees who demonstrate attendance problems, including but not limited to Abuse of Sick Leave, Tardiness or Unexcused Absences, shall first be counseled by their immediate supervisor. If the problems persist, a written reprimand shall be issued and the employee shall be counseled by the Department Head. If an employee has a personal health, physical or emotional problem, he or she shall be referred immediately for assistance.

Reprimands for attendance will become a part of the employee's permanent personnel record.

### 07.03. DISCIPLINARY PROVISION

Abuse of leave, excessive tardiness, and unauthorized absences may constitute cause for disciplinary action, up to and including discharge from employment.

### 07.04. JOB ABANDONMENT

An employee is deemed to have resigned if the employee is absent for three (3) consecutive shifts without prior authorization and without notification during that period of absence. The employee will be given written notice via personal service or certified mail, at his or her address of record, of the circumstances of the job abandonment, and an opportunity to provide an explanation for the employee's unauthorized absence. If the City is unsuccessful in serving the notice via personal service or certified mail after fifteen (15) calendar days, the City may mail final written notice via US mail. An employee who promptly responds to the City's written notice, within the timeframe set forth in the written notice, can arrange for an appointment with the Personnel Officer before final action is taken, to explain the unauthorized absence and failure of notification.

An employee separated for job abandonment may be reinstated upon proof of justification for such absence, such as severe accident, severe illness, false arrest, or mental or physical impairment which prevented notification. The Personnel Officer will have discretion on whether or not, and under what conditions, to re-hire the employee. No employee separated for job abandonment has the right to a post-separation appeal unless said appeal is required by law

## **Section 08. EMPLOYEE RECOGNITION**

### **08.01. PURPOSE**

The sole purpose of the awards is to serve the public, through the retention and recruitment of highly competent employees.

### **08.02. YOU ROCK AWARD**

Employees and community members alike are invited to nominate employees for a You Rock Award by completing the form on the City's website or by emailing the Director of Human Resources. These awards are given out throughout the year to employees for going above and beyond to get a job done and are accompanied by a gift card. A copy of the You Rock Award will be placed in the employee's personnel file.

### **08.03. PAUSE FOR APPLAUSE**

A Department Head, with the approval of the City Manager, is authorized to give his/her employee a "Pause for Applause" when an employee has been working overtime, under additional pressure, or extra diligently in order to meet new or exceptional demands of the job. A "Pause for Applause" is time off with pay ranging from one hour to a full day off work. A "Pause for Applause" cannot be "banked", the award must be taken within the pay period in which it is granted. The time off work should be recorded on the employees' time sheet as "Pause for Applause".

### **08.04. SAVINGS AWARD**

When a non-executive management employee comes up with a cost saving measure that is implemented, he or she will receive 10% of the realized savings, up to \$1,000.

#### **08.04.01 Criteria**

To be eligible the Savings Award, an employee's idea or proposal must result in cost savings attributable to one of the following:

- A proposal that is implemented resulting in measurable monetary savings;
- A repair or fix of City equipment or property that is outside of the employee's normal scope of duties that results in measureable monetary savings.

#### **08.04.02 Selection**

Employees may nominate themselves or a co-worker at any time by submitting a written nomination to the employee's department head or the Director of Human Resources. The employee's department head, the Finance Director and the City Manager must all verify the cost savings. Once approved, the Saving Award will be granted within 2-3 weeks with the employee's regular pay check.

#### **08.04.03 Award**

The employee may choose to take the award as a part of his/her regular paycheck or a separate paycheck, subject to any tax requirements; or to be deposited into the employee's tax deferred 457 account. A Savings Award Certificate will also be placed in the employee's personnel file.

### 08.05. EMPLOYEE OF THE QUARTER

Each quarter (in or around August, November, February, and May) the Executive Management Team may select an Employee of the Quarter. Nominations should be submitted for employees who demonstrate the City's values:

- Efficiency and effectiveness
- Honesty and integrity
- Financial accountability
- Teamwork
- Community partnership
- Small town character

Employees selected as Employee of the Quarter will receive reimbursement for up to \$100 spent in Sierra Madre. Employee must present receipts for expenditures all at one time within six months of the award in order to receive the reimbursement. Employees may also receive an Employee of the Quarter parking spot. An Employee of the Quarter Certificate will be placed in the employee's personnel file

Members of the Executive Management Team are not eligible for this award.

### 08.06. RECOGNITION FOR YEARS OF SERVICE

The City Council will recognize employees on their 10, 15, 20, 25, 30, 35, and 40 year anniversaries at a public City Council meeting with a proclamation or award. Employees not wishing to be recognized at a public meeting can notify their department head or the Director of Human Resources.

## Section 09. LEAVES

### 09.01. VACATION

Every full-time probationary and regular employee shall accrue paid vacation leave per payroll period as follows:

| <u>Length of Service</u> | <u>Service Years</u> | <u>Per Payroll</u> | <u>Annually</u> |
|--------------------------|----------------------|--------------------|-----------------|
| 0 - 48 months            | 1 – 4                | 3.71 hours         | 96.46 hours     |
| 49 - 60 months           | 5                    | 4.01 hours         | 104.26 hours    |
| 61 - 72 months           | 6                    | 4.32 hours         | 112.32 hours    |
| 73 - 84 months           | 7                    | 4.62 hours         | 120.12 hours    |
| 85 - 96 months           | 8                    | 4.93 hours         | 128.18 hours    |
| 97 - 108 months          | 9                    | 5.24 hours         | 136.24 hours    |
| 109 - 120 months         | 10                   | 5.55 hours         | 144.30 hours    |
| 121 - 132 months         | 11                   | 5.85 hours         | 152.10 hours    |
| 133 - 144 months         | 12                   | 6.16 hours         | 160.16 hours    |
| 145 - 156 months         | 13                   | 6.47 hours         | 168.22 hours    |
| Over 157 months          | Over 14              | 6.78 hours         | 176.28 hours    |

Vacation shall accrue bi-weekly on a pro rata basis and increases shall occur at the beginning of the month.

For purposes of this section, continuous service shall include time in which an employee is on an authorized leave of absence with pay. Vacation leave shall not accrue during unpaid leaves of absence unless required by law, e.g., military leave.

#### 09.01.01. Vacation Accrual

An employee may not accrue more than 135 hours of vacation leave in excess of their regular annual accrual. E.g., an employee whose annual accrual of vacation is 104 hours shall not be entitled to accrue in excess of 239 hours. Any employee whose vacation accrual reaches the above limits shall not continue to accrue vacation leave until the employee’s total accrual of vacation leave falls below the limit. The employee shall not forfeit any vacation leave which has already accrued. The City retains the discretion to require employees to use accrued vacation. Vacation accrual limits for positions covered by an MOU will be governed by the MOU in effect on the date the limit is reached.

A new confidential-exempt or executive management employee joining the City from an outside agency will have his or her starting vacation leave based on the number of consecutive years working in the public sector.

#### 09.01.02. Vacation Cash Out

Unless otherwise stated in an applicable MOU, an employee may cash out up to 100 hours of his/her vacation leave at his/her normal hourly rate if the employee (1) has taken 80 hours of paid leave (excluding sick leave) in the past twelve (12) month period and (2) has at least 120 hours of combined vacation, sick, and holiday leaves on the books after the cash-out. An employee may cash out vacation leave once each fiscal year upon request to the Personnel Officer or his/her designee.

#### 09.01.03. Effects of Holiday on Vacation Leave

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

#### 09.01.04. Effects of Sick Leave on Vacation/Other Leave

In the event an employee becomes ill during a vacation or other leave period, such time shall not be charged as vacation or other leave if the following conditions are met:

- Notice is given promptly to the employee's supervisor or the Administrative Services Department. Sick leave will only be granted for those days on which notice is given to the City on the day of or day after the illness; or
- The employee submits a doctor's certificate for the period of sick leave.

Employees requesting this option must use sick leave or leave without pay for the period of the illness.

#### 09.01.05. Compensation for City Work during Vacation Prohibited

No person shall be permitted to work for compensation for the City in any capacity, except compensation for mandated court appearance or special duty assignments, during paid vacation time. Violation of this provision shall be a basis for disciplinary action.

#### 09.01.06. Scheduling Vacations

An employee may take annual vacation leave at any time during the year, subject to approval by the employee's department head based on a determination that such absence will not adversely affect the City. Each employee must consider the needs of the City when requesting vacation leave. An employee shall provide a minimum of two (2) week's written advance notice, unless waived by the department head, when requesting vacation time off.

#### 09.01.07. Separation Vacation Pay

Any employee terminating from the City service who has accrued vacation leave shall be paid for all accrued vacation at termination at his/her normal hourly rate at the time of separation. No leave credit will be earned on such payments. Termination shall be effective on the employee's last working day.



## 09.02. HOLIDAYS

No employee shall be entitled to compensation for any holiday herein specified unless the employee was employed by the City on the day preceding and the day following the holiday. For the purposes of this paragraph, an employee who is absent on authorized vacation with pay or on accrued sick leave shall be deemed to be employed at such time.

The Personnel Officer is empowered to determine whether the City shall observe special days declared by the President or Governor as days of thanksgiving or mourning. The Personnel Officer is also empowered to declare limited service days. On such limited service days, employees will have the option to work or take the day off. If the employee chooses to take the day off, he/she shall utilize floating holiday, compensatory time, or vacation leave. If no such paid leave is available, the Personnel Officer may grant leave without pay.

### 09.02.01. Annual Holidays

Subject to any applicable MOU, full-time non-public safety employees shall be entitled to the following holidays with pay each calendar year and such other days as may be designated by action of the City Council:

- January 1 (New Year's Day)
- The third Monday in January (Martin Luther King's Birthday)
- The third Monday in February (Presidents' Birthday)
- The last Monday in May (Memorial Day)
- July 4 (Independence Day)
- The first Monday in September (Labor Day)
- The second Monday in October (Indigenous Peoples' Day)
- November 11 (Veteran's Day)
- Thanksgiving Day (fourth Thursday in November)
- The Friday after Thanksgiving Day
- December 24\* (Christmas Eve)
- December 25 (Christmas Day)
- December 31\* (New Year's Eve)

\* Denotes a partial holiday of 4 hours.

If any such holiday falls on a Sunday, the Monday following shall be treated as the holiday. If the holiday falls on a Saturday, the Friday preceding shall be treated as the holiday.

### 09.02.02. Floating Holidays

Employees who work at the Public Works Yard shall receive twenty-seven (27) hours of floating holiday leave each calendar year pro-rated to the date of hire for the first calendar year of employment. The accrual will be posted during the first pay period in January.

### 09.02.03 Holiday Pay and Floating Holiday Pay

Subject to an applicable MOU, if a holiday falls on a scheduled work day, the employee will be granted holiday pay for the number of hours the employee normally works in a day.

Example: If the employee is scheduled to work 9 hours a day, the employee will be paid holiday pay for 9 hours. If the employee follows a 9/80 work schedule and works 8 hours on a Friday, the employee will be granted 8 hours of Holiday Pay.

Subject to an applicable MOU, if an employee has a scheduled day off, and a holiday falls on that day, the employee will be granted floating holiday pay.

Example: If it's an employee's regular day off, per the 9/80 work schedule, the employee will be compensated with 8 hours of floating holiday pay for the hours normally worked in a day.

All employees must use floating holiday by the end of the corresponding calendar year. Any time not used will be cashed out on the last pay period of the calendar year. Floating holidays may be used at any time subject to two days' advance approval, unless waived by the department head. Terminating employees shall be compensated for accrued unused floating holiday hours.

### 09.02.04. End of the Year Holiday Pay

All full-time employees, with the exception of those in the Police Association, those governed by the Terms and Conditions of Employment for Full-time Fire Department Employees, or those who work at the Public Works Yard, will receive holiday pay for regular work days the week between the Christmas holiday and the New Year's Day holiday. City Hall, the Library, and the Community Recreation Center will close during this time.

## 09.03. SICK LEAVE

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

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

### 09.03.01. Sick Leave Use

To request to use sick leave if the need for leave is foreseeable, an employee must give the immediate supervisor reasonable advance written or oral notice. If the need for sick leave is not foreseeable, the employee shall provide written or oral notice of the need for the leave as soon as practicable.

If the employee is required to be absent on sick leave for more than one day, the employee must keep the immediate supervisor informed each day as to the date the employee expects to return to work and the purpose of the leave.

Failure to request sick leave as required by this Policy without good reason may result in the employee being treated as absent without leave.

An employee may use accrued sick leave, in a minimum increment of two hours, beginning on the 90th day after the first day of employment with the City, subject to the limits and request provisions in this Policy.

Sick leave shall not be accrued by any employee absent from duty after separation from City service or during a City authorized leave of absence without pay or any other absence from duty not authorized by the City.

Sick leave cannot be used to extend an employee's vacation, unless otherwise mandated by law.

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

Employees will not be permitted to use vacation or other leave in lieu of sick leave unless approved by the Personnel Officer.

### 09.03.02. Sick Leave Accrual

Full-time employees who are not seasonal/temporary or extra help shall accrue 3.69 hours of sick leave per pay period in paid status for a total of ninety-six (96) hours per year. Accrual shall occur on a daily basis. No accrual shall take place for any day in which the employee has performed less than a full day of service. Accrued sick leave carries over from year to year. Sick leave may be accrued to a maximum of two thousand (2,000) hours except as provided below.

Part-time, seasonal/temporary, and extra help employees who work 30 or more days within a year from the commencement of employment with the City accrue one hour of paid sick leave for every 30 hours worked. Accrued and unused sick leave carries over to the following year of employment but part-time, seasonal/temporary, and extra help employees stop earning sick leave once they have accrued 48 hours or 6 work days/ shifts, whichever is greater.

Sick leave granted by the City and used by an employee shall be deducted from the employee's accrued sick leave balance.

Employees granted a leave of absence with pay or other approved leave with pay shall accrue sick leave during such leave as provided therein. Sick leave shall not accrue during unpaid leaves of absence unless required by law, e.g., military leave.

#### 09.03.03. Reimbursement and Reinstatement of Accrued Sick Leave

Upon separation, an employee who has worked for the City for five (5) or more years shall be paid fifty percent (50%) of the employee's total accrued and unused sick leave to a maximum of 2,000 hours (2000 hours maximum accrual equals 1000 hours maximum cash out). Such reimbursement shall be at the employee's normal hourly rate at the time of separation.

For an employee who has worked for the City for less than five (5) years, unused sick leave will not be cashed out upon separation from employment. Unused sick leave may be converted to retirement service credits only as may be permitted under applicable retirement system laws and regulations.

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

#### 09.03.04. Protected Sick Leave

For full time employees who are not seasonal/temporary or extra help, one-half of the employee's accrued and available annual sick leave is protected and may be used for any of the purposes stated in this Policy.

For seasonal/temporary or extra help employees, up to 24 hours, or three days, whichever is greater, of accrued and available sick leave each year is protected and may be used for any of the purposes stated in this Policy. The year is measured beginning on July 1, 2015, or the employee's anniversary of hire date, whichever is later.

#### 09.03.06. Wellness Program

The City has established wellness programs that encourage daily attendance and the maintenance of personal health. The specific terms of the wellness program vary by bargaining unit and will be governed by any applicable MOU.

##### 09.03.06.01 Seasonal Pool Pass

The City will provide a complementary seasonal pool pass to all city employees. To obtain a seasonal pass, employee must visit the Community Services Division to have a photograph taken and pass issued. The pass is for the employee only and is not transferable to friends or family members.

##### 09.03.06.02 Sick Leave Buy-Back for Management and Confidential-Exempt Employees

Management and confidential-exempt employees are eligible to cash-out, at their normal hourly rate, up to 100 hours of sick leave per calendar year, minus the number of sick leave hours taken during the calendar year, as long as the employee has 120 hours of combined vacation, sick, and holiday leaves on the books after the cash-out.

#### 09.03.07 Donation of Sick Leave

The purpose of this section is to establish a policy and procedures for the donation of leave time to city employees who become seriously injured or ill or need to care for a family member who is seriously injured or ill. The City views "Donation of Sick Time" as a positive program which regular employees may participate in to help co-workers in need. Therefore, the City hereby agrees to institute a program whereby regular employees may donate sick and/or compensatory leave to other regular employees as outlined below:

##### 09.03.07.01 Eligibility

Regular employees will be eligible to receive donated sick and/or compensatory leave once they have been placed on FMLA. The employees' leave time will follow all FMLA guidelines.

A recipient employee must use all of his/her own leave before using donated leave.

Regular employees are eligible to donate sick and/or compensatory leave as long as the employee maintains a balance of 120 hours of combined vacation, sick, and holiday leaves (management and compensatory leaves are not eligible).

An employee shall be prohibited from threatening or coercing or attempting to threaten or coerce another for the purpose of interfering with rights involving donating, receiving or using donated leave time. Such prohibited acts shall include, but not be limited to, promising to confer or conferring a benefit such as an appointment or promotion or making a threat to engage in, or engaging in, an act of retaliation against an employee.

#### 09.03.07.02 Procedures

Once an employee on FMLA can foresee all their leave balances reaching zero he or she may submit a request for donation of sick leave in writing to the Director of Human Resources. The Director will work with the employee on the best way to notify other employees of the request for donations whether through posting, email, or word of mouth. At the employee's discretion, the request for donated leave can be kept confidential.

Those wishing to donate leave will notify the Director of Human Resources in writing with the amount and type of leave they wish to donate (only sick or compensatory time will be accepted). The donating employee must have a combined 120 hours of sick, vacation, or holiday leave balances after the donation. Leave will be donated in increments of (1) one hour and all leave will be donated on an hour-for-hour basis.

Once an employee notifies the Director of their intent to donate, the donation cannot be rescinded. All donations are to be confidential.

The Director will notify payroll once the donating employee has been determined eligible to donate. The donated leave will appear on the requesting employee's leave balance as sick leave. Any unused, donated leave shall be retained by the leave recipient as sick leave. Donated leave may not be bought back as a part of the City's Wellness Program, or used for the purchase of CalPERS service credit. Donated leave shall be forfeited upon separation from City Employment.

Donated leave will not be counted against an employee's leave balance when determining sick leave used for the Wellness Program Sick Leave Buy-Back.

Donated leave, when used by a recipient, will be paid at the recipient's current rate of pay and will be taxable income.

#### 09.04. FAMILY CARE AND MEDICAL LEAVE POLICY

The City provides family and medical care leave for eligible employees as required by state and federal law. The following provisions set forth certain of the rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the U.S. Department of Labor regulations implementing the U.S. Family and Medical Leave Act of 1993 ("FMLA"), and the regulations under the California Family Rights Act ("CFRA"). Unless otherwise provided by this policy, "leave" under this policy shall mean leave pursuant to the FMLA and CFRA. Unless otherwise provided by law, the City will run each employee's FMLA and CFRA leaves concurrently.

#### 09.04.01 Definitions

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

**Single 12-month period** means a 12-month period which begins on the first day the eligible employee takes FMLA leave to take care of a covered servicemember and ends 12 months after that date.

**Child, under the FMLA**, means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee's child is one for whom the employee has actual day-to-day responsibility for care and includes, a biological, adopted, foster or step-child.

A child is "**incapable of self-care**" if he/she requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living — such as, caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.

**Child, under the CFRA**, means a child, including a child who is 18 years of age or older who is capable of self-care. An employee's child means a biological, adopted, foster, step-child, legal ward, a child of a domestic partner or a person to whom the employee stands in loco parentis.

**Family member**, under the FMLA, means an employee's child, parent, and spouse.

**Family member**, under the CFRA, means an employee's child, parent, parent-in-law, spouse, domestic partner, grandchild, grandparent, and sibling.

**Grandparent** means a parent of the employee's parent.

**Grandchild** means a child of the employee's child.

**Sibling** means a person related to the employee by blood, adoption, or affinity through a common legal or biological parent.

**Parent** means the biological, adoptive, step, or foster parent of an employee, or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. Under the FMLA, this term does not include parents-in-law. Under the CFRA, this term includes parent-in-laws.

**Parent-in-law** means the parent of a spouse or domestic partner of the employee.

**Spouse** means one or two persons to a marriage, regardless of the sex of the persons, and for purposes of CFRA leave, includes a registered domestic partner as defined below.

**Domestic Partner** is another adult with whom the employee has chosen to share their life in an intimate and committed relationship of mutual caring and with whom the employee has filed a Declaration of Domestic Partnership with the Secretary of State, and who meets the criteria specified in California Family Code section 297. A legal union formed in another state that is substantially equivalent to the California domestic partnership is also sufficient.

**Serious health condition** means an illness, injury impairment, or physical or mental condition that involves:

- 1) Inpatient Care in a hospital, hospice, or residential medical care facility, including any period of incapacity (e.g., inability to work or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom). A person is considered “inpatient” when a health care facility admits him or her to the facility with the expectation that he or she will remain at least overnight, even if it later develops that such person can be discharged or transferred to another facility, and does not actually remain overnight; or
- 2) Continuing treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
  - a) A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three full consecutive calendar days, and
  - b) any subsequent treatment or period of incapacity relating to the same condition, that also involves:
    - i. Treatment two or more times by a health care provider, by a nurse or physician’s assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider; or
    - ii. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
- 3) Any period of incapacity due to pregnancy or for prenatal care. (This entitles the employee to FMLA leave, but not CFRA leave. Under California law, an employee disabled by pregnancy is entitled to pregnancy disability leave (PDL), see Policy \_\_, below.)
- 4) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:



- a) Requires periodic visits for treatment by a health care provider or by a nurse or physician's assistant under direct supervision of a health care provider;
  - b) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
  - c) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.
- 5) A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
- 6) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

**Health Care Provider** means:

- A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;
- Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treat or supervise treatment of a serious health condition;
- Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;
- Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
- Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

**Covered Active Duty** means: 1) in the case of a member of a regular component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or 2) in the case of a member of the reserve component of the Armed Forces, duty during the deployment of members of the Armed Forces to a foreign country under a call or order to active duty under certain specified provisions.

**Covered Servicemember** means 1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or 2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

**Outpatient Status** means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to either: (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

**Next of Kin of a Covered Servicemember** means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.

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

#### 09.04.02 Reasons for Leave

Leave is only permitted for the following reasons:

- The birth of a child or to care for a newborn of an employee;
- The placement of a child with an employee in connection with the adoption or foster care of a child;

- Leave to care for a child, parent, or spouse who has a serious health condition (or – under the CFRA only – a domestic partner, grandparent, grandchild, sibling, or parent-in-law who has a serious health condition. Leave for this purpose does not apply to FMLA leave and will not run concurrently with leave under the FMLA);
- Leave because of a serious health condition that makes the employee unable to perform any one or more essential functions of his/her position;
- Leave for a variety of “qualifying exigencies” arising out of the fact that an employee’s spouse, son, daughter, or parent is on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation (under the FMLA only, not the CFRA);  
  
Leave for a variety of “qualifying exigencies” arising out of the fact that an employee’s domestic partner is on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation (under the CFRA only, not the FMLA. Leave for this purpose does not apply to FMLA leave and will not run concurrently with leave under the FMLA); or
- Leave to care for a spouse, son, daughter, parent, or “next of kin” who is a covered servicemember of the United States Armed Forces who has a serious injury or illness: incurred in the line of duty while on active military duty; or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces (this leave can run up to 26 weeks of unpaid leave during a single 12-month period) (under the FMLA only, not the CFRA).

#### 09.04.03 Employees Eligible for Leave

An employee is eligible for leave if the employee has been employed by the City for at least 12 months; and has been employed by the City for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

#### 09.04.04 Amount of Leave

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

#### 09.04.04.01 Minimum Duration of Leave

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

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

#### 09.04.04.02 Spouses Both Employed by the City of Sierra Madre

If both parents of a child, adoptee, or foster child are employed by the City and are entitled to bonding leave:

- The aggregate number of workweeks of FMLA leave to which both may be entitled may be limited to 12 workweeks during any 12-month period.
- Each parent is entitled to take 12 workweeks of CFRA leave during any 12-month period.

If both parents of a covered servicemember are employed by the City and are entitled to leave to care for a covered servicemember, the aggregate number of workweeks of leave to which both may be entitled may be limited to 26 workweeks during any 12-month period.

This limitation does not apply to any other type of leave under this Policy.

#### 09.04.05 Employee Benefits While on Leave

Leave under this policy is unpaid. However, employees are required to exhaust all leaves before taking unpaid leave. Employees taking unpaid leave will continue to be covered by the City's group health insurances for up to 12 weeks each leave year to the same extent that coverage is provided while the employee is on the job. If the employee is disabled by pregnancy, coverage will continue up to four months each leave year. If an employee disabled by pregnancy also uses leave under the CFRA for baby-bonding, the City will maintain her coverage while she is disabled by pregnancy (up to four months or 17 1/3 weeks) and during her CFRA leave (up to 12 weeks).

The City does not pay for benefit plans that are not part of the group health plan for any employee on unpaid leave. As a result, employees will not continue to be covered under the City's benefit plans that are not provided through the City's group health plans while the employee is on unpaid leave.

Employees may make the appropriate contributions for continued coverage under the health benefits plans by payroll deductions or direct payments. The City will inform the employee whether the direct payments for premiums should be paid to the carrier or to the City, and the deadlines for paying premiums in order to prevent coverage from being dropped. Employee contribution rates are subject to any changes in rates that occur while employee is on leave.

Similarly, employees may make the appropriate contributions for continued coverage under the non-health benefit plans by payroll deductions or direct payments made to these plans. Depending on the particular plan, the City will inform the employee whether the premiums should be paid to the carrier or to the City.

If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control.

Sick leave and vacation leave do not accrue while an employee is on unpaid leave. An employee must receive 60% of his/her base pay through accrued leaves to continue to accrue sick leave and vacation leave.

#### 09.04.06. City's Right to Require an Employee to Use Paid Leave when Using FMLA/CFRA Leave

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

An employee may use any earned or accrued paid leave except sick leave for all or part of any unpaid family and medical care leave. An employee is entitled to use sick leave concurrently with family and medical care leave for the employee's own serious health condition or that of the employee's parent, parent-in-law, spouse, domestic partner, child, grandparent, grandchild, or sibling.

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

- 1) Employees are not required to use paid leave during leave pursuant to a disability plan that pays a portion of the employee's salary while on leave unless the employee agrees to use paid leave to cover the unpaid portion of the disability leave benefit; and
- 2) An employee must agree to use accrued sick leave to care for a child, parent, parent-in-law, spouse, domestic partner, grandparent grandchild or sibling.

#### 09.04.07. City's Right to Require an Employee to Exhaust FMLA/CFRA Leave Concurrently with Other Leaves

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

#### 09.04.08 City's Rights if an Employee Requests Accrued Leave without Mentioning Either the FMLA or CFRA

If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to a FMLA/CFRA-qualifying purpose, the City may not ask the employee if the leave is

for a FMLA/CFRA-qualifying purpose. However, if the City denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA-qualifying purpose, the City may require the employee to exhaust accrued leave as described above.

#### 09.04.09. Medical Certification/Recertification

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

- 1) **Employee's Own Serious Health Condition:** Employees who request leave for their own serious health condition must provide written certification from the health care provider that contains all of the following: the date, if known, on which the serious health condition commenced; the probable duration of the condition; and a statement that, due to the serious health condition, the employee is unable to work at all or is unable to perform any one or more of the essential functions of his or her position. Upon expiration of the time period the health care provider originally estimated that the employee needed for his/her own serious health condition, the employee must obtain recertification if additional leave is requested.
  
- 2) **Family Member Serious Health Condition:** Employees who request leave to care for a child, parent, parent-in-law, domestic partner, spouse, grandparent, grandchild, or sibling who has serious health condition must provide written certification from the health care provider of the family member requiring care that contains all of the following: the date, if known, on which the serious health condition commenced; the probable duration of the condition; an estimate of the amount of time which the health care provider believes the employee needs to care for the child, parent, parent-in-law, domestic partner, spouse, grandparent, grandchild, or sibling, and a statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision of the child, parent, parent-in-law, domestic partner, spouse, grandparent, grandchild, or sibling. The term "warrants the participation of the employee" includes, but is not limited to, providing psychological comfort, and arranging third party care for the covered family member, as well as directly providing, or participating in, the medical care. Upon expiration of the time period the health care provider originally estimated that the employee needed to care for a covered family member, the employer must obtain recertification if additional leave is requested.
  
- 3) **Servicemember Serious Injury or Illness:** Employees who request FMLA leave to care for a covered servicemember who is a child, spouse, parent, or "next of kin" of the employee must provide written certification from a health care provider regarding the injured servicemember's serious injury or illness. The City will verify the certification as permitted by the FMLA regulations.
  
- 4) **Qualifying Exigency:** The first time an employee requests FMLA leave because of a qualifying exigency, an employer may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to active duty status in a foreign country, and the dates of the military member's active duty service. A copy of the new active duty orders or similar documentation shall be provided to the City if the need for leave because of a qualifying

exigency arises out of a different active duty or call to active duty status of the same or a different military member. The City will verify the certification as permitted by the FMLA and CFRA regulations.

#### 09.04.09.01. Time to Provide a Certification

When an employee has provided at least 30 days' notice for a foreseeable leave, the employee must provide a medical certification before the leave begins. When this is not possible, the employee must provide the medical certification to the City within the time frame requested by the City (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

#### 09.04.09.02. Consequences for Failure to Provide an Adequate or Timely Certification

If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to cure any such deficiency.

However, if an employee fails to provide a medical certification within the time frame established by this policy, the City may delay the taking of FMLA/CFRA leave until the required certification is provided, or deny FMLA/CFRA protections following the expiration of the time period to provide an adequate certification.

#### 09.04.09.03. Personnel Officer's Review of the Contents of Medical Certification for Employee's Own Serious Health Condition

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

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

09.04.09.04.

Second and Third Medical Opinions for Employee's Own Serious Health Condition

If the City has a good faith, objective reason to doubt the validity of a certification for the employee's serious health condition, the City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee, but paid for by City. The opinion of the third provider will be binding. The City must provide the employee with a copy of the second and third medical opinions, where applicable, without cost, upon the request of the employee.

09.04.09.05. Intermittent Leave or Leave on a Reduced Leave Schedule

If an employee requests leave intermittently (a few days or hours at a time) or a reduced leave schedule for his or her own serious health condition, or to care for a family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule. The City may require an employee who certifies the need for a reduced schedule or intermittent leave to temporarily transfer to an alternate position of equivalent pay and benefits that better accommodates the leave schedule.

09.04.10. Employee Notice of Leave

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

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



#### 09.04.11. Reinstatement upon Return from Leave

##### 09.04.11.01. Right to Reinstatement

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

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

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

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

##### 09.04.11.03. Fitness-for-Duty Certification

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

##### 09.04.11.04. Reinstatement of "Key Employees"

Under the FMLA only, the City may deny reinstatement to a "key" employee (i.e., an employee who is among the highest paid 10 percent of all employed by the City within 75 miles of the work site) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the City, and the employee is notified of the City's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur. Under the CFRA the City may not deny reinstatement to a "key" employee during or upon the expiration of CFRA leave.

#### 09.04.12. Required Forms

Employees must complete the applicable forms to receive family and medical care leave. The forms may be found with the Human Resources Department.

#### 09.05. PREGNANCY DISABILITY LEAVE

An employee who is disabled because of pregnancy, childbirth or a related medical condition is entitled to an unpaid leave for up to the number of hours she would normally work within four calendar months (one-third of a year or 17 1/3 weeks). For a full-time employee who works 40 hours per week, "four months" means 693 hours of leave entitlement, based on 40 hours per

week times 17 1/3 weeks. An employee who works less than 40 hours per week will receive a pro rata or proportional amount of leave.

#### 09.05.01. Notice & Certification Requirements:

Requests for pregnancy disability leave must be submitted in writing with reasonable advance notice of the medical need for the leave. All leaves must be confirmed in writing, have an agreed-upon specific date of return, and be submitted to the Personnel Officer.

The request for pregnancy disability leave must be supported by a written certification from the attending physician stating that: 1) the employee is disabled from working by pregnancy, childbirth or a related medical condition; 2) the date on which the employee became disabled by pregnancy, childbirth or a related medical condition; and 3) the estimated duration or end date of the leave.

#### 09.05.02. Compensation during Leave

Pregnancy disability leaves are without pay. However, the employee must first use her accrued sick leave, if any. Once sick leave is depleted, the employee may elect to use vacation leave or any other accrued paid time off during the leave.

#### 09.05.03. Benefits and Status during Leave

An employee on pregnancy disability leave may continue to receive any group health insurance coverage that was provided before the leave beginning on the date the pregnancy disability leave begins and continuing for up to four months in a 12-month period, at the same level and under the same conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. The City may recover premiums it paid to maintain health coverage if an employee does not return to work following pregnancy disability leave, unless the reason for the failure to return is a circumstance beyond her control or the use of the separate right to 12 weeks of bonding leave under the California Family and Medical Leave Act.

Sick leave and vacation leave do not accrue while an employee is on unpaid pregnancy disability leave. An employee must receive 60% of her base pay through accrued leaves to continue to accrue sick leave and vacation leave.

The employee retains employee status during the leave. The leave is not a break in service for purposes of longevity or seniority under any collective bargaining agreement or employee benefit plan. Benefits will be resumed upon the employee's reinstatement in the same manner and at the same levels as provided when the leave began, without any new qualification period, physical exam, or other qualifying provisions.

#### 09.05.04. Reinstatement

Upon the expiration of pregnancy leave, the employee will be reinstated to her original or a comparable position, so long as it was not eliminated for a legitimate business reason during the leave.

If the employee's original position is no longer available, the employee will be assigned to a comparable, open position.

If upon return from leave an employee is unable to perform the essential functions of her job because of a physical or mental disability, the City will initiate an interactive process with the employee in order to identify a potential reasonable accommodation in accordance with these Policies.

#### 09.06. BEREAVEMENT

Full-time employees shall be allowed time off with pay in the event of a death of a family member. Up to three (3) days of such leave shall be allowed where the death and funeral services are within California. Up to five (5) days shall be allowed where the death and/or funeral service is outside California. For purposes of this Policy, family member is defined as the employee's parent; parent-in-law; spouse; registered domestic partner; grandparent; grandchild; sibling, or child of any age or dependency status.

Part-time employees are not entitled to bereavement leave.

#### 09.07. JURY LEAVE AND COURT APPEARANCES

##### 09.07.01. Jury Duty Leave/Subpoenaed or Court-Ordered Witness Leave

Any employee who is summoned to serve on a jury, or subpoenaed or ordered to be a witness, must notify his or her supervisor or department head as soon as possible. Any employee who is released from jury service prior to the end of his or her scheduled work hours must report to work unless otherwise authorized by his or her supervisor.

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

All FLSA-exempt employees will continue to receive their normal salary while on jury duty or as serving as a witness. The City will offset the amount from pay the employee receives from the Court for jury fees.

## 09.07.02. Other Court or Administrative Proceeding Appearances

### 09.07.02.01 Regarding Agency Duties

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

### 09.07.02.02 Regarding Employee-Initiated Proceedings

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

### 09.07.02.03 Regarding Crime Victim/ Victim Family Member Court Attendance Leave

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

### 09.07.02.04 Regarding Crime Victim/ Family Member Victims' Rights Proceedings Leave

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

requirements are met. The leave is unpaid unless the employee elects to use accrued vacation or paid leave, or compensatory time off.

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

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

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

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

### 09.08. MILITARY LEAVE

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

### 09.09. LEAVE OF ABSENCE WITHOUT PAY

Leave without pay may be granted by the Personnel Officer for good cause, including but not limited to, an employee's pursuit of a course of study which will increase the employee's effectiveness or usefulness to the City.

Except in the discretion of the Personnel Officer, an employee shall be required to exhaust available banks of paid leave prior to commencing an authorized leave of absence without pay.

Use of the leave of absence for a purpose other than that requested may be cause for forfeiture of reinstatement rights or disciplinary action, up to and including dismissal.

A request for leave of absence without pay shall be made in writing and submitted to the employee's department head for submission to the Personnel Officer with a recommendation whether to grant or deny the request.

A leave of absence without pay may be made for a period not to exceed one year provided that the Personnel Officer may extend such leave for an additional period not to exceed one year. The procedure for granting extensions shall be the same as that in granting the original leave provided that the request for extension must be made no later than fourteen (14) calendar days prior to the expiration of the original leave. The City will hold the employee's position open for the first thirty (30) days of leave, and thereafter may fill the position with a temporary employee. If the position is filled on other than a temporary basis, the returning employee will be eligible to receive the next available position for which he/she is qualified.

When an employee intends to return from an authorized leave of absence without pay, either before or upon the expiration of such leave, the employee shall contact the department head at least fourteen (14) calendar days prior to the planned day of return. The department head shall promptly notify the Personnel Officer of the employee's intention.

An employee who fails to report to work upon the conclusion of the leave of absence may be considered to have abandoned his/her position.

The granting of any leave of absence without pay exceeding fifteen (15) calendar days or the prorated equivalent for three-quarter or half-time employees shall cause the employee's performance evaluation date and benefit accruals to be changed proportionately.

#### 09.10. ADMINISTRATIVE LEAVE

Administrative leave is a general term for temporary removal from a job assignment. An employee on administrative leave generally continues to receive pay and benefits during the leave, which can be as short as a day or as long as several months, depending on the circumstances. In rare occurrences, Administrative Leave may be non-paid leave, as determined by the Personnel Officer.

Employees on Administrative Leave will be required to call into the Personnel Office and are subject to return to work at any time while on leave.

## 09.11. SCHOOL-RELATED LEAVE

### 09.11.01 School or Licensed Day Care Activity Leave

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

### 09.11.02 Child Suspension Leave

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

## 09.12. TIME OFF TO VOTE

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

## Section 10. WORKERS' COMPENSATION

All injuries sustained in the course of employment shall be reported as soon as practicable to the supervisor, who shall in turn promptly report the same to the Human Resources Department. The supervisor and Human Resources Department shall authorize medical treatment for the employee at one of the City's approved medical clinics. In the event the employee is physically incapacitated in such a manner as to prevent submission of a report, the supervisor shall complete and forward the required reports to the Personnel Officer within twelve (12) hours following the injury.

Work related injury claims shall be administered under the California workers' compensation laws. Additionally, the City shall comply with the applicable rules and regulations issued by the California Occupational Safety and Health Administration (Cal-OSHA). The City shall complete and submit all required forms and reports as required by applicable law. The injured employee shall cooperate in the timely completion and submission of forms to the extent that the injured employee is capable of participating.

### 10.01. NON-SWORN EMPLOYEES

Whenever any employee is directed by direction of either the City's or his/her physician to be absent from work due to an injury or illness arising out of and in the course and scope of City employment, the employee shall receive full salary during the first ninety (90) days of such absence. During the period of time that an employee is on leave as a result of a work related injury/illness and receiving full salary from the City, the employee shall sign over to the City any workers' compensation disability payments received by the employee. Failure to do so shall cause the City to cease payment of the employee's salary.

The nature of certain injuries may not be readily identifiable as work related. In such cases, employees are to use accrued leaves unless and until a relationship between City employment and the injury is established if, any. If a relationship between City employment and the injury is established, the employee's leave balances will be restored to the levels that existed immediately prior to the injury.

After ninety (90) days, an employee may elect to apply pro-rated accrued sick leave to such absence in order to receive compensation equal to the difference between the compensation to which the employee is entitled under the Workers' Compensation Act (i.e. temporary disability payments) and his/her regular City salary. Once the employee's accrued sick leave has been depleted to the nearest hour, he or she may then elect to use any accrued vacation, personal holidays, and compensatory time in order to continue supplementing the amount of his/her temporary disability payments.

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



An injured employee shall accrue vacation, floating holiday, administrative leave, and sick leave during an absence resulting from an on-the-job injury. An employee shall not earn eligibility for consideration for merit salary increases during an absence resulting from an on-the-job injury providing the employee receives compensation payments under the provisions of the Workers' Compensation Act. A probationary employee shall be entitled to the same benefits as a regular employee, except such employee shall not continue to earn eligibility for consideration for regular status.

Medical care and payments for permanent disabilities incurred in the course of employment shall be as prescribed by the Workers' Compensation Act.

### 10.02. SWORN EMPLOYEES

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

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

The Personnel Officer may declare a position temporarily vacant due to the absence of an employee on leave pursuant to Labor Code section 4850 or on a long-term illness leave and the position may be filled by a temporary or acting appointment. A person appointed to the position shall sign a statement acknowledging that:

- The appointment is temporary only, with no attainment of regular status; and
- If already employed by the City, the appointee will revert to his/her original position and salary range upon notice from the Personnel Officer.

## Section 11. REASONABLE ACCOMMODATION/ INTERACTIVE PROCESS/ TRANSITIONAL RETURN TO WORK POLICY

### 11.01 Reasonable Accommodations

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

1. qualified individuals with disabilities, both applicants and employees, to enable them to perform essential job functions; and
2. employees with conditions related to pregnancy, childbirth, or a related medical condition, if she so requests, and with the advice of her health care provider; and
3. employee victims of domestic violence, sexual assault, or stalking to promote the safety of the employee victim while at work; and
4. employees who request reasonable accommodation to address a conflict between religious belief or observance and any employment requirement.

#### 11.01.01. Supporting Documentation or Certification

##### 11.01.01.01 Reasonable Medical Documentation of Disability

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

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

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

#### 11.01.01.03 Certification of Victim Status

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

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

#### 11.01.02. Fitness for Duty Examinations

##### 11.01.02.01 Applicants

After a conditional offer of employment has been extended to an applicant, the City may require the applicant to submit to a fitness for duty examination that is job-related; necessary for efficient operations of the agency; and required of all applicants for the job classification. An applicant or employee who is required to pass a medical and/or psychological examination will be notified of his/her right to obtain a second opinion at his/her expense and that he/she may submit such second opinions for consideration.

##### 11.01.02.02 Current Employee

The Personnel Officer may require an employee to submit to a fitness for duty examination to determine if the employee has a disability and is able to perform the essential functions of his or her job when there is significant evidence that:

- (a) the employee's ability to perform one or more essential functions of his or her job has declined; or
- (b) could cause a reasonable person to question whether an employee is still capable of performing one or more of his or her essential job duties, or is still capable of performing those duties in a manner that does not harm him or herself or others.

##### 11.01.02.03 Role of Health Care Provider

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

applicant or employee. The health care provider will examine the employee and provide the City with non-confidential information regarding whether:

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

Should the health care provider exceed the scope of the City's request and provide confidential health information, without valid consent of the applicant or employee, the City will return the report to the health care provider and request another report that includes only the non-confidential fitness for duty information that the City has requested.

#### 11.01.02.04 Authorization for Use of Medical Information

During the course of a fitness for duty examination, the City will not seek or use information regarding an employee's medical history, diagnoses, or course of treatment without an employee's written authorization.

#### 11.01.02.05 Medical Information from the Employee or Applicant

If an employee or applicant submits medical information to the City from his or her own health care provider, the Personnel Officer will not forward that information on to the health care provider who conducted the examination for the City, without the employee or applicant's written authorization. Upon receipt of the written authorization, the Personnel Officer will request the City-paid health care provider to determine whether the information alters the original fitness for duty assessment.

## 11.02 Interactive Process

### 11.02.01 When to Initiate the Interactive Process

The Personnel Officer will initiate the interactive process when:

- (a) an applicant or employee with a known physical or mental disability or medical condition requests reasonable accommodation(s); or
- (b) the City otherwise becomes aware of the need for an accommodation through a third party (e.g. a doctor's note requesting an accommodation), or by observation of the employee's work; or
- (c) the City becomes aware of the possible need for an accommodation because the employee with a disability has exhausted workers' compensation leave, Family and Medical Act leave, or other leave rights, but the employee and/or the employee's health care provider indicate that further accommodation is still necessary for recuperative leave or other accommodation; or
- (d) an employee disabled by pregnancy, childbirth or related medical conditions requests a reasonable accommodation or transfer based on the advice of her health care provider; or
- (e) an employee with a physical or mental disability, regardless of cause, fails to return to work following pregnancy disability leave; or
- (f) an employee-victim of domestic violence, sexual assault, or stalking requests a reasonable accommodation(s) for his or her safety at work; or
- (g) an employee requests an accommodation to address a conflict between religious belief, observance, or practice and any employment requirement; or
- (h) an employer is aware of the need for a reasonable accommodation for an employee's or applicant's religious beliefs, observance or practices.

### 11.02.02 Interactive Communication

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

#### 11.02.02.01 Potential Accommodations for Applicants or Employees with Disabilities

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

- making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities, including: acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, and/or the provision of qualified readers or interpreters;
- job restructuring;
- part-time or modified work schedules;
- paid or unpaid leave of absence of a finite duration that is likely to enable the employee to return to work at the end of the leave;
- preferential consideration to reassignment to a vacant, comparable position, except when such preference would violate a bona fide seniority system;
- reassignment to a vacant lower-paid position if there is no funded, vacant comparable position for which the individual is qualified for; or
- reassignment to a temporary position, if the individual agrees.

#### 11.02.02.02 Potential Accommodations for Employees Affected by Pregnancy and Related Medical Conditions

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

- transfer to a less strenuous or hazardous position for the duration of the pregnancy;
- change in or restructuring of work duties, such as modifying lifting requirements;
- providing more frequent breaks;
- providing seating;
- time off for medical appointments;
- transfer temporarily to a job with equivalent pay and benefits that the employee is qualified to perform in order to accommodate reduced work schedule or intermittent leave. (However, a reduction in work hours may be considered a form of pregnancy disability leave and deducted from the employee's four-month pregnancy disability leave entitlement.)

#### 11.02.02.03 Potential Accommodations for Employee-Victims of Domestic Violence, Sexual Assault, or Stalking

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

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

#### 11.02.02.04 Potential Accommodations for Religious Creed, Religious Dress Practice, or Religious Grooming Practice

Depending on the facts of each case, the interactive process analysis will review all possible accommodations that would resolve the conflict between the religious belief or observance and any employment requirement. The City will consider the preference of the employee or applicant, but has the right to select and implement any accommodation that it deems effective. The range of potential accommodations includes, but is not limited to:

- job restructuring or job reassignment (but not segregation from other employees or the public);
- modification of work practices, including dress or grooming standards;
- allowing time off in an amount equal to the amount of non-regularly scheduled time the employee has worked in order to avoid a conflict with his or her religious observances;
- allowing alternatives to union membership or payment of union dues.

#### 11.02.03 Determination

After the interactive process communications, the Personnel Officer will review the information received, and determine: whether all available information has been reviewed; whether all potential accommodations that the applicant or employee has suggested have been considered; whether additional discussions with the applicant or employee would be helpful; whether the applicant's or employee's preferences have been taken into account; if there is a reasonable accommodation that would enable the applicant or employee to perform essential job functions without harming him or herself or others; and if the accommodations would pose an undue hardship on City finances or operations. The Personnel Officer will inform the applicant or employee of his or her determination in writing. The Personnel Officer will use his or her discretion based upon the particular facts of each case.

#### 11.02.04 Access to Medical Information Regarding Fitness for Duty

Medical records and information regarding fitness for duty, or the need for an accommodation, will be maintained separately from non-medical records and information. Medical records and information regarding fitness for duty and the need for accommodation will be accessible only by the Personnel Officer, the City's legal counsel, first aid and safety personnel in case of emergency, and supervisors who are responsible for identifying reasonable accommodations. Medical records and information contained therein may be released pursuant to state and federal law.

#### 11.03. TRANSITIONAL RETURN TO WORK POLICY

The City is committed to providing a work environment that is free from discrimination. In keeping with this commitment, the City maintains a strict policy prohibiting discrimination and harassment of injured employees.

The purpose of the Transitional Return to Work (TRTW) program is to return injured employees who are temporarily precluded from performing their normal duties to work in a TRTW assignment where feasible. Based on the employee's job classification, work restrictions, and other applicable factors, the City reserves the right to establish TRTW assignments on a temporary basis as the individual circumstances allow.

#### 11.04. RESPONSIBILITY

The Personnel Analyst will act as the TRTW coordinator. This individual will function as the liaison with the workers' compensation claims administrator if the claim is industrial.

#### 11.03. EMPLOYEE PLACED ON TRTW BY A TREATING PHYSICIAN

If the employee has work restrictions and the employee's department is able to accommodate the restrictions, the employee's supervisor will notify the Personnel Analyst who will send a TRTW agreement letter to the employee. The employee's supervisor will ensure that the employee is complying with and working within the work restrictions imposed by the treating physician. The City has established a maximum time frame of ninety (90) days for employee participation in a TRTW program. The Personnel Officer may approve a one-time extension of that time frame where circumstances warrant.

#### 11.04. EMPLOYEE'S DEPARTMENT UNABLE TO ACCOMMODATE THE RESTRICTIONS

If the employee's department is unable to accommodate the restrictions, the department will notify the Personnel Analyst immediately who will contact departments for possible TRTW assignments based upon the employee's restrictions and instruct the employee where to report if an assignment in another department is located. If applicable, the Personnel Analyst will also initiate the interactive process, described above in Section 11.02.



#### 11.05. UNAVAILABLE TRANSITIONAL ASSIGNMENTS

If no transitional assignment is available, the employee will be put on leave of absence unless the interactive process has been initiated and another reasonable accommodation has been found. Employees off work are to contact the Personnel Analyst immediately following a change in work restrictions or medical condition as determined by his/her treating physician. Failure to contact the Personnel Analyst may result in disciplinary action. Notice and right to respond where applicable will be provided to the employee.

#### 11.06. INTERMITTENT ASSIGNMENT

If an employee completes a temporary assignment and there is no additional transitional work available, unless required by law to engage again in the interactive process, the employee will be put off work with notice and the right to respond. If the injury is industrial, the Personnel Analyst must immediately notify the workers' compensation claims administrator that the employee is not working.

#### 11.07. TIMESHEET PROCEDURES

The time record code "TRTW" shall be used to track employees on transitional return to work assignments. "TRTW" time is recorded on the employee's timesheet. The employee's regular program and account number are used.

## Section 12. GENERAL EMPLOYMENT MATTERS

### 12.01. DEPARTMENT HEAD AUTHORITY

Each operating department, under direction of its department head, shall have the authority to establish rules, regulations and work standards necessary for the efficient operation of that department. The rules established herein shall in all instances govern and take precedence over departmental policies.

### 12.02. HOURS OF WORK

Work schedules are determined at the sole discretion of the department head and are subject to change with or without notice, according to the needs of the department or City. An employee shall be in attendance at their work during the hours specified by the department head or designee. Any unauthorized absence may be cause for disciplinary action, up to and including discharge from employment.

An absence from work is authorized if the employee is granted permission to be absent from duty for a specified purpose with the right to return to duty upon the conclusion of authorized leave. Absences other than those authorized in these rules may be treated as an abandonment of the employee's position. Department heads shall be responsible for maintaining employee attendance records which shall be transmitted to the payroll division on in a standardized format at times specified by the Finance Director.

#### 12.02.01 Flexible Work Schedules

Recognizing the need for City of Sierra Madre employees to maintain work, family and personal commitments, the City supports flexible scheduling options that are mutually agreed upon by both the City and the employee. All flexible scheduling arrangements must be cost neutral and contribute to customer service, productivity, and employee morale.

##### 12.02.01.01 Scope

Flexible schedules may include variations in daily beginning and ending work time periods, providing those schedules comply with state and federal wage and hour laws.

##### 12.02.01.02 Process

Employees desiring flexibility in their schedule should give their department head a written proposal detailing the adjusted schedule and how that schedule meets the requirements of their job description and the goals purpose of this policy. The department head should recommend approval to the City Manager for proposals, which in their view meet the purpose and scope of this policy. The agreement to flex a schedule may be withdrawn at any time if, in the department head's view, it is no longer in the best interest of the City to continue the arrangement. The Director of Human Resources is available to consult with supervisors on options for flexible scheduling.

### 12.02.01.03 Flexible Scheduling Guidelines

Supervisors should consider the following guidelines as they review employee proposals for flexible schedules:

Department heads who establish flexible schedules should insure that their department is adequately covered and customer service is fully functioning for the entire regular business day.

Departments implementing flexible schedules must maintain or increase service levels to their constituents.

Employees working on a flexible schedule must maintain or increase personal productivity levels.

The implementation of flexible schedules should not add a cost to the City. (Examples of added costs could include temporary staff or overtime for other employees).

Flexible schedules should be customized based on the department's needs, the employee's "customers" needs and the employee's needs for flexibility.

In considering flextime for an employee, the needs of coworkers who are on a different schedule should be evaluated and balanced with the needs of the requesting employee. Reasonable adjustments are expected by both the requesting employee and coworkers to make a flexible schedule successful. For instance, on the one hand the employees on a flexible schedule needs to be accessible to other coworkers at certain times even though they are not at work. On the other hand, coworkers can rely on email and voice mail for communication and response instead of expecting immediate response for their own convenience. Good judgment, consideration and accommodation and understanding of other's needs are the ingredients for success.

In considering an employee's proposal for an adjusted schedule, the department head must take into consideration whether that employee's work lends itself well to flexibility. For example, a flexible schedule for a receptionist in a small office would likely hinder the department from meeting its service needs.

Flexible scheduling is a privilege (not an entitlement) that a department head might give to an employee. In considering an employee's proposal for an adjusted schedule, a department head should evaluate the employee's past work performance.

Each flexible scheduling arrangement should be implemented on a trial basis, with evaluation points occurring at the department head's discretion. Trial periods of at least three to four month intervals for the first year are recommended. Department heads should attempt to measure feedback from "customers" on effects of employee flextime.

#### 12.02.01.04. Exempt/Nonexempt Staff Distinctions:

In making decisions about flexible scheduling options, please keep in mind the legal distinctions between nonexempt (hourly) and exempt (salaried) employees. Those distinctions may affect scheduling options.

**Nonexempt Staff:** The City is required by the Fair Labor Standards Act to keep a record of the weekly hours worked by each nonexempt employee and to pay overtime for all hours worked in excess of 40 hours in a work week. The work week for full-time nonexempt employees is generally from 12:00 pm Friday through 11:59:59 am Friday, but may vary.

**Exempt Staff:** Exempt staff are paid on a salary basis. Exempt staff are paid "to get the job done" as opposed to being paid for the exact hours worked during each workweek.

The Director of Human Resources is available to consult with department heads who are considering an employee's proposal for a flexible schedule

### 12.03. MEAL PERIODS/REST PERIODS

A minimum of a thirty (30) minute non-compensated meal period shall be provided to any employee who works six or more hours in one workday. The meal period may be taken at the mid-point of the shift, or when otherwise authorized by a supervisor.

A ten (10) minute compensated rest period will be provided to all employees for each four (4) hour period of service. The rest period shall be taken at a time designated by the employee's supervisor.

### 12.04. TIME CLOCK MANAGEMENT SYSTEM

It is the policy of the City of Sierra Madre to provide an effective time management system. The following procedures outline the appropriate use and function of the time clock system. This policy will apply to all non-exempt employees who are paid on an hourly basis. The City will utilize a biometric fingerprint system for attendance and time. A fingerprint time clock will be placed in each facility. Fingerprints cannot be downloaded using this system.

#### 12.04.01. Clocking In/Out

The City will utilize a seven-minute rule policy for clocking in or out for the purpose of rounding. This will allow employees to clock in seven minutes before and seven minutes after the beginning and end of the employees schedule shift. This time allowance does not excuse tardiness or leaving early; employees are expected to be ready to work at the beginning of their scheduled shift and remain on the job until the end of their shift.

1. An employee clocking in at 7:25 am, the employee will be paid beginning at 7:30 am.
2. An employee clocking out at 5:33 pm will be paid at 5:30 pm.

- Supervisors are responsible for insuring that employees are not recording time outside of this seven-minute window, as it will result in the payment of non-worked overtime. (i.e. if an employee clocks-in at 7:52 am for an 8:00 am shift, time will be paid from 7:45 am resulting in .25 hours of overtime).

#### 12.04.02. Missed Punches

If an employee misses an entry into the time clock system, the employee must notify his or her supervisor as soon as possible. The supervisor will manually enter the employee's work hours. Failure to clock in or out as directed, or a pattern of failing to clock in and out on a regular basis, may result in disciplinary action.

#### 12.04.03. Equipment Malfunction

If an employee is unable to clock in in or out due to time clock malfunction, it is the employee's responsibility to immediately inform his or her supervisor. There shall be no attempt by any employee to repair any equipment at any time.

#### 12.04.04. Disputes

In case of a timesheet dispute, the employee shall make a written notice of problems and submit to his or her supervisor on duty. If no malfunction or other mechanical problem is found with the device in question and no other evidence can substantiate the employee's claims, the records recorded by the time clock shall be considered final.

#### 12.04.05. Subject to Discipline

Employees shall be subjected to immediate discipline, up to and including termination, for any violations of the following:

- Any attempt to tamper with time clock hardware or software
- Falsification of information, whether intentional or unintentional
- Attempting to clock in or out for any other employee.
- Any action, whether intentional or unintentional, which damages or causes to damage any timekeeping equipment.
- Having any access to any time clock software without permission of the administrator or supervisor.
- Interfering with any investigation concerning any timekeeping issues.
- Attempting to view any other employee records or download any records.

### 12.05. LACTATION POLICY

#### 12.05.01 Lactation Break Time and Location

The City will provide a reasonable amount of break time to accommodate any employee desiring to express breast milk for the employee's infant child each time the employee has a need to express milk. The break time shall, if possible, run concurrently with any break time already provided to the employee. If the employee takes lactation breaks at times other than their

provided break times, then the lactation break shall be unpaid or the employee may choose to use accrued leave.

Those desiring to take a lactation break at times other than their provided break times must notify a supervisor prior to taking such a break. Breaks may be reasonably delayed if they would seriously disrupt operations. Once a lactation break has been approved, the break should not be interrupted except for emergency or exigent circumstances.

The City will provide a room or other appropriate location in close proximity to the employee's worksite that is not in a bathroom to express milk in private. The room or location will meet the following requirements:

- Be shielded from view and free from intrusion while being used to express milk;
- Be safe, clean, and free of hazardous materials;
- Contain a surface on which to place a breast pump and personal items;
- Contain a place to sit; and
- Have access to electricity needed to operate an electric battery-powered breast pump.

An employee occupying such private area shall either secure the door or otherwise make it clear to others through signage that the area is occupied and should not be disturbed. All other employees should avoid interrupting an employee during an authorized break under this section, except to announce an emergency or other urgent circumstance.

The City will provide access to a sink with running water and a refrigerator, or other cooling device, suitable for storing milk, in close proximity to the employee's work area.

#### 12.05.02 Lactation Accommodation

An employee may make a request for lactation accommodation, either orally or in writing, with the Human Resources Department.

Following receipt of a request for lactation accommodation, the City will provide a timely written response to the employee in which the City will indicate if it is unable to provide the requested break time or a requested location for the purposes of expressing breast milk.

An employee does not believe that the City is providing an appropriate lactation accommodation should immediately inform the Human Resources Department.

An employee who does not believe that the City is providing an appropriate lactation accommodation as required by state law has the right to file a complaint with the California Division of Labor Standards Enforcement/Labor Commissioner.

### 12.06. GIFT POLICY

Gifts to public employees and volunteers by the general public (residents, consultants, developers, or other private individuals) shall not be accepted if worth more than the gift limits specified in the Fair Political Practices Commission Form 700 guidelines in effect at the time of acceptance.

If gifts such as food are received they should be displayed in a place to be shared with other City employees.

### 12.07. EMPLOYEE IDENTIFICATION BADGE

The City issued photo ID badge will contain the employee's photo, name, job classification, and employee ID number. All employees will be required to have their City issued photo ID badge on their person at all times during their on duty shift. The City issued ID will be worn face forward in full view, on or over the outermost garment, at or above the waist. Employees who are off-duty, but who are entering into an area within a City building or facility in which the public doesn't normally have access, must wear their ID badge in accordance with this policy. Each department will be responsible for ensuring that ID badges are worn or carried, as required.

Individual departments may exempt their employees from wearing their ID badge if those employees are required to wear a uniform that clearly identifies them as a City employee and/or if wearing a lanyard, pulley, or clip presents a safety hazard to the employee due to the nature of their job duties. These employees, however, are required to carry their ID badge in order to provide further identification if necessary.

Identification badges will be issued to new employees upon hire, at their New Employee onboarding or within a reasonable amount of time after the start of their employment. Lost or stolen ID badges shall be reported immediately to Human Resources Department. The Human Resources Department will assist employees in obtaining a replacement ID badge. There will be no charge for replacement ID badges.

Some of the cards issued to employees are connected to an electronic identification and authentication system. The electronic chip in the identification card is linked to other identifiers in a City database and allows access to areas approved by the employee's department director and/or Human Resources Manager.

Departments such as Police and Fire, which by law or necessity are required to have employee ID badge requirements that are more stringent than what is contained in this policy, shall not have their policies superseded by any provision(s) contained within this policy.

Optional City issued lanyards (around the neck ID badge holders) will available at no cost for employees through the Human Resources Department. ID badges may also be attached using an ID pulley and/or clip. Employees may opt to wear personal lanyards, pulleys, or clips; however, the style must not depict any offensive materials or slogans. If necessary, the final determination

of what may be considered “offensive” to the City shall be at the discretion of the City Manager or his/her designee.

Photos taken to be used for ID badges are considered part of the employee’s employee profile. Identification photos will not be used for any purpose other than employee photo ID badges or security measures.

All employees upon separation from the City, are required to return their ID badge to their supervisor or the Human Resources Department.

#### 12.07.01 City Issued ID Badge Procedures

- **New Employee**  
New employees will complete an Employee ID Badge Request form, be photographed and issued an ID badge at or upon new employee onboarding process or within a reasonable amount of time after the start of their employment. Promotional employees will complete an Employee ID Badge Request Form with new classification data at the time of promotion.
- **Current Employee**  
Current employees who have not been photographed for an ID badge should contact the Human Resources Department to schedule an appointment and complete an Employee ID Badge Form with required signatures.
- **Volunteers and Contractors**  
A department may request that volunteers and/or contractors working at a City department site obtains an ID badge. The department should contact Human Resources to schedule an appointment for the non-employee ID badge.

#### 12.07.02 City Issued ID Badge Replacement and Separation Procedures

- **Employee**  
Complete an Employee ID Badge Request Form with required signatures  
  
Contact Human Resources Department for an ID Badge photo appointment  
  
Upon printing, or appointment time, report to the Human Resources Department, submit the Employee ID Badge Request Form.



### **Upon Separation**

When an employee, volunteer or contractor separates from the City of Sierra Madre, the card is invalid for continued use of City facilities and services. The card becomes inactive for contractors and temporary workers once their contract expires. The City of Sierra Madre identification card is the property of the City and must be surrendered to a supervisor or Human Resources Department.

#### **12.07.03 Lost, Stolen, or Damaged ID Badges**

Any employee who becomes aware that their identification badge has been lost, stolen, or damaged must immediately report the occurrence to Human Resources and their department. A replacement identification card will be issued upon completion of an Employee Identification Badge Form. If an employee misplaces his or her identification badge three (3) times or more within thirty (30) calendar days, the Department Director and/or supervisor will counsel the employee. Further incidents may lead to discipline or termination of contract.

#### **12.08. EMPLOYEE ACTIVITIES**

Employees shall devote their full attention to assigned duties during compensated hours of work. No City employee shall engage in any employment, enterprise or outside activity which conflicts with his/her duties, functions, or responsibilities as a City employee, nor shall the employee engage in any outside activity for compensation which will directly or indirectly detract from the employee's effectiveness as a City employee. No full-time employee shall engage in any outside employment without first obtaining written approval of the Personnel Officer.

In making a determination as to the consistency or inconsistency of outside activities, the appointing authority shall consider, among other pertinent factors, whether the activity involves:

- Employee receipt or acceptance of any money or other consideration from anyone other than the City for the performance of an act which the employee would be required or expected to perform in the regular course of City employment; or,
- The performance of an act or work which may later be directly or indirectly subject to the control, inspection, review, audit or enforcement by such employee or other City employees; or
- Conditions or factors which might, directly or indirectly, lessen the efficiency of the employee in regular City employment or conditions in which there is a substantial danger of injury to or illness of the employee; or
- The use for private gain or advantage of City time, facilities, equipment and supplies, prestige, influence, or information obtained through one's City office or employment; or
- The solicitation of future employment with a firm or individual doing business with the City over which the employee has some control or influence in the course of performing official duties.

No City-owned equipment, vehicles, trucks, instruments, tools, supplies, machines, badges, identification cards, computers, telephones or other items which are the property of the City shall be used by any City employee for personal or non-City business reasons except upon written approval of the Personnel Officer.

#### 12.09. EMPLOYEES AS VOLUNTEERS

The City accepts the services of employees as volunteers. This service is accepted provided that the volunteer service is provided totally without any coercive nature, involves work which is outside the scope of, and not similar in any way to, the employee's normal duties, and is provided outside of usual working hours. Family members of employees are allowed to volunteer with the City. When family members are enrolled as volunteers, they will not be placed under the direct supervision or within the same department as other members of their family who are employees. An exception for family participation in episodic volunteer work may be granted by the City Manager.

#### 12.10. POLITICAL ACTIVITY OF CITY EMPLOYEES

Government Code sections 3201 through 3209 ("Political Activities Chapter") regulate these activities.

California law prohibits all of the following by City officials and employees:

- Soliciting or receiving political funds or contributions to promote the passage or defeat of any ballot measure that would affect working conditions during the working hours of its officers and employees, or in City offices.
- Directly or indirectly soliciting political contributions from other officers or employees of the City unless the solicitation is part of a solicitation made to a significant segment of the public which may incidentally include officers from and employees of the City.
- Engaging in political activities of any kind while in uniform). Thus, firefighters and police officers who wish to engage in campaign activities must do so out of uniform. Wearing campaign badges while in uniform is prohibited.
- Engaging in political activity during working hours or on City property.
- The use of public resources for partisan political purposes is also prohibited. The City can provide neutral, balanced information about measures on the local ballot, election proceedings, and the like. Neither the City, nor its employees and officials, however, may use public resources (including email, telephones, faxes, copiers, etc.) to encourage a "yes" or "no" vote on any measure or a vote for or against any candidate.

### 12.11. SMOKING AND TOBACCO USE

Smoking, vaping, and any other form of tobacco use, including chewing tobacco, is prohibited in or on any City property, buildings, parks, or vehicles.

### 12.12. PORNOGRAPHY IN THE WORKPLACE

The City is determined to provide a productive environment free from any threats of harassment. Racy, obscene, or pornographic literature, materials or images will not be tolerated on City property, whether it is in public areas or in spaces assigned to an employee or volunteer including, but not limited to buildings, lockers, desks, vehicles or bunks. Additionally, no racy, obscene or pornographic materials may be transmitted or accessed while on-duty or on City property, or at any time through City owned or provided electronic equipment including, but not limited to computers and mobile phones.

### 12.13. WORKPLACE VIOLENCE PREVENTION

#### 12.13.01 Safe and Secure Workplace

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

#### 12.13.02 Prohibited Behavior

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

#### 12.13.03 "Workplace Violence"

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

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

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

#### 12.13.04 Incident Reporting Procedures

(a) Employees must immediately report to their supervisor or department director whether they have been a victim of, or have witnessed, workplace violence. The supervisor or department director will immediately report the matter to the Personnel Officer.

(b) The Personnel Officer or designee will document the incident, including the employee names(s), date/time, location, incident description, witness names and statements, description of unidentified parties, description of the act(s) and/or behavior arising from the incident, action taken, and provide any other relevant information regarding the incident.

(c) The Personnel Officer or designee will take appropriate steps to provide security, such as:

- 1) Placing the employee alleged to have engaged in workplace violence on administrative leave, pending investigation;
- 2) Asking any threatening or potentially violent person to leave the site; or
- 3) Immediately contacting an appropriate law enforcement agency

#### 12.13.05 Investigation

The Personnel Officer will see that reported violations of this Policy are investigated as necessary.

#### 12.13.06 Prevention

Each department head has authority to enforce this Policy by:

- (a) Training supervisors and subordinates about their responsibilities under this Policy;
- (b) Assuring that reports of workplace violence are accurately and timely documented and addressed;
- (c) Notifying the Personnel Officer and/or law enforcement authorities of any incidents;
- (d) Making all reasonable efforts to maintain a safe and secure workplace; and
- (e) Maintaining records and follow up actions as to reports of workplace violence.

#### 12.14. EMPLOYEE ASSISTANCE PROGRAM

It is City policy to offer referral to appropriate education, prevention, counseling, treatment and rehabilitation programs and services to employees and their eligible dependents when alcohol or drug abuse, individual psychological problems, marital, family or child difficulties, work stress, or financial or legal concerns arise which may impact an employee's work performance.

The City will provide an active Employee Assistance Program (EAP) to assist and refer employees and their eligible dependents to appropriate education, prevention, counseling, treatment, or rehabilitation services.

It is the responsibility of each employee to seek assistance from the EAP before the employee's alcohol or drug problems lead to disciplinary action.

An employee's decision to seek voluntary help from the EAP shall not be used as a basis for disciplinary action against the employee. However, misconduct by an employee shall not be excused merely because the employee has sought help

The confidentiality of individuals utilizing the EAP will be protected within the limits of the law.

### 12.15. LAYOFF PROCEDURE

Whenever in the judgment of the City Council it becomes necessary to abolish any position or employment, the employee holding such a position or employment may be laid off or demoted for non-disciplinary reasons and without the right of appeal.

Employees to be laid off shall whenever possible be given at least fourteen (14) calendar days prior notice.

Employees shall be laid off in the inverse order of their seniority in their classification. Seniority shall be determined based upon date of hire with the City.

If two or more employees in a classification to be laid off have the same length of employment, the employee to be laid off will be decided by lottery.

Regular employees who have received a satisfactory or better evaluation for the 12-months prior to lay off, who have completed their probationary period and who have been laid off shall be automatically placed on a re-employment list for two (2) years for the classification from which they were laid off.

Regular employees who are designated to be laid off and have held regular status in a lower classification within the same classification series (e.g. development services series, community service series, police series, fire series, etc.) in the same department may displace ("bump") employees in the lower classification, provided that the employee exercising the displacement privilege has greater classification length of service than the incumbent in the class into which the employee is bumping. If the employee in the higher classification has not held status in a lower classification, then no displacement rights accrue to that individual. Conditions which affect displacement rights are as follows:

- The employee exercising the displacement privilege will displace employees in lower classifications in the inverse order of seniority.

*Section 12. General Employment Matters*

- All employees must exercise displacement privileges within five (5) working days after receipt of the Notice of Layoff by written notice to the Personnel Officer. If this choice is not exercised within the specified time period, it is automatically forfeited.

## Section 13. PERSONNEL FILE POLICY

A personnel file will be maintained for each employee. Each file will contain the following documents, if applicable:

- Employee's employment application.
- Offer letter,
- At-will acknowledgement,
- Records of all changes in salary and position (PAF's),
- Forms signed by employee to secure benefits,
- Forms reflecting changes in beneficiary and/or insurance coverage,
- Performance evaluations and rebuttals to performance evaluations,
- Written reprimands and rebuttals to written reprimands,
- Employee acknowledgments,
- Awards,
- Compliments and commendations,
- Disciplinary actions,
- Records of training,
- Verification of employee's references,
- Records of termination and reasons therefore.

An employee's personnel file will be maintained by the Human Resources Department. Only the following individuals may have access to the file: the City Manager, Department Heads, Human Resources Analyst, and City Attorney or other authorized City legal counsel. Any employee granted access to another employee's file must hold a confidential-exempt or management position. Under no circumstances will rank and file police employees, classified employees, part-time seasonal staff or volunteers who do not have department head status be granted access to another employee's personnel file. For purposes of processing payroll, files that contain the above information, to the extent necessary to process payroll, will be available to employees who process payroll.

### **13.01. EMPLOYEE RECORD INSPECTION POLICY**

The City will maintain the official personnel file containing all personnel information and documents.

An employee wishing to inspect his/her personnel file may only do so between the hours of 9:00 a.m. and 5:00 p.m. Monday through Thursday (holidays excluded).

An employee wishing to inspect his/her personnel file must submit a written request for an appointment with the Personnel Analyst at least 1 working day in advance. The Personnel Analyst will then notify the employee in writing of the date and time of the inspection. The employee will not be required to wait more than 3 working days from the time the request was made to inspect his/her file.

In the event the employee wishes to have another person/representative inspect his or her personnel file, the employee must provide the person/representative with written authorization at least 1 working day in advance. The Personnel Analyst will then notify the employee in writing of the date, time and place of the inspection. It is the employee's responsibility to notify the person to whom the employee has given written authorization to review the employee's personnel file of the date, time and place of the inspection.

The City shall have an official monitor the employee's and/or the employee's designee's inspection of the personnel while it is being reviewed. Under no circumstances shall the employee and/or the employee's designee remove the personnel file or any of its contents from the area designated by the City during the inspection. Should the employee desire copies of any documents located in his/her personnel file, the City will have the documents copied at the employee's expense within 3 working days of the request.

The employee and/or the employee's designee shall not under any circumstances add or remove any document or other item from the employee's personnel file during the inspection.

An employee will not have the right to inspect records relating to the investigation of a possible criminal offense, letters of reference and/or ratings, reports or records that were: (1) obtained prior to the employee's employment with the City; (2) prepared by identifiable examination committee members and/or (3) obtained in connection with a promotional exam.

### 13.02.LAW ENFORCEMENT OR FIREFIGHTER PERSONNEL FILE INSPECTION POLICY

The Human Resources Department will maintain the official personnel file containing all personnel information and documents pertaining to Police and Fire Department employees. In no case shall an employee have the right to inspect records relating to the investigation of a possible criminal offense, letters of reference and/or ratings, reports or records that were: (1) obtained prior to the employee's employment with the City; (2) prepared by identifiable examination committee members and/or (3) obtained in connection with a promotional exam.

In responding to law enforcement background investigations and reference checks, pursuant to Government Code section 1031.1, the Police Department will only consider the contents of the official personnel file in considering its response to such a request pursuant to Government Code section 1031.1.

An employee wishing to inspect his/her personnel file must submit a written request for an appointment with the Personnel Analyst at least 1 working day in advance. The Personnel Analyst will then notify the employee in writing of the date and time of the inspection. The employee will not be required to wait more than 3 working days from the time the request was made to inspect his/her file.



An employee wishing to inspect his/her personnel file may only do so between the hours of 9:00 a.m. and 5:00 p.m. Monday through Thursday (holidays excluded).

In the event the employee wishes to have another person/representative inspect his or her personnel file, the employee must provide the person/representative with written authorization at least 1 working day in advance. The Personnel Analyst will then notify the employee in writing of the date, time and place of the inspection. It is the employee's responsibility to notify the person to whom the employee has given written authorization to review the employee's personnel file of the date, time and place of the inspection.

The Department shall have an official monitor the employee and/or the employee's designee's inspection of the personnel file while it is being reviewed. Under no circumstances shall the employee and/or the employee's designee remove the personnel file or any of its contents from the area designated by the Department during the inspection. Should the employee desire copies of any documents located in his/her personnel file, the Department will have the documents copied within 3 working days of the request.

The employee and/or the employee's designee shall not under any circumstances add or remove any document or other item from the employee's personnel file during the inspection under any circumstances. However, if after the inspection of the employee's personnel file the employee believes that any portion of the material contained in the personnel file has been mistakenly or unlawfully placed in the personnel file, the employee may request, in writing, that the mistaken or unlawful portion be corrected or deleted. This request must also state all reasons supporting the request for corrections or deletions. Within 30 calendar days of receipt of this request, the City will notify the employee in writing of its decision whether to grant or deny the employee's request for corrections or deletions. In the event the City denies the employee's request in whole or in part, the City's written response shall state the reasons for the denial of the request. The request and statement of reasons supporting the request will become part of the employee's personnel file regardless of whether the City agrees with the employee's requested corrections or deletions. Similarly, the City's written response granting or denying the request shall be placed in the employee's personnel file.

No officer or firefighter shall have any comment adverse to his or her interest entered into his or her personnel file without the officer or firefighter having first been given the opportunity to read and sign the document containing the adverse comment indicating that he or she is aware of such comment. Should the officer or firefighter refuse to sign the document that fact shall be noted on the document and signed or initialed by such officer or firefighter.

An officer or firefighter shall have 30 days in which to file a written response to any adverse comments entered into his or her personnel file. Such a written response shall be attached to, and shall accompany, the adverse comment.

### 13.03. DISCLOSURE TO THIRD PARTIES

The City is extremely concerned about the accuracy of information provided for job references. Consequently, no employee may provide, either on or off the record, any information or letters of reference on current or former employees to any non-employee.

The Human Resources Department should be advised of any such requests. The Human Resources Department will normally verify, on written request, only a former employee's dates of employment, position held, and final rate of pay. A written disclosure authorization and release shall be required before any additional information is furnished.

## Section 14. CUSTOMER SERVICE POLICY

Employees of the City are committed to providing high quality services and facilities in a fiscally sustainable, responsive and friendly manner to foster a safe and healthy community.

### 14.01. MANAGEMENT RESPONSIBILITY

All City employees shall be made aware of their individual responsibility to provide excellent customer service and the importance of customer service within the City's operation. Leadership by example is a key component to excellence in customer service. City department heads and supervisors must continually promote, in their actions, words and writing, the importance of the highest customer service standards.

### 14.02. CUSTOMER SERVICE STANDARDS

The City recognizes that, for a successful interaction with a customer, not only must the end result be satisfactory, the entire experience must be reflective of a quality organization. There are many aspects of our services that must be founded on the concepts of excellent customer service.

#### 14.02.01. Processes

There are many processes within the City that require formal procedures be followed. The City must strive to make these processes as consistent and simple as possible throughout all City departments. Simplification of forms, easy to understand directions, up to date public information and forms available via the website, and short time lines are key examples of efforts that should be put forth to assure that customer service orientated processes are in place.

#### 14.02.02. Marketing and Communication

The City provides information and services to residents on an ongoing basis. Communication with the public, oral and written, must be clear, concise, consistent and easy to access. Departments should strive to utilize all communication possibilities as efficiently as possible to assure that City residents remain informed and aware on a regular basis. In order to best achieve this, all marketing and communications should be approved and dispersed through the Public Information Officer.

#### 14.02.03. Phone and Written Inquiries

All inquiries by either phone or in writing shall be responded to by the proper person in accordance with this policy. Phone calls placed to a specific person shall be answered by a live person whenever possible. Initial phone messages must be returned within one business day. Employees at all levels must adhere to this timeline. If an employee is not available to return calls within one business day, the caller should be given that information and informed when the person will be available. Alternative help should be offered in the interim.

All written inquiries, including email, be they complaints, compliments or suggestions, should be acknowledged in an appropriate manner. The initial response should be within no more than three business days of receipt of letter or email.

The use of automated phone answering systems, including voicemail, can be an effective tool in the pursuit of excellence in customer service. Any department or employee that utilizes such a device must assure that the information it provides is regularly updated and that it can be easily bypassed to achieve direct contact with live people in the office. When an employee is out of the office for more than one day, he/she must use out of the office greeting for both voice mail and electronic mail.

#### 14.02.04. Information and Referral

Many times residents will make inquiries concerning issues that are not within the City's purview (for example, school district, county, store). Every effort should be made to refer them to the governmental or community service agency that is best able to handle their concern. All referrals should include a phone number or location of the suggested agency if at all possible. Internal referrals should be handled in a similar manner. If a person, on the phone or through email, is being referred to a different department or employee, the caller should be given the direct dial number for future reference and then automatically transferred through the phone or email systems. Customers should not be made to call back at that time.

If a referral is made to another City department, there must be certainty that the referral is correct. If there is some doubt as to the proper referral, the referring department should ascertain the appropriate contact before connecting or directing the customer. If this information is not obtainable the customer should be directed to a supervisor in the initiating department.

#### 14.02.05. Complaints/Compliments

Each department shall have a complaint log. Whether a complaint is formal or informal, written or verbal, it must be entered into the complaint log. The substance of the log is within the discretion of each individual department, but must include at minimum the name of the complainant if available, the time and date of the complaint, the nature of the complaint, the employee handling the situation and the disposition of the situation, plus contact information for the complainant (name, address, telephone number, email address, etc.).

Departments should make equivalent attempts to log public or internal compliments of excellent customer service provided by City employees. Employees who are the subject of such praise should be copied or notified of these compliments by their supervisor.

#### 14.02.06. Internal Service Departments

Administrative Services and Human Resources primarily service other City departments. The City's customer service standards are fully applicable to our internal service departments and all internal services occurring throughout the City and within departments. The ability of the City to meet its own needs in a professional, efficient and customer service orientated manner is a key component to offering such service to the public.

## Section 15. DRUG AND ALCOHOL FREE WORKPLACE POLICY

The application of this Drug and Alcohol Free Workplace Policy (“Policy”) to non-safety sensitive employees comes under the City’s own authority.

### 15.01. PURPOSE

The City of Sierra Madre (the “City”) is committed to maintaining a workplace that is free of drugs and alcohol and to discouraging drug and alcohol abuse by its employees. The City has a vital interest in maintaining safe and efficient working conditions for its employees. Substance abuse is incompatible with health, safety, efficiency, and success at the City. Employees who are under the influence of alcohol or who have any illegal drugs in their system, or who abuse legal drugs while conducting or performing City business compromise the City’s interests, endanger their own health and safety and the health and safety of others, and can cause a number of other work-related problems, including absenteeism and tardiness, substandard job performance, increased workloads for coworkers, behavior that disrupts other employees, delays in the completion of work, inferior quality in service and disruption of resident relations.

It is important for employees to understand that this Policy governs not only the abuse of alcohol and illegal drugs, but also the use and abuse of legal drugs in the workplace. Employees who find the need to use legal drugs, including prescription and over-the counter drugs, should consult with and must comply with those provisions set forth in this Policy that address such use.

To further its interest in avoiding accidents, to promote and maintain safe and efficient working conditions for its employees, to protect its business, property, equipment and operations, and to comply with all federal and state requirements, the City has established this Policy concerning employee use of alcohol and drugs. As a condition of continued employment with the City, each employee must abide by this Policy.

### 15.02. DEFINITIONS

For purposes of this Policy:

**Illegal Drugs or Other Controlled Substances:** Illegal drugs or other controlled substances means any drug or substance that (i) is not legally obtainable; or (ii) is legally obtainable but has not been legally obtained; or (iii) has been legally obtained but is being sold or distributed unlawfully.

**Legal Drugs:** Legal drugs means any drug, including prescription drugs and over the-counter drugs, that has been legally obtained and that is not unlawfully sold or distributed.

**Abuse of Any Legal Drug:** Abuse of any legal drug means the use of any legal drug (i) for any purpose other than the purpose for which it was prescribed or manufactured; or (ii) in a quantity, frequency, or manner that is contrary to the instructions or recommendations of the prescribing physician or manufacturer.

**Reasonable Suspicion:** Reasonable suspicion means that, based on objective factors, a reasonable person would believe that the employee is under the influence of drugs or alcohol at work. Examples of objective factors, include, but are not limited to: unusual behavior, slurred or altered speech, body odor, red or watery eyes, unkempt appearance, unsteady gait, lack of coordination, sleeping on the job, a pattern of abnormal or erratic behavior, a verbal or physical altercation, puncture marks or sores on skin, runny nose, dry mouth, dilated or constricted pupils, agitation, hostility, confused or incoherent behavior, paranoia, euphoria, disorientation, inappropriate wearing of sunglasses, tremors, or other evidence of recent drug or alcohol use. If the City suspects drugs or alcohol may have played a role in an accident involving City property or equipment, that will also constitute reasonable suspicion.

**Possession:** Possession means that an employee has the substance on his or her person or otherwise under his or her control.

### 15.03. THE CITY'S CONSENT FOR USE OF LEGAL DRUGS

#### 15.03.01. Use of Legal Drugs

The City recognizes that it may be necessary for employees to use legal drugs from time to time. The City also recognizes that an employee who is using legal drugs might become impaired by the drug such that the employee's ability to adequately or safely perform is compromised. In order to accommodate employees who might be required to use legal drugs, and to help assure that no serious adverse consequences in the workplace result from such drug use, employees are required to obtain the City's consent and comply with certain disclosure and work-restriction requirements under the following circumstances.

#### 15.03.02. When Consent Is Required

Employees who know or should know that their use of legal drugs might endanger their own safety or the safety of another person, or might pose a risk of significant damage to the City's property, or might substantially interfere with their job performance or the efficient operation of the City's business, are obligated to report such drug use to the Director of Human Resources or the City Manager, and to obtain the City's consent to continue working. The City reserves the right to have either a City physician or the employee's own physician determine whether it is advisable for the employee to continue working while taking such drugs.

#### 15.03.03. Duty to Disclose

Employees who operate or who are responsible in any way for the operation, custody or care of the City's property, or for the safety of other employees or other persons, have a duty to disclose the nature of their job duties to any prescribing physician or pharmacist and/or to a City physician or pharmacist and to inquire of the physician(s) or pharmacist whether their use of the drugs prescribed might result in the dangers, risks or impairment that this Policy is intended to prevent.

#### 15.03.04. Restrictions on Work

The City reserves the right to restrict the work activities of any employee who is using legal drugs or prohibit any employee from working entirely while he or she is using legal drugs.

#### 15.03.05. Duty to Refrain from Working

Each employee using legal drugs has a duty to not report for work while impaired by the drug if such impairment might result in serious harm or damage or might interfere with his or her job performance. Accordingly, even if an employee has obtained the City's consent to continue working while taking legal drugs, the employee will not be authorized to work while impaired by the use of such drug if the employee knows or has reason to know that working while impaired might endanger the safety of the employee or some other person, pose a risk of significant damage to the City's property, or substantially interfere with the employee's job performance or the efficient operation of the City's business.

#### 15.03.06. Medical Marijuana Card and/or a Cannabis Prescription

Having a Medical Marijuana Card and/or a cannabis prescription from a physician does not allow you to use or possess any cannabis products (marijuana, hash, or hash oil) on City properties, while working as an employee, or while 'on call' and subject to return to work. The federal government still classifies cannabis as an illegal drug, even if the state of California has decriminalized its possession or use. Unlike .08 blood alcohol levels, as yet there is no 'acceptable level of driving impairment' when it comes to cannabis use and driving City equipment or vehicles. Employees are still subject to testing under the City's pre-employment, reasonable suspicion, and safety sensitive employee policies, and are subject to discipline up to and including termination for a positive cannabis test.

### 15.04. PROHIBITED CONDUCT

The prohibitions of this section apply whenever the interests of the City may be adversely affected, including any time the employee is:

- On City premises;
- Conducting or performing City business, regardless of location;
- On call or standby to perform City business;
- Operating or responsible for the operation, custody, or care of City vehicle, equipment or other property; or
- Responsible in any way for the safety of other individuals associated with City, including, but not limited to, co-employees, management, visitors, residents and vendors.

#### 15.04.01. Alcohol

The following acts are prohibited and subject an employee to discharge:

- The unauthorized use, possession, purchase, sale, manufacture, distribution, transportation or dispensation of alcohol; or
- Being under the influence of alcohol as defined by applicable state law.

#### 15.04.2 Illegal Drugs

The following acts are prohibited and subject an employee to discharge:

- The use, possession, purchase, sale, manufacture, distribution, transportation, or dispensation of any illegal drug or other controlled substance; or
- Having any illegal drug or other controlled substance in your system.

#### 15.04.04. Legal Drugs

The following acts are prohibited and subject an employee to discharge:

- The abuse of any legal drug; or
- The purchase, sale, manufacture, distribution, transportation, dispensation, or possession of any legal prescription or over-the counter drug in a manner inconsistent with law; or
- Working or being subject to call in while impaired by the use of a legal drug in violation of Section 15.03 above; or
- Working or being subject to call in without obtaining the required consent in violation of Section 15.03, above; or
- Failure to make proper disclosure in violation of 15.03, above.

### 15.05. SUBSTANCE SCREENING

#### 15.05.01. Job Applicants

For certain jobs where a special need for pre-employment drug and alcohol testing exists, job applicants may be required to undergo drug and alcohol testing following a conditional offer of employment with the City.

#### 15.05.02. Employees

Current employees will be subject to testing if they:

- Report to work or, while conducting or performing City business regardless of location, are suspected of being intoxicated or exhibiting abnormal behavior or performance difficulties associated with substance abuse;
- Are involved in a work-related accident and the City has reason to suspect that drugs or alcohol may have played a role in an accident;
- Are subject to federal or state regulatory requirements for random drug or alcohol testing; or
- Are in safety-sensitive positions or other positions in which impaired performance could have an adverse effect on the health or safety of the employee, his or her co-employees, other individuals or the City.

#### 15.05.03. Testing

The City may utilize each or all of the following testing methods:

- Pre-employment testing;
- Random testing for employees in safety-sensitive positions;
- Reasonable suspicion testing; and
- Testing authorized or required by federal or state regulations, including Department of Transportation regulations.

### 15.06. DISCIPLINARY ACTION

Violation of this Policy by any employee may result in discipline, up to and including discharge, depending on the circumstances and at the discretion of the City. At a minimum, disciplinary mandates for safety-sensitive positions, as required under Title 13 of the California Code of



Regulations and Title 49 of the Code of Federal Regulations, will be followed for those individuals in safety-sensitive positions.

#### 15.06.01. Effect of Criminal Conviction

An employee who is convicted under a criminal drug statute for a violation occurring in the workplace, while conducting or performing City business regardless of location, or during any City-related activity or event will be deemed to have violated this Policy.

#### 15.06.02. Refusal to Test

Includes circumstances or behaviors such as:

- Failure to appear at the collection site in the time allotted;
- Leaving the collection site before the testing process is completed;
- Failure to provide a urine, breath, or saliva specimen as required by CFR, Part 40;
- Failure to permit the observation or monitoring of specimen collection when it is required;
- Failure to provide a sufficient amount of urine or breath specimen without a valid medical explanation;
- Failure or refusal to take a second test when required;
- Failure to undergo a medical evaluation when required;
- Failure to cooperate with any part of the testing process. (Example: refusal to sign the testing form when required);
- Leaving the scene of an accident without just cause prior to submitting to a test; or,
- If the Medical Review Officer (MRO) reports a verified adulterated or substituted test result.

**Note: A refusal to test shall be treated as a positive test result for the purposes of administration of this Policy and any resulting disciplinary action.**

#### 15.06.02.01. First Violation

An employee who is not discharged for a first violation of this Policy will receive a final written warning. The City reserves the right to suspend the employee without pay for a period of up to five (5) business days.

#### 15.06.02.02. Second Violation

A second violation of this Policy at any time will result in discharge.

### 15.07. CRIMINAL CONVICTIONS

Employees are required by this Policy to notify the City of any conviction under a criminal drug statute for a violation occurring in the workplace, while conducting or performing City business regardless of location, or during any City-related activity or event, not later than five (5) days after any such conviction. When required by applicable law, the City will notify agencies under contract of any employee who has been convicted under a criminal drug statute for a violation occurring while conducting or performing City business, regardless of location.

## 15.08. UNREGULATED OR AUTHORIZED CONDUCT

### 15.08.01. Customary Use of Over-the-Counter Drugs

Nothing in this Policy is intended to prohibit the customary and ordinary purchase, sale, use, possession, or dispensation of over-the-counter drugs, so long as such activity does not violate any law or result in an employee being impaired by the use of such drugs in violation of this Policy.

### 15.08.02. Off-the-Job Conduct

Nothing in this Policy is intended to regulate off-the-job conduct, so long as the employee's off-the-job use of alcohol or legal drugs does not result in the employee being under the influence of or impaired by the use of alcohol or drugs in violation of this Policy.

### 15.08.03. Use of Alcohol or Legal Drugs

The Human Resources Director will maintain a list of circumstances in which the use or possession of certain legal drugs or alcohol is authorized (such as certain medicine or drugs maintained in company first-aid cabinets or alcoholic beverages served during certain business meetings or social functions) and will communicate the authorization as appropriate. Changes to the authorization require the prior written approval of the City Manager. Except as otherwise provided in this Policy, no employee may assume that his or her possession, use, purchase, sale, manufacture, distribution, transportation, or dispensation of alcohol or drugs is authorized unless the employee has been notified in writing by the City Manager.

## 15.09. QUALIFIED DISABLED EMPLOYEES

### 15.09.01. Commitment to Employ Disabled Individuals

Nothing in this Policy is intended to diminish the City's commitment to employ qualified disabled individuals or to provide reasonable accommodation to such individuals consistent with all federal, state and local laws. As noted above, however, employees are required, under certain limited circumstances, to obtain the City's consent to continue working while using legal drugs.

### 15.09.02. Reasonable Accommodation

If an employee's use of a legal drug is related to a disability and the employee voluntarily self-identifies as a disabled individual to the City in connection with an effort to determine whether it is advisable to continue working despite the use of the drug, and if it is determined that the employee should not continue to work in his or her regular job while using the legal drug, an effort will be made to reasonably accommodate that employee.

## 15.10. CONFIDENTIALITY

Disclosures made by employees to the Human Resources Director or City Manager concerning their use of legal drugs will be treated confidentially and will not be revealed to managers or supervisors unless there is an important work-related reason to do so. Disclosures made by employees to the Human Resources Director or City Manager concerning their participation in any drug or alcohol rehabilitation program will be treated confidentially.

Managers and supervisors should restrict communications concerning possible violations of this Policy to persons who have an important work-related reason to know. In addition, managers and supervisors should not disclose the fact of an employee's participation in any drug or alcohol counseling or rehabilitation program.

#### 15.11. COUNSELING

Employees who suspect they may have alcohol or drug problems, even in the early stages, are encouraged to voluntarily seek diagnosis and to follow through with the treatment as prescribed by qualified professionals. Employees who wish to voluntarily enter and participate in an approved alcohol or drug rehabilitation program are encouraged to contact the Human Resources Director or City Manager, who will determine whether the City can accommodate the employee by providing unpaid leave for the time necessary to complete participation in the program.

For more information about the City's Employee Assistance Program (EAP), please see section 12.12, above.

## Section 16. DRUG AND ALCOHOL POLICY: SAFETY-SENSITIVE POSITIONS

### 16.01. STATEMENT OF PURPOSE

The Federal Highway Administration (FHWA) of the U.S. Department of Transportation (“DOT”) regulations mandate urine drug testing and Breathalyzer alcohol testing for safety-sensitive positions and prevent performance of safety-sensitive functions when there is a positive test result. The regulations also set standards for the collection and testing of urine and breath specimens. In addition, “The Drug-Free Workplace Act of 1988” requires the establishment of drug free workplace policies and the reporting of certain drug-related offenses to the DOT. This policy incorporates those requirements for public sector safety-sensitive employees and others when so noted. The purpose of this policy is to assure worker fitness for duty and to protect City employees and the public from risks posed by the use of alcohol, unlawful drugs and controlled substances. This policy is intended to comply with all applicable federal regulations governing workplace anti-drug programs in the transportation industry.

The City recognizes that the use of alcohol and/or controlled substances in the workplace is not conducive to safe working conditions. In order to promote a safe, healthy and productive work environment for all employees, it is the City’s objective to have a work force free from influence of alcohol and controlled substances.

### 16.02. DEFINITIONS

**Accident:** An occurrence resulting in a fatality, bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

**Alcohol:** The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl or isopropyl alcohol.

**Alcohol Concentration:** The alcohol in a volume of breath expressed in terms of grams of alcohol per liters of breath as indicated by an evidentiary breath test under the DOT regulations.

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

**Breath Alcohol Technician (BAT):** A person who instructs and assists employees in the alcohol testing process and operations of an evidentiary breath-testing device, trained to proficiency in

the operation of the Evidential Breath Testing (EBT) device that the technician uses in the alcohol testing procedures.

**Chain of Custody:** The procedures used to document the handling of a urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form to account for the integrity of each urine specimen by tracking its handling and storage from point of collection to final disposition.

**City Representative:** “City Representative” is at the level of a supervisor or above.

**City Time:** Any period of time in which the safety-sensitive employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

**Collection Site:** A place selected by the City where individuals present themselves for the purpose of providing a specimen of either urine and/or breath.

**Commercial Motor Vehicles:** A motor vehicle, or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle: (1) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or (2) has a gross vehicle weight rating of 26,001 or more pounds; or (3) is designed to transport 16 or more passengers, including the driver; or (4) is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations; and any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle: (1) has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 10,001 pounds or more, whichever is greater; or (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or (4) is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

**Confirmation Test:** For alcohol testing, a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration. For controlled substances, this means a second analytical procedure to identify the presence of specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

**Consortium:** A service agent that provides or coordinates one or more drug and/or alcohol testing services for DOT-regulated employers. Consortia typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the

operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool).

**Controlled Substances and/or Drugs:** All substances and/or medications that can affect one or more of mental and/or physical functions (e.g., coordination, reflexes, vision, mental capacity or judgment, etc.). The words "controlled substances(s) and/or "drug(s)" includes all chemical substances or drugs listed in the Controlled Substances Acts or Regulations applicable under any federal, state or local laws. They also include prescription drugs and/or over-the-counter drugs, as such drugs also may affect the employee's performance of his/her job.

**Controlled Substance (Drug) Test:** A method of detecting and measuring the presence of alcohol and other controlled substances, whether legal or illegal, in a person's body. A controlled substance test may be either an initial test or confirmation test. An initial controlled substance test is designed to identify specimens having concentrations of a particular class of drug or substance above a specified concentration level. It eliminates negative specimens from further consideration.

Controlled substances will be tested under the Department of Health and Human Services guidelines. The primary (initial or screening) controlled substance test thresholds for a verified positive test result are those that are equal or greater than:

|                             |            |
|-----------------------------|------------|
| Marijuana Metabolites       | 50 ng/ml   |
| Cocaine Metabolites         | 150 ng/ml  |
| Codeine/Morphine            | 2000 ng/ml |
| Hydrocodone/Hydromorphone   | 300 ng/ml  |
| Oxycodone/Oxymorphone       | 100 ng/ml  |
| 6-Acetylmorphine            | 10 ng/ml   |
| Phencyclidine (PCP)         | 25 ng/ml   |
| Amphetamine/Methamphetamine | 500 ng/ml  |
| MDMA 4/MDA 5                | 500 ng/ml  |

A confirmation drug testing is a second analytical procedure to detect the presence of a specific drug or its metabolite. The confirmation procedure is conducted independent from the initial test and uses a different technique and chemical principle in order to confirm reliability and accuracy. The confirmatory controlled substance test thresholds for a verified positive test result are those that are equal to or greater than:

|                         |            |
|-------------------------|------------|
| Marijuana Metabolites   | 15 ng/ml   |
| Cocaine Metabolites (2) | 100 ng/ml  |
| Codeine                 | 2000 ng/ml |
| Morphine                | 2000 ng/ml |
| Hydrocodone             | 100 ng/ml  |

|                     |           |
|---------------------|-----------|
| Hydromorphone       | 100 ng/ml |
| Oxycodone           | 100 ng/ml |
| Oxymorphone         | 100 ng/ml |
| 6-Acetylmorphine    | 10 ng/ml  |
| Phencyclidine (PCP) | 25 ng/ml  |
| Amphetamine         | 250 ng/ml |
| Methamphetamine     | 250 ng/ml |
| MDMA 4              | 250 ng/ml |
| MDA 5               | 250 ng/ml |

**Covered Employee:** A person including a volunteer, applicant, or transferee, who performs a safety-sensitive function for the City.

**DOT Guidelines:** The controlled substance and alcohol testing rules (49 CFR Part 199 (RSPA – Pipeline), Part 219 (FRA – Railroad), Part 382 (FHWA – Commercial Motor Vehicle), 654 (FTA – Mass Transit) and 14 CFR 61 (FAA – Aviation) et. al.) setting forth the procedures for controlled substance and alcohol testing (49 CFR Part 40) in all the transportation industries.

**Driver:** Any person who operates a commercial motor vehicle. This includes but is not limited to: full time, regularly employed drivers, casual, intermittent or occasional drivers; leased drivers and independent, owner-operated contractors who are either directly employed by or under lease to an employer or who operates a commercial motor vehicle at the direction of or with the consent of an employer. For the purposes of pre-employment / pre-duty testing only, the term driver includes a person applying to an employer to drive a commercial motor vehicle.

**Drug (Controlled Substance) Metabolite:** The specific substance produced when the human body metabolizes (changes) a given drug (controlled substance) as it passes through the body and is excreted in urine.

**Evidential Breath Testing Device (EBT):** Means a device approved by the NHTSA for the evidential testing of breath at the .02 and .04 alcohol concentrations, placed on NHTSA’s Conforming Products List (CPL) for “Evidentiary Breath Measurement Devices” and identified on the CPL as conforming with the model specifications available from NHTSA’s Traffic Safety Program.

**Medical Review Officer (MRO):** A licensed physician responsible for analyzing, receiving and reviewing laboratory results generated by a controlled substance (drug) testing program and evaluating medical explanations for positive drug test results. The MRO is knowledgeable about substance abuse disorders and has appropriate medical training to interpret and evaluate positive test results.

**Motor Carrier:** The registered owner, lessee, licensee, or bailee of any vehicle set forth in California Vehicle Code section 34500 who operates or directs the operation of any such vehicle on either a for-hire or not-for-hire basis.

**On Duty:** An Employee is considered “on duty” or “on City property” or at “work locations” whenever the employee is:

- On City property, including parking lots, at any time;
- On City time, and/or on City controlled property, even if off the City premises (including paid lunch and rest periods):
- On City time and in the facilities of member agencies, customers, clients and/or vendors of the City;
- Driving or riding as a passenger in a City vehicle or a private conveyance for which the City pays for or reimburses expenses; and
- At a job site.

**Performing (Safety Sensitive Function):** Means a safety-sensitive employee is considered to be performing a safety sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

**Possession:** Possession includes substances physically held by a person and stored or deposited in areas the employee controls (e.g., inside purses, lunch boxes, personal automobiles, lockers and limited access work areas).

**Prohibited Drugs (Controlled Substances):** Means Marijuana, Cocaine, Opiates, Amphetamines, or Phencyclidine or others listed by federal or California statute or regulation.

**Prohibited Substances:** Means and is synonymous with drug abuse and/or alcohol misuse or abuse.

**Reasonable Suspicion:** “Reasonable suspicion” is a belief based on specific, contemporaneous, articulable objective facts sufficient to lead a reasonably prudent supervisor who is trained in accordance with Department of Transportation regulations to suspect that an employee is under the influence of drugs, controlled substances or alcohol.

**Refuse to Submit (to an Alcohol and/or Controlled Substance Test):** When a safety-sensitive employee (1) refuses to cooperate with and/or submit to any alcohol, illegal drug, or controlled substance test required by state or federal regulations; (2) fails to provide adequate breath for alcohol testing without a valid medical explanation after he or she has received notice of the requirement to submit to breath or urine testing; (3) fails to provide an adequate urine sample for controlled substances testing without a genuine inability to provide a specimen (as determined by medical evaluation) after he or she has received notice of the requirement for urine testing, or (4) engages in conduct that clearly obstructs the testing process (i.e., verbal declarations, obstructive behavior or physical absence resulting in the inability to conduct the test). A refusal to test shall be treated as a positive test result for the purposes of administration of this Policy and any resulting disciplinary action.



**Rehabilitation:** The total process of restoring an employee to satisfactory work performance through constructive confrontation, referral to the SAP and participation in SAP recommendations such as education, treatment and/or support groups to resolve personal, physical or emotional / mental problems which contributed to job problems.

**Return-to-Duty (Last Chance) Agreement:** A document agreed to and signed by the employer, safety sensitive employee and the Substance Abuse Professional that outlines the terms and conditions under which the safety sensitive employee may return to duty after having had a verified positive controlled substance test result or an alcohol concentration of 0.04 or greater on an alcohol test.

**Safety-Sensitive Function:** Safety-sensitive function under 49 CFR Part 382 means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include: (1) driving a commercial motor vehicle which requires the driver to have a CDL; (2) waiting to be dispatched to operate a commercial motor vehicle; (3) inspecting, servicing, or conditioning any commercial motor vehicle; (4) performing all other functions in or upon a commercial motor vehicle (except resting in a sleeper berth); (5) loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloading, remaining in readiness to operate the vehicle, or giving or receiving receipts for shipments being loaded or unloaded; or (6) repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle. Under 49 CFR Part 655, covered employee include those who any of the following safety-sensitive functions: (1) operating a revenue service vehicle, in or out of revenue service; (2) operating a non-revenue vehicle requiring a commercial driver's license; (3) controlling movement or dispatch of a revenue service vehicle; (4) maintaining (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used in revenue service; or (5) carrying a firearm for security purposes. An employee is considered to be performing a safety-sensitive function during any period in which that employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive function, including off-site lunch periods and breaks.

**Screening (Initial) Test:** In alcohol testing, an analytical procedure to determine whether a safety sensitive employee may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, it means an immunoassay screen to eliminate negative urine specimens from further consideration.

**Subject to Being Called to Duty:** An employee is considered "subject to being called to duty" whenever the employee is assigned to standby duty.

**Substance Abuse Professional (SAP):** A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

**Supervisor (Safety Sensitive):** A person in authority who has had one hour of training on the signs and symptoms of alcohol abuse and an additional hour of training on the signs and symptoms of controlled substance abuse.

**Terminal:** A place where a vehicle of a type listed in California Vehicle Code section 34500 is regularly garaged or maintained, or from which the vehicle is operated or dispatched.

### 16.03. APPLICABILITY

This policy applies to all safety-sensitive employees and contractors when they are on City property or when performing any City related business. It applies to off-site lunch periods and breaks when a safety-sensitive employee is scheduled to return to work. Visitors, vendors, and contracted employees are governed by this policy while on City premises, and they will not be permitted to conduct business if found to be in violation of this policy.

A safety-sensitive position is defined as any position requiring the use of a Class "A" or Class "B" commercial driver's license. A safety-sensitive employee is considered to be performing a safety-sensitive function, as defined above, during any period in which that employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

### 16.04. SAFETY SENSITIVE POSITION CLASSIFICATION\*

Some positions within the below listed classifications do not require the incumbent to perform "safety-sensitive functions," as set forth in this policy. The Personnel Officer will maintain a list of the specific positions / employees covered under DOT regulations.

- Public Works/Maintenance Employees
- Police Department Employees
- Fire Department Employees

\*Subject to change

### 16.05. PROHIBITED SUBSTANCES

Prohibited substances addressed by this policy include the following:

Drugs: Marijuana, amphetamines, opiates, phencyclidine (PCP) and cocaine.

Alcohol: The use of beverages or substances, including any medication, containing alcohol such that it is present in the body at a level in excess of that stated in DOT guidelines while actually performing, ready to perform, or immediately available to perform any City business is prohibited. "Alcohol" is defined as: the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol, including methyl or isopropyl alcohol.

## 16.06. PROHIBITED CONDUCT

All employees who engage in the following prohibited conduct shall be subject to disciplinary action, up to and including termination.

### Drug Use

All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of any of the following prohibited drug in the body above the minimum thresholds defined in 49 CFR Part 40:

1. Marijuana;
2. Cocaine;
3. Phencyclidine ("PCP");
4. Opioids; or
5. Amphetamines.

### Alcohol Use

All covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having a blood alcohol concentration ("BAC") of 0.04 or greater.

All covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. If the on-call employee claims the ability to perform his or her safety-sensitive function, he or she must take an alcohol test prior to performance.

All covered employees are prohibited from consuming alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

All covered employees are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

### Stand-By Time

Being under the influence of alcohol, drugs, or any controlled substances while subject to being called to duty, including stand-by time.

### Other Prohibited Activity

Directly or through a third party, manufacturing, selling, distributing, dispensing, otherwise attempting to manufacture, sell, or distribute alcohol, drugs, or controlled substances during work hours, including rest breaks or while on City premises.

Use of City property or premises to manufacture, sell, or distribute alcohol, drugs, or controlled substances.

Absence or tardiness as a result of having been under the influence of alcohol, drugs, or controlled substances during non-work time.

Leaving the scene of an accident without a valid reason as to why authorization was not obtained from a supervisor or manager.

#### 16.07. IMPAIRED/NOT FIT FOR DUTY

Any safety-sensitive employee who is reasonably suspected of being impaired, under the influence of a prohibited substance, or not fit for duty shall be removed from safety-sensitive job duties and be required to undergo a reasonable suspicion controlled substance or alcohol test. Employees failing to pass this reasonable suspicion controlled substance or alcohol test shall remain off duty, be referred to a SAP, and may be subject to disciplinary action. A controlled substance or alcohol test is considered positive (failed) if the individual is found to have a quantifiable presence of a prohibited substance in their body above the minimum thresholds defined in the DOT guidelines.

#### 16.08. ALCOHOL CONCENTRATION

As stated above in Section 16.06, all covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having a blood alcohol concentration of 0.04 or greater.

A covered employee with an alcohol concentration of 0.02 or greater, but less than 0.04, shall be removed from duty for at least the next 24 hours following administration of the alcohol test.

Employees with an alcohol concentration of 0.04 or greater will be removed from a covered function and referred to the SAP for evaluation.

#### 16.09. REQUIRED CONDUCT

All safety-sensitive employees are expected to comply with testing requirements. All safety-sensitive employees are subject to controlled substance testing and breath alcohol testing. Any safety-sensitive employee who refuses to comply with a request for testing, who provides false information in connection with a test or who attempts to falsify test results through tampering, contamination, adulteration, or substitution shall be removed from duty immediately, be referred to a SAP, and may be subject to disciplinary action.

##### 16.09.01 Required Conduct re: Prescription Drugs

No prescription drug shall be possessed or used by an employee other than the employee for whom the drug is prescribed by a licensed medical practitioner. A prescription drug shall be used only in the manner, combination, and quantity prescribed. An employee must advise his/her supervisor of the use or influence of any prescription drug prior to beginning work, when taking the medication or drug could interfere with the safe and effective performance of duties, or the operation of a City vehicle or heavy machinery, such that the employee poses a direct threat to the health and safety of himself/herself or others.

An employee's failure to provide this notice in a timely manner can result in discipline, up to and including termination. In the event there is a question regarding an employee's ability to safely

and effectively perform assigned duties while using such medications or drugs, clearance from a qualified physician may be required.

#### 16.10. TREATMENT/REHABILITATION PROGRAM

An employee with a controlled substance and/or alcohol problem will be afforded an opportunity for treatment in accordance with the following provisions:

Positive Controlled Substance and/or Alcohol Test: A rehabilitation program is available for safety-sensitive employees who have tested positive for a prohibited substance on a one time only basis. Program costs and subsequent controlled substance and/or alcohol testing costs will be paid by the safety-sensitive employee. When recommended by the SAP, participation and completion of the rehabilitation program is mandatory. Failure of a safety-sensitive employee to attend and/or complete a prescribed program will result in termination from employment. Prior to return-to-duty testing, an employee must follow the rehabilitation program recommended by the SAP and agree to and sign a Return-To-Duty (Last Chance) Agreement, pass a return-to-duty controlled substance and/or alcohol test and be subject to unannounced follow-up testing for 36 months following return to duty. A positive result on the return-to-duty test or on the unannounced follow-up tests within a 36-month period will result in termination of employment. At the Personnel Officer's discretion, participants in a rehabilitation program may be required to use accumulated sick, vacation, and/or compensatory time, to participate in the prescribed program.

#### 16.11. CONFIDENTIALITY

The City affirms the need to protect individual dignity, privacy and confidentiality throughout the testing process. Breach of confidentiality by supervisors/managers shall be thoroughly investigated and appropriate discipline applied.

#### 16.12. NOTIFYING THE CITY OF CRIMINAL DRUG CONVICTION

Pursuant to the "Drug Free Workplace Act of 1990" any employee who fails to notify the City immediately of any criminal controlled substance or alcohol related conviction shall be subject to disciplinary action, up to and including termination of employment.

#### 16.13. PROPER APPLICATION OF THE POLICY

The City is dedicated to assuring fair and equitable application of this Substance Abuse Policy. Therefore, supervisors are required to administer all aspects of this policy in an unbiased and impartial manner and in coordination with the Personnel Officer. Any supervisor who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy with respect to his/her subordinates shall be subject to disciplinary action, up to and including termination.

#### 16.14. TESTING FOR PROHIBITED SUBSTANCES

Analytical urine controlled substance testing and/or breath testing for alcohol will be conducted as required by DOT guidelines. All safety-sensitive employees may be subject to applicable testing prior to employment, randomly, for reasonable suspicion, and following an accident, as

defined in the DOT guidelines. In addition, all safety-sensitive employees will be tested prior to returning to duty after failing a controlled substance and/or alcohol test. Employees who have returned to duty will be subject to unannounced follow-up tests for up to five years, as determined by a SAP. Safety-sensitive employees who perform safety-sensitive functions as defined in the DOT guidelines shall also be subject to testing on a randomly selected, unannounced basis.

Testing shall be conducted in such a manner as to assure a high degree of accuracy and reliability and shall use techniques, equipment, and laboratory facilities, which have been approved by the U.S. Department of Health and Human Services (DHHS). All testing will be conducted in a manner that is consistent with the procedures set forth in the DOT guidelines. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the testing procedure, and the validity of the test result.

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

Tests for alcohol concentration will be conducted utilizing an approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). An employee who has a confirmed alcohol concentration of 0.02 percent will be removed from his/her position for at least twenty-four hours. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of DOT guidelines and of this policy.

Any safety-sensitive employee who has a confirmed positive controlled substance or alcohol test will be removed from his/her position, informed of educational and rehabilitation programs available, evaluated by a SAP, and may be subject to appropriate disciplinary action.

Employees in safety-sensitive positions may be tested under any of the following circumstances.

#### 16.15. PRE-EMPLOYMENT TESTING

All applicants for safety-sensitive classifications shall undergo urine controlled substance testing after a conditional offer of employment has been extended. Receipt of a satisfactory test result is required prior to employment and failure of a controlled substance test will disqualify the applicant from further consideration for employment. Pre-employment testing requirements may change and will be conducted in compliance with current law.

The City shall obtain from the applicant's previous DOT-covered employers who employed the applicant during any period during the preceding three (3) years, pursuant to an applicant's consent, information on the applicant's alcohol tests with a concentration result of 0.04 or greater, positive controlled substances test results, and refusals to be tested, other violations of

DOT agency drug and alcohol testing regulations, and documentation of the applicant's successful completion of DOT return-to-duty requirements.

#### 16.16. REASONABLE SUSPICION TESTING

All safety-sensitive employees will be subject to urine and/or breath testing when there is a reason to believe that they have used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing will be made based on specific, contemporaneous, articulable objective facts sufficient to lead a reasonably prudent supervisor who is trained in accordance with Department of Transportation regulations to suspect that an employee is under the influence of drugs, controlled substances or alcohol. The observations may include indications of the chronic and withdrawal effects of controlled substances. Examples of reasonable suspicion include, but are not limited to, the following:

- Physical signs and symptoms consistent with prohibited substance use.
- Occurrence of a serious or potentially serious accident that may have been caused by human error.
- Fights involving physical contact, assaults and flagrant disregard or violations of established safety, security, or other operational procedures.

Reasonable suspicion determinations will be made (in consultation with their department head and the Personnel Officer) by a supervisor who is trained to detect the signs and symptom of controlled substance and alcohol use.

Managers and supervisors shall notify their department head or designee following personal observation of the employee when they have reasonable suspicion to believe that an employee may have illegal drugs in his/her possession or in an area not jointly or fully controlled by the City. If the department head or designee concurs that there is reasonable suspicion of illegal drug possession, the department head in coordination with the Personnel Officer shall notify the appropriate law enforcement agency.

The reasonable suspicion alcohol test should be administered as soon as practicable upon making observations triggering the request for the test. If a required test is not administered within eight (8) hours following the observations triggering the request for the test, the supervisor shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

The reasonable suspicion drug test should be administered as soon as practicable. If not administered within thirty-two (32) hours of the observations, the supervisor must prepare a statement explaining the reasons a test was not administered.

## 16.17. POST-ACCIDENT TESTING

### A. FTA Procedures

Covered employees shall be subject to FTA post-accident drug and alcohol testing under the following circumstances:

#### **Fatal Accidents**

As soon as practicable following an accident involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee operating the public transportation vehicle at the time of the accident. In addition, any other covered employee whose performance could have contributed to the accident, as determined by the City using the best information available at the time of the decision, will be tested.

#### **Non-Fatal Accidents**

As soon as practicable following an accident not involving the loss of a human life, drug and alcohol tests will be conducted on each covered employee operating the public transportation vehicle at the time of the accident if at least one of the following conditions is met:

1. The accident results in injuries requiring immediate medical treatment away from the scene, and the covered employee may have contributed to the accident;
2. One or more vehicles incurs disabling damage and must be towed away from the scene, and the covered employee may have contributed to the accident;  
or
3. The vehicle is a rail car, trolley car or bus, or vessel, and is removed from operation, and the covered employee may have contributed to the accident.

In addition, any other covered employee whose performance could have contributed to the accident, as determined by the City using the best information available at the time of the decision, will be tested.

A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

### B. FMCSA Procedures

Covered employees shall be subject to FMCSA post-accident drug and alcohol testing under the following circumstances:



**Fatal Accidents**

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, and involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee who was performing safety-sensitive functions with respect to the vehicle.

**Non-Fatal Accidents**

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, and not involving the loss of a human life, an alcohol test will be conducted on each driver who receives a citation within eight (8) hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if:

1. The accident results in injuries requiring immediate medical treatment away from the scene; or
2. One or more motor vehicles incur disabling damage and must be transported away from the scene by a tow truck or other motor vehicle.

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, and not involving the loss of a human life, a drug test will be conducted on each driver who receives a citation within thirty-two (32) hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if:

1. The accident results in injuries requiring immediate medical treatment away from the scene; or
2. One or more motor vehicles incur disabling damage and must be transported away from the scene by a tow truck or other motor vehicle.

A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

**16.18. RANDOM TESTING**

Employees working in safety-sensitive classifications will be subjected to randomly selected, unannounced testing. Random testing will be conducted at all times of the day when safety-sensitive functions are performed. The dates for administering random tests will be spread reasonably throughout the calendar year. The selection of employees for random drug and alcohol testing will be by a scientifically valid method, such as a random number table or a computer-based random number generator. Each safety-sensitive employee will have an equal chance of being tested each time selections are made.

A covered employee will only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

Each covered employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the designated testing site.

Random testing under the FTA may occur anytime an employee is on duty so long as the employee is notified prior to the end of the shift. Employees who provide advance, verifiable notice of scheduled medical or child care commitments will be random drug tested no later than three hours before the end of their shift and random alcohol tested no later than thirty (30) minutes before the end of their shift. Verifiable documentation of a previously scheduled medical or child care commitment, for the period immediately following an employee's shift, must be provided at least four (4) hours before the end of the shift.

#### 16.19. RETURN-TO-DUTY TESTING

All safety-sensitive employees who previously tested positive on a controlled substance or alcohol test or who refused to submit to a test must test negative and be evaluated and released to duty by the SAP before returning to duty.

Employees will be required to undergo unannounced follow-up testing and the frequency thereof will be determined by the SAP. However, it shall not be less than six (6) tests during the first 12 months, nor longer than 60 months in total, following return to duty.

#### 16.20. EMPLOYEE REQUESTED TESTING

Any safety-sensitive employee who questions the result of a required controlled substance test under DOT guidelines may request that an additional test be conducted. The additional test may be conducted at the same laboratory or at a different DHHS certified laboratory.

The test must be conducted on the split sample that was provided at the same time as the original sample. All costs for such testing are to be paid by the employee unless the second test invalidated the original test. If the employee is unable to pay for the second test, the City will cover the cost, and the employee can reimburse the City at a later date, unless the second test invalidated the original test, in which case the employee does not need to reimburse the City. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in the DOT guidelines. The safety-sensitive employee's request for a retest must be made to the Medical Review Officer (MRO) within 72 hours of notice of the initial test result. Requests after 72 hours will only be accepted if the delay was due to documentable facts that were beyond the employee's control.

### 16.21. EMPLOYEE ASSESSMENT

Any safety-sensitive employee who tests positive for the presence of controlled substances, or whose breath alcohol concentration is above the minimum threshold set pursuant to these rules, must be evaluated by a Substance Abuse Professional (“SAP”), which is a licensed physician, psychologist, social worker, employee assistance professional or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance abuse disorders. The SAP will evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited substance abuse or misuse.

If a safety-sensitive employee is returned to duty following rehabilitation, he/she must agree to and sign a Return-To-Duty (Last Chance) Agreement, pass a return-to-duty controlled substance and/or alcohol test and be subject to unannounced follow-up tests for a period of one (1) to five (5) years, as determined by the SAP. The cost of any rehabilitation and subsequent controlled substance and/or alcohol testing shall be borne by the safety-sensitive employee and is on a one-time basis only. Employees may be required to use accumulated sick, vacation, comprehensive annual leave and/or compensatory time to participate in the prescribed rehabilitation program.

### 16.22. DRIVING OF COMMERCIAL MOTOR VEHICLES

The City shall provide the following information to employees at the time of hiring and to all employed commercial drivers annually in accordance with the California Vehicle Code.

- Employees shall be ordered out of service for twenty-four (24) hours if their blood-alcohol concentration is tested to be 0.02 percent or more, by weight.
- Employees shall be prohibited from driving a commercial motor vehicle if their blood is found to have 0.04 percent, by weight, of alcohol in his/her blood.

## Section 17. DISCRIMINATION AND HARASSMENT PREVENTION POLICY

It is the City's intent and the purpose of this Policy to provide all elected or appointed officials, employees, volunteers, applicants, interns, and contractors with an environment that is free from any form of discriminatory harassment, discrimination or retaliation as defined in this Policy. This Policy applies to all terms and conditions of employment, internships, and volunteer opportunities, including, but not limited to, selection, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

This Policy prohibits harassment and discrimination on the basis of any of the following protected classifications: an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, pregnancy, age (40 and over), medical condition and physical or mental disability (whether perceived or actual), genetic information, gender expression, veteran status, and any other basis protected by law.

This Policy establishes a complaint procedure for investigating and resolving internal complaints of discrimination, harassment and retaliation. The City encourages all covered individuals to report any conduct they believe violates this Policy as soon as possible. Any retaliation against an employee because they filed or supported a complaint or because they participated in the complaint resolution process is prohibited. Individuals found to have retaliated in violation of this Policy will be subject to appropriate sanction or disciplinary action, up to and including termination.

The City has zero tolerance for any conduct that violates this Policy. Conduct need not rise to the level of a violation of law in order to violate this Policy. Instead, a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions. If you are in doubt as to whether any particular conduct may violate this Policy, do not engage in the conduct, and seek guidance from a supervisor or the Personnel Officer.

### 17.01. DEFINITIONS

**Protected Classifications:** This Policy prohibits harassment and discrimination because of an individual's protected classification(s). "Protected Classification" includes race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, pregnancy, age (40 and over), medical condition and physical or mental disability (whether perceived or actual), genetic information, gender expression, veteran status, and any other basis protected by law.

**Policy Coverage:** This Policy prohibits City officials, officers, employees, volunteers, interns, and contractors from harassing or discriminating against applicants, officers, officials, employees, volunteers, interns, and contractors because: (1) of an individual's protected classification, (2) of

the perception that an individual has a protected classification, or (3) of the individual's association with a person who has or is perceived to have a protected classification.

**Discrimination:** This Policy prohibits treating individuals differently and adversely because of the individual's protected classification, actual or perceived; because the individual associates with a person who is member of a protected classification, actual or perceived; or because the individual participates in a protected activity as defined in this Policy.

**Harassment:** Harassment means unsolicited words or conduct which subjectively and objectively offends another person. Harassment includes, but is not limited to, the following types of behavior undertaken because of an individual's actual or perceived protected classification:

- Speech, whether verbal or written, such as epithets (nicknames and slang terms), derogatory or suggestive comments, jokes or slurs, including graphic verbal commentaries about an individual's body, or propositioning on the basis of his or her protected classification. It also includes comments about appearance, dress, physical features, gender identification, or race-oriented stories and jokes.
- Visual acts, such as derogatory posters, notices, bulletins, cartoons, drawings, pictures, sexually suggestive objects, or e-mails related to a protected classification.
- Physical acts, such as assault, offensive touching, impeding or blocking movement, grabbing, patting, pinching, propositioning, leering, making express or implied job-related threats in return for submission to physical acts, mimicking, taunting, or any physical interference with normal work or movement.

Sexual harassment, such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature or any of the above described conduct where:

- Submission to such conduct is either an expressed or implied term or condition of an individual's employment, or
- Submission to or rejection of such conduct is used as the basis for employment decisions, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating a hostile, intimidating or offensive work environment.

## 17.02. ROMANTIC RELATIONSHIPS

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

## 17.03. GUIDELINES FOR IDENTIFYING HARASSMENT

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

- (a) It is no defense that the recipient "appears" to have consented to the conduct at issue by failing to protest about the conduct. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized or subjected to retaliation.
- (b) Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. Small, isolated incidents might be tolerated up to a point. The fact that no one has yet complained does not preclude someone from complaining if the conduct is repeated in the future.
- (c) Even visual, verbal, or physical conduct between two people who appear to welcome the conduct can constitute harassment of a third person who witnesses the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at a particular individual.
- (d) Conduct can constitute harassment even if the individual has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual would find it offensive (e.g., gifts, over-attention, endearing nicknames, hugs).

## 17.04. RETALIATION

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

Well-intentioned attempts to insulate or protect a complainant by changing his or her work environment, schedule or duties, or by transferring the complainant to another office may be

considered retaliatory. Before a supervisor takes such action, the supervisor should contact the Personnel Officer.

Any act of retaliation will be treated as a separate and distinct incident, regardless of the outcome of the harassment or discrimination complaint. Retaliation of any kind is strictly prohibited.

### 17.05. REPORTING HARASSMENT, DISCRIMINATION OR RETALIATION

An applicant, employee, officer, volunteer, intern, official, or contractor who feels he or she has been harassed, discriminated against or retaliated against in violation of this Policy should report the conduct immediately as outlined below so that the complaint can be resolved quickly and fairly.

All employees involved in the complaint process may be represented by a person of their choosing and at their own expense.

#### 17.04.03. Oral or Written Complaint

An individual who believes this Policy has been violated may make a complaint -- orally or in writing -- to any supervisor, manager, or department head, without regard to any chain of command. Any supervisory or management employee who receives a harassment complaint should immediately notify the Personnel Officer. Individuals are encouraged but in no way required to use the Confidential Complaint Form for this purpose.

#### 17.04.04. Option to Report to Outside Administrative Agencies

Applicants, employees, officers, volunteers, interns, officials and contractors have the option to report harassment, discrimination, or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These governmental agencies offer legal remedies and a complaint process. The nearest offices are listed on the Internet, in the government section of the phone book, as well as on posters located on City bulletin boards.

#### 17.04.05. City's Response to Complaints of Harassment, Discrimination or Retaliation

##### 17.04.05.01. Investigation

Upon receipt of a complaint of alleged harassment, discrimination or retaliation, the Personnel Officer will be responsible for coordinating a thorough investigation (unless he/she is named in the complaint as an offender, in which case an individual with higher authority will complete and/or delegate the following steps). The Personnel Officer may coordinate the investigation with the complainant's department head and may hire an outside investigator if the City deems appropriate. The type of investigation undertaken, and the party chosen to conduct the investigation, will depend on the nature of the complaint made and will be determined by the Personnel Officer. The Personnel Officer will report the status of investigations to the City Council as appropriate.

The Personnel Officer may take interim action to diffuse volatile circumstances, such as placing the alleged perpetrator on paid administrative leave or temporarily transferring the alleged perpetrator. Generally, no interim action should be taken to change the complaining individual's working conditions unless the complaining individual voluntarily consents to the temporary change.

The investigator will review the complaint allegations in an objective manner and to the extent that the City deems necessary. The investigation will normally include interviews with the reporting individual, the accused, and any other person who is believed to have relevant knowledge concerning the allegations. The investigator will remind all witnesses that retaliation against those who report alleged harassment or who participate in the investigation is prohibited.

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

At the conclusion of the investigation, if it is determined that the alleged conduct did not occur or that it did not violate this Policy, the Personnel Officer will notify the complainant and the alleged perpetrator, if appropriate, of the general conclusion(s) of the investigation and whether any further action is warranted.

#### 17.04.05.02. Remedial and Disciplinary Action

If the investigation determines that the alleged conduct occurred and that the conduct violated this Policy, the Personnel Officer will notify the complainant and perpetrator of the general conclusion(s) of the investigation and take effective remedial action that is designed to end the violation(s). Any employee or officer determined to have violated this Policy will be subject to disciplinary action, up to and including termination. Disciplinary action may also be taken against any official, supervisor or manager who condones or ignores potential violations of this Policy, or who otherwise fails to take appropriate action to enforce this Policy. Any official or contractor found to have violated this Policy will be subject to appropriate sanctions.

#### 17.04.05.03. Closure

At the conclusion of the investigation, the Personnel Officer shall notify the complainant in general terms of the outcome of the investigation.

#### 17.04.05.04. Confidentiality

Every possible effort will be made to assure the confidentiality of complaints made under this policy to the extent allowed by law. Complete confidentiality cannot occur, however, due to the need to investigate potential policy violations fully and take effective remedial action. An individual who is interviewed during the course of an investigation is prohibited from attempting to influence any potential witness while the investigation is ongoing. An employee may discuss his or her interview with a designated representative. The City will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take



remedial action, to defend itself in adversarial proceedings, or to comply with the law or a court order.

#### 17.04.06. Responsibilities of Employees, Management and Supervisory Employees

##### 17.05.06.01. Employees

In order to establish and maintain a professional working environment, while at the same time preventing harassment, discrimination and retaliation, employees are expected to:

- Treat all individuals in the workplace or on worksites with respect and consideration.
- Model behavior that conforms to this Policy.
- Participate in periodic training.
- Cooperate with the City's investigations pursuant to this Policy by responding fully and truthfully to all questions posed during the investigation.
- Take no actions to influence any potential witness while the investigation is ongoing.
- Report any act he or she believes in good faith constitutes harassment, discrimination or retaliation as defined in this Policy, to his or her immediate supervisor, or department head, or Personnel Officer.

##### 17.05.06.02. Managers and Supervisors

In addition to the responsibilities listed above, managers and supervisors are responsible for the following:

- Informing employees of this Policy.
- Modeling behavior that is consistent with this Policy.
- Implementing this Policy by taking all complaints seriously and documenting steps taken to resolve complaints.
- Taking positive steps to eliminate any form of harassment, discrimination or retaliation observed or brought to his/her attention.
- Taking all steps necessary to prevent harassment, discrimination and, retaliation from occurring, including monitoring the work environment and taking immediate, appropriate action to stop potential Policy violations.
- Following up with those who have complained to ensure the behavior complained of has ceased.
- Informing complainants of their option to contact the EEOC or DFEH regarding a potential Policy violation.
- Assisting, advising, or consulting with employees and the Personnel Officer regarding this Policy.

*Section 17. Harassment Prevention Policy*

- Assisting in the investigation of complaints involving employee(s) in their departments and, when appropriate, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with these Policies, up to and including termination.
- Implementing appropriate disciplinary and remedial actions.
- Reporting potential violations of this Policy of which he or she becomes aware to the Personnel Officer, regardless of whether a complaint has been submitted.
- Participating in periodic training and scheduling employees for training.

**17.05.07. Mandatory Training**

As part of its commitment to ensuring a work environment free from harassment and discrimination, the City requires that all of its employees and regular volunteers receive training on this Policy at least once every two years. The City will schedule the training sessions, and attendance will be mandatory and documented.

## **Section 18: DRESS CODE AND PERSONAL APPEARANCE**

For the purpose of this policy, the term “employees” includes all City employees and volunteers. The City’s objective in establishing a dress code and personal appearance policy is to promote workplace safety and enable employees to project a professional, business-like image while experiencing the comfort advantages of more casual and relaxed clothing. Yet, because we also need to present a professional image to the public, it is important that employees use their best judgment in dressing appropriately for the office and customer interaction. The standard dress for the City is Business Casual. However, employees who prefer to dress more formally should feel free to do so. Because not all casual clothing is suitable for the office, these guidelines will assist employees in determining what is appropriate to wear to work.

The City wishes to emphasize this does not mean Business Casual is always appropriate dress. Employees are required to dress appropriately for the jobs they are performing. For some employees, there will be times such as City Council and Commission meetings, when more formal attire will be necessary and must be worn.

On occasion, the City may announce a dress-down day when looser clothing – including sweatshirts and t-shirts (with the City logo/community event), jeans and athletic shoes can be worn in order to allow you to enjoy a special occasion or more comfortably organize your area. However, it is never permissible to wear stained, wrinkled, frayed or revealing clothing to work.

Employees may dress consistent with their gender identity or gender expression.

### **18.01. BUSINESS CASUAL ATTIRE INCLUDES (DO’S):**

- Slacks, Pants, Capris, and Suit Pants (khaki, cotton, dress, corduroy, or twill)
- Shirts, Tops, Blouses and Jackets – casual shirts, golf (polo sport shirts or rugby) shirts, dress shirts, sweaters, tops and turtlenecks.
- Dresses and skirts – casual dresses, skirts, denim skirts, and skirts that are split at or below the knee.
- Jackets – sport coats, suit jackets and blazers are always acceptable.
- Jewelry, make-up, perfume and cologne – should be in good taste with no visible body piercing other than pierced ears.
- Footwear – Loafers, boots, flats, mules, slides, clogs, heels, leather deck shoes, leather lace-up shoes, conservative athletic shoes.
- Hats and Head Coverings – hats are not appropriate in the office. Head Covers that are required for religious purposes or to honor cultural tradition are allowed.

### 18.02. BUSINESS CASUAL ATTIRE DOES NOT INCLUDE (DON'TS):

- Jeans, sweatpants, shorts, pants above the knee, bib overalls, spandex, leggings, exercise pants.
- Tank tops, sweatshirts, clothes exposing midriffs, shirts with offensive or political words, terms, logos, pictures, cartoons or slogans; halter tops, backless tops with bare shoulders unless worn under another blouse or jacket.
- Mini or shorts skirts; spaghetti-strap dresses.
- Flashy athletic shoes, sandals, flip flops, and slippers are not acceptable.
- Ragged clothing or clothing in disrepair.
- Clothing that shows signs of excessive wear or use, frayed or wrinkled
- Shear material that reveals underclothing or body parts.
- Clothing that may lead a reasonable visitor to the worksite to conclude that the individual is not prepared to perform assigned tasks.

### 18.03. UNIFORMED STAFF

The following employees/volunteers are required to wear uniforms:

- Fire Department employees and volunteers
- Police Department staff
- Public Works staff

Employees/volunteers with positions that require uniform apparel will be in full uniform, as dictated by the department head, each and every work day that the individual is assigned duties. Department heads may delegate the responsibility for uniform inspection to subordinate staff.

Any shirts, pants, hats, badges, belts, shoes and other uniform equipment issued must be worn on a daily basis unless the department head has declared such items as optional.

Uniforms are to be worn in the manner determined by the department head. At a minimum, uniforms must be free of dirt, wrinkles and odors. Personal alterations of the complete uniform (except for those required for appropriate fit) are prohibited.

Uniform care, including laundry and cleaning expenses, are the responsibility of the individual employees/volunteers, unless agreement for uniform care has been negotiated between an employee organization and the City.

### 18.04. NON-UNIFORMED STAFF

All non-seasonal, non-uniformed staff and Management Employees will receive one (1) City of Sierra Madre polo shirt, for which the color and style is chosen by the Personnel Officer, each fiscal year. The cost of this benefit is subject to the IRS tax guidelines. At the discretion of the Personnel Officer, an employee may choose a different style shirt if available in the same color, and pay the difference in price, if the selected shirt cost more than the polo shirt selected by the Personnel Officer.

### 18.05. PERSONAL APPEARANCE

- Grooming should be neat and clean at all times
- Hair must be neat, clean and well groomed
- Beards, mustaches and sideburns must be maintained in a neat and well-groomed fashion.
- Good personal hygiene is required.
- Avoid fashion extremes
- Be appropriate for the work situation

Exceptions to the above guidelines will be made on an individualized basis, for good cause. Exceptions include reasonable accommodations under law including the Americans with Disabilities Act, and temporary work assignments that require a shift in employee dress. Style preference is not considered good cause under this policy.

Should questions arise regarding the apparel of individuals under various circumstances, the City Manager will have the final decision in the matter of appropriate attire.

Any employee whose appearance does not meet these standards will be counseled by a supervisor or department head. If the appearance is unduly distracting or the clothing is unsafe, the employee may be sent home without pay to correct the problem. Repeated disregard for this dress and personal appearance code may result in disciplinary action up to and including termination.

## Section 19. EMERGENCY RECALL & NOTIFICATION PROCEDURES

Whenever a disaster strikes, the Sierra Madre community looks to City employees for leadership and assistance in mitigating its effects. The assistance of City employees is vital to ensuring that this community recovers from a disaster as quickly as possible. It is important that all City employees be available to assist in responding, regardless of whether you work in public safety positions.

### **19.01. OFF-DUTY RECALL PROCEDURES OUTSIDE NORMAL WORKING HOURS**

After ensuring that your own families are safe, City employees shall respond according to the established procedures. Employees should follow the following steps:

- Contact your supervisor or the Emergency Operations Center (EOC) for direction on where and when to report. The Employee Call-In Number for the EOC is 626.355.7136 x7.
- If you are unable to contact your supervisor, gather the supplies and equipment you will need for 72 hours and report directly to the EOC.
- If you are unable to report physically to the EOC, report to the closest City Hall or emergency shelter to provide your assistance. As soon as possible, contact the EOC to let them know of your whereabouts.
- If for any reason you cannot safely report to help (if, for instance, you are the sole caregiver for a child and do not have available child care), please notify your supervisor or the EOC that you are unable to respond.

### **19.02. ON-DUTY RECALL PROCEDURES DURING NORMAL WORKING HOURS**

All City employees shall remain at work to make themselves available for disaster relief, and each department head is responsible to ensure that their employees do so. No supervisor is authorized to release any employee from work in the event of a disaster without his or her department head's approval. The EOC Director/City Manager is responsible for retaining and releasing staff.

## Section 20. TRAVEL POLICIES AND PROCEDURES

As a municipal government, the majority of work and meetings for the City should be conducted within City limits. Nonetheless, from time to time, certain employees must conduct City business outside City boundaries. In an effort to compensate employees for additional expenses fairly incurred while conducting business outside the City and to comply with Internal Revenue Service (IRS) rules and regulations, the following travel policies are hereby established.

### 20.01. DEFINITION

**Travel:** City related business that must be conducted at a location outside of City limits.

### 20.02. DAY TRAVEL

Examples of day travel include one-day seminars and meetings that cannot be attended/conducted within City limits. When City employees must travel during the day, a City vehicle, if available, should be used. If a City vehicle is not available, the City will reimburse the employee for business use of a personal vehicle at the IRS established rate (revised periodically) in effect on the day of travel. Such reimbursement is subject to the Vehicle Usage Policy.

No meal reimbursement will be provided for day travel should an employee travel outside the City during a regularly scheduled meal break.

### 20.03. OVERNIGHT TRAVEL

All overnight travel must be pre-approved by the department head and City Manager. Employees must submit the Travel Authorization Form to the City Manager 21 days prior to embarking on travel. The Form should then be submitted to the Administrative Services Department if travel advances are requested. After travel, the form must be completed and submitted to the Administrative Services Department with itemized receipts.

Only select expenses will be approved for overnight travel that is not required. These expenses may include transportation, lodging, and registration.

Should an employee be required to travel overnight, the following costs will be reimbursed:

#### 20.03.01. Transportation

**Mode of Transportation:** Employees will be reimbursed for the least expensive method of transportation that will expediently transport the employee to and from the travel destination. When determining the appropriate mode of transportation, slower modes of transportation that result in increases in other costs (such as reimbursable meals and salary) must be considered.

Should an employee select a mode of transportation that is not the least expensive, the City will reimburse the employee for the amount that would have been reimbursable had the employee selected the least expensive mode of transportation.

Should an employee select a mode of transportation that is not the most expedient, the City will not reimburse the employee for meals that would have been reimbursable if the employee had selected the most expedient mode of transportation. Additionally, the employee must use personal leave (not sick leave) for any time away from regular duties attributable to the slower mode of transportation. This provision will be waived if the slower mode of transportation is more economical after considering these costs.

**Local Transportation:** The City recognizes that while traveling employees must be mobile under certain circumstances. Employees are to use the most economical modes of transportation when moving from place to place at a travel destination. Choices of local transportation include but are not limited to buses, subways, trains, taxis, shuttles, personal vehicles and rental cars.

**Public Transportation:** Employees are expected to use shuttle buses if available. In many cities, public transportation and taxis are an economical alternative to car rental. Such alternatives must be used, if available and reasonably convenient.

**Private Vehicles:** If an employee drives a City or personal vehicle to a travel destination, that vehicle should be used for all local transportation requirements. Additionally, employees may travel in personal vehicles of others, if reasonably convenient, safe and available.

**Car Rental:** Employees will be reimbursed for necessary car rental expenses when away from the City on business. Car rental must be pre-approved by the department head. Employees are expected to rent the least expensive vehicle available that will accommodate the business needs of the traveler. Optional loss damage coverage should be purchased from the rental agency at the time the vehicle is rented. Employees are required to adhere to the City's Vehicle Usage Policy while driving a rental car.

**Car Travel:** Should an employee determine that travel by car is the most efficient mode of transportation, a City vehicle, if available, should be used. The same applies to transportation to and from an airport (or other public transportation station). If a City vehicle is not available, the City will reimburse the employee for business use of a personal vehicle at the IRS established rate (revised periodically) in effect on the day of travel. Such reimbursement is subject to the Vehicle Usage Policy.

**Parking:** All reasonable parking expenses incurred at a local public transportation terminal and at the travel destination will be reimbursed. Employees are expected to use discount long-term parking lots if available.

#### 20.03.02. Meals

If an employee is attending a conference or seminar that includes a meal, no reimbursement will be provided for that meal.

Itemized receipts must be submitted for reimbursement. Under no circumstances will the City reimburse an employee for alcoholic beverages.



The following maxima are established for meals. Certain “High Cost” travel destinations may require a larger allowance. Such allowances must be pre-approved by the City Manager.

|               |                |
|---------------|----------------|
| Breakfast     | \$18.00        |
| Lunch         | \$18.00        |
| <u>Dinner</u> | <u>\$28.00</u> |
| Total         | \$64.00        |

#### 20.03.03. **Lodging**

The City will reimburse employees for reasonable lodging expenses incurred while traveling where an overnight stay is required. Should a conference be coordinated through a specific hotel (or group of hotels), employees are expected to stay at the least expensive accommodations offered and available. If travel is not in connection with a conference or seminar, the employee shall make reasonable arrangements for accommodations that do not exceed the going rate for business travelers within the area visited.

#### 20.03.04. **Incidentals**

Should an employee find it appropriate to incur other costs (such as moderate baggage handling costs) that would not be necessary if the employee were not traveling, such costs must be documented and will be reimbursed, if approved by the department head. Excessive tipping and entertainment are not allowable expenses.

#### 20.03.05. **Prepaid Travel Expenses/Receipts**

Receipts are required for all travel expenses except incidentals that would not normally yield a receipt. The City may prepay travel expenses for employees or place travel expenses on a City issued credit card. Such payments are considered travel advances and must be accounted for on the employee’s travel reimbursement request as such. Failure to submit receipts may result in the denial of reimbursement and future advances.

The City will prepay travel expenses for an employee who does not have a City issued credit card, if requested. The employee must document needs at least 21 days prior to travel. Travel advances will be paid directly to hotels and airlines. Other travel advances will be paid to the employee.

#### 20.03.06. **Travel Expense Reports**

Travel expenses must be reported to the Administrative Services Department within 10 business days of returning from travel. All advances, charges on City issued credit cards and reimbursable expenses must be reported on the Travel Expense Report form provided by the Financial Services Department. Failure to submit the Travel Expense Report form will result in denial of reimbursements and the employee must return all advances received to the City.

#### 20.03.07. **Communications Expense**

Employees who travel away from the assigned work location shall be accessible by telephone/pager. If neither is available, the City will reimburse the employee for reasonable

business telephone costs incurred while traveling on City business. Employees shall use the most economical telephone system available when making business telephone calls.

**20.03.08. Conference/Class Registration**

The cost of training classes and conferences will be prepaid by the City. The employee must document need for prepayment of conference or class registration at least 21 days prior to travel. The cost of the class must be included on the expense reimbursement request.

**20.03.09. Policy Clarification Needs**

Should questions arise regarding the application of these travel policies, the City Manager shall have the final decision in allowable and reimbursable travel expenses. Provisions of existing memoranda of understanding and statutes will prevail over provisions of this policy.

**20.04. COMPENSATION FOR NON-EXEMPT EMPLOYEES**

The City of Sierra Madre compensates all non-exempt City employees in accordance with the Fair Labor Standards Act (FLSA).

A Travel Time Matrix has been prepared to reflect the compensability of travel time for employees who are eligible for overtime compensation. The Travel Time Matrix follows:

| <b>If:</b>   | <b>Then Travel Time Is:</b>  |
|--|--|
| Travel during the normal workday                     | <i>Compensable</i> - Travel during the workday, after the employee has reported to work, is hours worked for the City of Sierra Madre unless it is in connection with a bona fide meal break. However, travel from the employee's last work location to home is not compensable. Supervisors should not require employees who will be traveling during the work day to report to their normal work site at the start or the end of their shift unless it is truly necessary for the employee to report to such location. |
| The employee is sent out of town for one day or less | <i>Compensable</i> , only for the portion of travel time in excess of the employee's normal commute.   |
| The employee travels and stays overnight             | <i>Compensable</i> , Except for time spent eating meals or engaging in personal pursuits (e.g. sleeping), time spent traveling to a location where the employee will be staying overnight is considered hours worked. The hours worked includes time spent driving or as a passenger on an airplane, train, bus, taxi cab or car, or other mode of transportation, in traveling to and from the out of town location. In addition, time spent waiting to purchase a ticket,  |

Section 20. Travel Policies and Procedures

|  |  |
|--|--|
|  | check baggage, or get on board a mode of transportation is compensable.  |
| The employee travels after hours as a passenger on public transportation on an overnight trip                    | <i>Compensable.</i>  |
| The employee drives for an overnight trip  | <i>Compensable.</i>  |
| The employee leaves early for an authorized attendance at an off-site function (i.e. conference, training, etc.) | <i>Not compensable.</i> If the employee leaves for a function prior to the day/time required to get to the function location in a timely manner, the travel time is not compensable. |
| The employee stays after his/her authorized attendance at an off-site function                                   | <i>Not compensable.</i> The return travel time is not compensable if the employee does not immediately return following the function.  |

- Similarly, under the FLSA, at least one of the following conditions must be met in order for a non-exempt employee to be eligible to be paid overtime for training time:
  1. The training is during normal working hours;
  2. The employee is performing productive work for the City during the training;
  3. Attendance is mandatory;
  4. The training program is directly related to the employee’s job (i.e. if an employee is being trained on how to use the computer program necessary to complete his/her job; conferences and professional organizational meetings are rarely considered “directly related”).
  5. Returning to work after the end of the training day, all employees who attend training are required to return to their regular work location if, at the end of the training day, after traveling back to their regular City work location, there would be at least one half hour left in their work day.

## Section 21: VEHICLE USAGE POLICY

This policy establishes procedures regarding the effective and economical usage of City owned pool and privately owned vehicles operated during the course of City business. Use of City owned pool vehicles shall be relied upon as the primary means of vehicle usage for City business, as it provides the greatest control over operating costs, usage, maintenance, inspection and insurance. For the purpose of this policy, the term “employees” includes all City employees and volunteers.

This policy has been approved by the City for use in matters regarding the use of all vehicles operated during the course of City business. This policy does not apply to commercial motor vehicles.

### 21.01. ASSIGNMENT OF RESPONSIBILITY

Department heads shall keep a list of all employees who may be required to drive City owned pool or privately owned vehicles on City business. Department heads shall also be responsible for overseeing the implementation of necessary driver training programs and ensuring that employees who require such training are in attendance. In addition, department heads shall work with the Personnel Analyst to maintain a current list of employees for each department.

The Personnel Officer shall coordinate all required training and maintain related records. Additionally, the Personnel Officer shall ensure that evidence of insurance and driver’s license information are maintained in each employee’s file. The Personnel Officer shall also receive and record Department of Motor Vehicles Pull Notice reports and notify department heads when necessary.

The Safety Committee shall review all accidents to determine whether an accident was preventable or not preventable, and to make any necessary disciplinary recommendations.

The designated City mechanic is responsible for the general operation of the City’s pool fleet, including receiving notification from any employee who reports unsafe conditions or defects in any City owned pool vehicle. Upon receiving such notification, the designated City mechanic shall determine whether the vehicle is unsafe for continued operation.

All City employees shall promptly provide insurance and driver license information at the time City employment is established. Employees are to comply with all training and other reporting requirements of this policy.

## 21.02. DEFINITIONS

**Preventable Accident:** the vehicle operator failed to do everything reasonably possible to prevent the accident.

**Non-Preventable Accident:** The vehicle operator did everything reasonably possible to prevent the accident.

**City Owned Pool Vehicle:** Any vehicle owned by the City, and assigned on a shared, designated or permanent basis.

**Privately Owned Vehicle:** Any vehicle owned, leases by or used by an employee.

**Commercial Motor Vehicle:** A motor vehicle or combination of vehicles designed or used for the transportation of persons or property for compensation.

**Vehicle Operator:** An employee operating either a City owned pool vehicle or a personally owned vehicle on City business.

**City Business:** activities that require the use of a vehicle and are authorized by the employee's supervisor. In the use of personal vehicles, City business also means that the operator is being reimbursed for mileage expenses according to Internal Revenue Service guidelines.

## 21.03. VEHICLE TYPES AND USE

### 21.03.01. Use of City Owned Pool Vehicles

City owned pool vehicles fall into the following three categories and have restrictions based upon type and use:

1. Vehicles kept overnight at City facilities, and assigned for use on a shared or designated basis during the course of daily City business. Personal use is expressly prohibited.
2. Vehicles assigned to managers on a permanent basis, and used for daily commuting to and from the City. According to the Internal Revenue Service, commuting to and from work and any other incidental personal usage is not considered official use, and must be reported as imputed taxable income.
3. Vehicles designed for emergency or on-call use, and authorized for use to and from work in order to respond on a 24-hour basis. Employees authorized to operate emergency or on-call vehicles may make reasonable but limited stops before and after assigned work shifts while traveling to and from work. City employees are authorized to operate City owned pool vehicles.

City owned pool vehicles are for transporting only those employees whose duties require the use of a motor vehicle, and such other persons whose business activities are important to City interests.

In general family members, friends or others may not be transported in City owned pool vehicles, including in those vehicles authorized for use commuting to and from the City or designated for emergency or on-call use. Prior written approval from the City Manager is required before transporting family members, friends or others.

Employees who have a City owned pool vehicle permanently assigned to them and/or City owned pool vehicles assigned for use within their department are responsible for ensuring that only those persons with a valid driver's license and on official City business are allowed use of the City owned pool vehicle.

#### 21.03.02. Use of Privately Owned Vehicles

There are times where the use of an employee's personal vehicle is preferable because either a City owned pool vehicle is not available or because the use of a privately owned vehicle is deemed more efficient. When such is the case, the following shall apply:

An employee may use his/her privately owned vehicle when he/she has a transportation need for City business and upon written authorization by his/her supervisor. Employees are to contact their personal insurance company if involved in an accident while on City business. An Accident Kit must be obtained from the Personnel Analyst and kept with the privately owned vehicle while operating on City business.

It is the responsibility of the individual utilizing his/her privately owned vehicle to maintain accurate records of the purpose and extent of his/her travel, and to make substantiated claims for reimbursement per the City's reimbursement policy. The vehicle and/or mileage allowance is intended to cover the employee's cost of operating the vehicle on City business, including the cost of insurance. Further, all operating expenses of the privately owned vehicles are to be borne by the employee. This includes, but is not limited to, gasoline, oil, maintenance, wear and tear, depreciation and insurance. The reimbursement will be based on the current IRS reimbursement amount.

The City is not liable for any damage to an employee's personally owned vehicle, unless caused by the City's negligence (employee's negligence excepted). It is the responsibility of the employee operating the vehicle to notify his/her immediate supervisor, the Department of Motor Vehicles, and the employee's insurance company in the case of any accident or damage.

#### 21.04. DRIVER TRAINING

Employees who drive City owned pool vehicles may be required to complete a defensive driver training course. Consideration should also be given to other employees who regularly use personally owned vehicles as part of their essential job functions.

New employees shall complete a defensive driver training program at the first available course date after commencement of employment. Instruction shall also be provided to make certain that these employees are familiar with this policy.

Current employees who change assignments to include driving a City owned pool vehicle may be required to complete the provisions as stated in this section.

All employees who are required to participate in defensive driver training shall be required to repeat this training at least once every three years. The Personnel Analyst will be responsible for keeping track of and scheduling employee training.

#### 21.05. GENERAL GUIDELINES

Employees shall obey all federal, state and local laws while operating either City owned pool or personally owned vehicles on official City business.

It is the responsibility of the employee operating either a City owned pool or personally owned vehicle to ensure that all persons in the vehicle fasten seat belts before starting the engine of the vehicle and keep seat belts fastened throughout the travel.

The vehicle operator is responsible for assuring that all items of cargo, materials or tools are properly secured.

No person shall be allowed to ride on running boards, fenders, hoods, tailgates, beds or other locations on a vehicle not designed or approved by the vehicle manufacturer for passenger seating. An exception to this shall be emergency vehicles and vehicles designed and equipped for passengers outside the cab area.

Any injuries sustained by the vehicle operator or other employees while operating a vehicle on City business shall be covered by workers' compensation.

When the vehicle operator is determined to be involved in a preventable accident, the Safety Committee shall recommend disciplinary action subject to review and approval by the department head.

No employee shall consume any alcoholic beverages, illegal drugs, or legal drugs that would impair an employee's ability to drive prior to, or while driving either a City owned vehicle or personally owned vehicle on official City business.

Alcoholic beverages and drugs shall not be transported or placed in any City owned pool. This does not apply to public safety employees during the course of their official duties and within the scope of their respective guidelines and policies.

Any employee who operates a City owned pool vehicle, regardless of frequency, is responsible for the proper care and operation of that vehicle.

Before operating the vehicle, and at least once each day, the employee shall check to make certain that all vehicle safety equipment, including headlights, turn signals, brake lights and windshield washers, are functioning properly. Public safety personnel shall make sure that all emergency lighting equipment and siren(s) are operating properly prior to the start of their shifts.

Any vehicle damage beyond normal wear and tear or that includes defects affecting the safe operation of the vehicle must be documented and reported to the employee's supervisor and the designated City Mechanic.

No employee shall operate a City owned pool vehicle found to be in an unsafe condition.

#### 21.06. USE OF ELECTRONIC DEVICES

In accordance with state law, employees may not use cellphones while driving a City owned pool or privately owned vehicle in the course of conducting City business. Under no circumstances should employees compose, send or read text messages, or e-mails or instant messages while operating a City owned pool or privately owned vehicle in the course of conducting City business. In situations where job responsibilities include regular driving and accepting of business calls, a hands-free listening and speaking device must be used. Even when using a hands-free listening and speaking device, employees may only answer telephone calls when it is safe to do so.

#### 21.07. RENTAL VEHICLES

When it is necessary for a City employee to use a rental vehicle for City business, the employee shall utilize a City approved rental agency. Optional loss damage coverage should be purchased from the rental agency at the time the vehicle is rented.

#### 21.08. ACCIDENT REPORTING REQUIREMENTS

Any accident involving a City owned pool vehicle, rented or leased vehicle or privately owned vehicle used in the performance of City duties shall be reported as follows:

- The vehicle operator shall summon medical care for any injured parties.
- The vehicle operator shall notify appropriate law enforcement agencies. The law enforcement agency should be encouraged to complete the proper traffic collision report.
- The vehicle operator and passengers should make no comments or admissions to anyone about whom may have been at fault for the accident other than to provide a factual statement to the law enforcement official completing a traffic collision report.



- The vehicle operator shall collect information about the other parties involved by completing the "Accident Kit" located in the City owned pool vehicle's glove box or obtained from the Personnel Officer.
- The vehicle operator shall notify his/her supervisor of the accident as soon as possible. The supervisor shall be responsible for initiating the departmental investigation of the accident, completing all required City reports and recommending action to the Safety Committee. In the event of serious bodily injury, an Incident Report form shall be completed by the supervisor and submitted to the California Joint Powers Insurance Authority (JPJA).
- The supervisor shall notify the Personnel Officer.
- The vehicle operator must report the accident to the DMV if more than \$750 in damage was done to the property of any person or of the City, or if anyone was injured (no matter how slightly) or killed. The report must be filed regardless of whether the vehicle operator caused the accident and even if the accident occurred on private property. The report must be made on the California Traffic Accident Report, form SR 1, and must be made within ten days of the accident. If the report is not filed with the DMV, the vehicle operator's driving privilege will be suspended.

#### 21.09. INSURANCE

Proof of insurance is required before any privately owned vehicle may be authorized and used for City business. Such proof of insurance shall be provided to the Personnel Analyst annually thereafter, no later than January 31 of each year.

Employees who receive a monthly vehicle allowance shall maintain coverage in an amount not less than \$100,000 per person/ \$300,000 per occurrence (or a combined single limit of \$300,000) and property damage coverage in an amount not less than \$100,000 per occurrence.

Employees who do not receive a monthly vehicle allowance but who are authorized to use personally owned vehicles on City business shall maintain minimum coverage in an amount not less than \$15,000 per person/\$30,000 per occurrence (or a combined single limit of \$100,000) and property damage coverage in an amount not less than \$5,000 per occurrence.

California Insurance Code section 11580.9 provides that, where two or more policies affording valid and collectible liability insurance apply to the same motor vehicle in an occurrence out of which a liability loss shall arise, it shall be conclusively presumed that the insurance afforded by that policy in which the motor vehicle is described or rated as an owned vehicle shall be the primary coverage and the insurance afforded by any other policy shall be excess.

The City shall not be responsible for any increase in the employee's automobile insurance premium as a result of an accident.

In the event of an accident, the employee is responsible for paying any deductibles his/her insurance company may require.

If insurance coverage is canceled, terminated, lapses, or is for any other reason curtailed, the immediate supervisor must be notified by the employee and the vehicle shall no longer be used for City service.

When an employee operating a City owned pool vehicle is involved in an accident, defense and settlement of any claim shall be the responsibility of the California JPIA, to the maximum protection limit (the California JPIA Memorandum of Coverage provides automobile liability coverage to all member entities, their city councils, commissions, committees, and employees). If an employee operating a City owned pool vehicle is sued independently as a result of an at-fault accident, the California JPIA may provide coverage to that employee if the accident qualifies as a covered occurrence.

Should an employee using his/her privately owned vehicle on City business be involved in an accident with resulting injury or property damage, the employee's own insurance carrier shall respond to defend the employee. Should a claim exceed the limits of the employee's liability insurance coverage, the California JPIA liability protection program would respond in an excess capacity if the accident qualifies as a covered occurrence.

#### 21.10. DRIVER'S LICENSE

All City employees authorized to use City owned pool or personally owned vehicles on City business must possess a valid California driver's license and provide proof of licensing upon hire.

All City employees must maintain in good standing a valid driver's license appropriate for the class of vehicle to be driven and must carry that license on their person while operating a City owned pool vehicle or privately owned vehicles on City business.

An employee whose driver's license is suspended or revoked for any reason must notify their supervisor no later than the first workday following suspension or revocation of their driver's license. Such employee shall not be allowed to operate any City owned pool or privately owned vehicles on City business.

Employees who possess temporary driving permits or hardship licenses shall not be permitted to operate City or privately owned vehicles in the performance of official City duties.

### 21.11. REVIEW OF DRIVING RECORD

The City shall enroll employees who operate City owned pool or privately owned vehicles on City business in the DMV Pull Notice Program. When a vehicle operator has received a violation, the DMV assigns points according to the type of violation, and automatically sends notification to the City.

In compliance with Vehicle Code section 1808.47, all information received from the DMV shall be used solely for the intended purpose, and kept in locked storage. Under no circumstances shall addresses or other information be given to a third party.

Employees who have an accumulation of four or more points in a 12-month period, six in a 24-month period or eight in a 36-month period may have City driving privileges suspended at the discretion of the department head. The Personnel Officer shall notify the department head when a driving record meets this threshold.

Any employee involved in a preventable accident or demonstrating questionable driving capabilities shall be required to attend remedial training in defensive driving. An employee may be regarded as having questionable capabilities based on a review of points assigned to him/her by the DMV in connection with citations and/or vehicular accidents.

An employee involved in any additional preventable accident or who has a disqualifying action taken against his/her driver's license shall be subject to disciplinary action, the severity of which will be determined by the nature of the offense and the employee's past driving and disciplinary action records.

An employee who has been determined to be involved in two or more preventable accidents within a 36-month period while operating a City owned pool or privately owned vehicle in the performance of official City business may be subject to disciplinary action up to and including termination.

Any conviction resulting from driving while under the influence of drugs or alcohol (DUI) or refusing to submit to a lawful drug or alcohol test shall be subject to disciplinary action up to and including termination.

Intentional abuse, moving violations, reckless operation, or negligent actions while operating any vehicle may result in disciplinary action.

## Section 22. ELECTRONIC USE POLICY

For the purpose of this policy, the term “employees” includes all City employees and volunteers. The City provides electronic equipment to employees for use as tools for efficiency in conducting City business.

Electronic equipment is any City-owned or supplied item, resource, or system including, but not limited to:

- Landline telephones
- Mobile/cellular telephones
- Pagers
- Computers
- Facsimile transmission (fax) machines
- Photocopiers with and without scanning capabilities
- E-mail
- Internet and Intranet
- Wireless networks
- Data systems
- Voicemail
- City network

As the City improves the quality of its services related to these business tools, it is imperative that the City also establish policies that control how the tools are used. These policies protect both the employees and the City. To that end, the following rules and regulations for use of electronic equipment are hereby established. For the purpose of this policy, the term “employees” includes all City employees and volunteers. All City employees are required to adhere to this Policy.

Electronic equipment is provided by the City to facilitate the performance of City work, and may only be used to conduct City business, except for incidental personal use that is consistent with this Policy. As a result, City equipment in any form is a non-public forum.

Incidental personal use of City electronic equipment is permitted as long as: (1) it is kept to a minimum and limited to break times or non-working hours; (2) it does not interfere or conflict with City operations or job performance; (3) it clearly indicates that it is personal, not City, usage, and does not indicate or imply City sponsorship or endorsement; and (4) it is not abusive, illegal, inappropriate, or prohibited by this Policy (for example, no social media use, no electronic dating, no gaming).

Electronic equipment must be used in compliance with applicable statutes, regulations, and City policies including those that require a work environment free from discrimination and harassment. Employees are expected to use common sense and judgment to avoid any communication which is wasteful, destructive, disrespectful, offensive, or illegal.

Electronic equipment, and communications and content sent through the City's electronic equipment (e.g. e-mail, electronic files, text messages, voicemail), are not confidential. Employees acknowledge that the City has the right without prior notice to monitor, review, access, retrieve, and make proper and lawful use of all electronic equipment, and electronic communications and content contained in and transmitted through the City's network and outside providers of wireless or electronic communications services. City employees must provide the City with the employee's username or password for any City issued equipment. The existence of passwords or message delete functions does not restrict the City's ability or right to access electronic equipment and communications and content sent through the City's electronic equipment. As a result, employees shall have no expectation of privacy in their use of any City equipment, or in any communications or content sent through the City's electronic equipment.

Certain communications and content sent through the City's electronic equipment (e.g. e-mail, electronic files, text messages, voicemail) to recipients on networks/systems which are outside of the City pass through networks/systems not managed by City. Some delivery methods and networks/systems impose legal restrictions regarding the nature of messages allowed. Employees are expected to comply with all such regulations. Employees can create criminal and civil liability for themselves and the City by using those systems in an offensive, defamatory or illegal manner. In such event employees and other users may be subject to disciplinary action up to and including termination.

Without exhausting all the possibilities, the following are examples of misuse of the City's electronic equipment:

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

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

Employees shall be held accountable for misuse and may be disciplined in accordance with applicable City policies. The City reserves the right to restrict or rescind employees' access to electronic equipment at its discretion. The City reserves the right to specify how the City's network resources will be used and administered to comply with this policy.

Unless specified in writing by the Personnel Officer, non-exempt employees are not authorized to have access to remote email via the web or mobile phone.

### **22.01. CITY EMAIL**

The City's email system is an official communication tool for City business. An official email address is established and assigned by the agency to each employee the City deems necessary. All City communications sent via email will be sent to and from this address. City employees must use the official agency email when communicating City business via email. Employees are prohibited from using their private email address (such as Gmail, yahoo, MSN/Hotmail, etc.) when communicating City business via email. Should an email related to City business be sent to an employee's personal email account, the email should be immediately forwarded to the employee's City email account and responded to accordingly.

#### 22.01.01. *Email Retention Policy*

Unless otherwise required by law, retention of all emails is 25 months. Each email is date stamped to notify the owner of the email of the retention policy. Emails are automatically deleted from the server after 25 months. It is the responsibility of the email owner to print or archive any emails that should be kept longer. It is recommended that employees print emails need to be saved (i.e. for grants, audits, or contractual significance) and file these emails in the appropriate categories. The owner of the email should refer to the “California Local Governments Record Management Guidelines” adopted by the City Council for determining if a printed record of the email should be filed. This policy is the overriding policy for the retention of all files and records of the City and provides the guidelines for all including the selection of emails that should be stored for longer than 25 months. Emails of terminated employees are kept for six months and then their email accounts/files are deleted.

#### 22.01.02. *Email and Account Passwords*

All employees, contractors, interns, and/or volunteers with access to the City network and/or email must adhere to the policies defined below to protect the security of the computer systems, network, and proprietary data.

##### 22.01.02.01. *Password Protection*

- Never write down passwords in an obvious public location
- Never send passwords in email or instant message
- Never include passwords in a non-encrypted file
- Never share your password with anyone
- Passwords should not to contain anything personally identifiable, like birthdays or children’s names
- Report suspicion of password use to the IT administrator
- Report password inquiry attempts to the IT administrator
- Be mindful of people spying on your entry of passwords

##### 22.01.02.02. *Password Requirements*

- Minimum length of 10 characters
- Maximum length of 20 characters
- Complexity must contain three of the four
  - Lowercase Text
  - Uppercase Text
  - Numbers
  - Special Characters
- Password history – 6 past passwords are kept and not allowed to be reused
- Maximum password age – 120 days
- Minimum password age – 2 days

#### 22.01.02.03. Account Lockout

- Account lockout threshold – 5 failed attempts
- Account holders must lock the computer when leaving for an extended period of time, defined as greater than 10 minutes

#### 22.01.02.04. Fingerprint Reader

Upon approval of the IT administrator, employee may utilize a fingerprint reader to unlock his/her computer

#### 22.01.03. Use of City Email on Mobile Device

Exempt employees may have access to their City email and calendar on their personal mobile devices. However, the City reserves the right to remotely wipe clean any device that the IT administrator feels may be compromised.

### 22.02. MOBILE TELEPHONE AND PAGER USE

The general policy for electronic equipment use applies to the use of mobile telephones. The following policies also apply to the use of mobile telephones.

Employees may be eligible for use of a City-owned mobile telephone device for use in the performance of their duties upon approval by the City Manager. The request, including a brief justification, must be made in writing. Employees may not use a City-owned mobile telephone device for personal use (incidental or otherwise). The City shall routinely audit employees' City-owned mobile telephone billings to ascertain whether personal calls have been made. The City may inspect that data at any time and without notice, as permitted by state and federal law.

The Administrative Services Department is responsible for administering this program. Employees acknowledge that the City has the right without prior notice to monitor, review, access, retrieve, and make proper and lawful use of a City-owned mobile telephone device and all electronic communications and content contained in and transmitted through the device. City employees must provide the City with the employee's password/pass code for the telephone device. The existence of passwords or pass codes does not restrict the City's ability or right to access City-owned telephonic devices. As a result, employees shall have no expectation of privacy in their use of a City-owned mobile telephone device, or in any communications or content sent through the device.

Employees eligible for use of a City-owned mobile telephone device have the option to use their own personal device. Such employees shall receive a flat monthly stipend that will be annually determined and is subject to IRS tax guidelines.

Should employment with the City be suspended or discontinued for any reason, it is the responsibility of the employee to return the City-owned mobile telephone, pager or other communication device(s) to their supervisor immediately along with all attachments, chargers, etc. Failure to return will result in reimbursement to the City by the employee.



Employees shall not use a handheld wireless telephone while operating a motor vehicle unless using a hands-free listening and talking device. Operators of authorized emergency vehicles during the course of employment are exempt from this requirement.

Employees who are issued City-owned pagers or mobile telephones or who receive a mobile telephone stipend are expected to be available via mobile telephone/pager during their scheduled work hours. Accordingly, during their scheduled work hours, such employees must keep their mobile telephones/pagers in the “on” position with a charged battery.

### 22.03. CITY OF SIERRA MADRE SOCIAL MEDIA POLICY

The City of Sierra Madre strives to increase and broaden community involvement and trust as part of its commitment to delivering excellent customer service.

#### 22.03.01. Definitions

**Administrator:** authorized City official who manages content on a City-related social media website as well as reviews content posted to the site by the public.

**Article:** Original posting of content to a City of Sierra Madre social media site by a City of Sierra Madre author.

**Author:** authorized City official who creates and is responsible for posted articles and information on social media sites

**Blog:** (an abridgment of the term “web log”) website where a blog author can post information on a specific topic targeted to a specific audience. A blog, if commenting is enabled, allows registered members of the public (called blog commenters) to post comments about posts by the blog author.

**Comment:** response to City social media site content submitted by a commenter.

**Commenter:** City official or member of the public who posts a comment in response to the content of a particular City-related social media site.

**Discussion Forums:** online bulletin board that may also be referred to as a discussion group or board, a message board or an online forum. On a forum, a registered user can post a message and receive responses to the message on the bulletin board from other registered users.

**Microblogging:** form of blogging that allows registered users to post short updates (140 characters or less) about themselves and their activities. Twitter is an example of microblogging.

**Moderator:** authorized City official who reviews, authorizes and allows content submitted by City of Sierra Madre authors and public commenters to be posted to a City of Sierra Madre social media sites.

**Social Media:** content created by individuals using accessible and scalable technologies through the Internet. Social media websites focus on creating and fostering online social communities for a specific purpose and connect users from varying locations and interest areas. Examples of social media include, but not limited to, Facebook, YouTube, Twitter, LinkedIn, blogging, instant messaging, video conferencing, website link sharing, web feeds, etc.

#### 22.03.02. Policy

1. All City of Sierra Madre social media sites shall be (1) approved by the Department Head and the City Manager; (2) published using approved City social networking platform and tools; and (3) administered by the Department Head or their designee. Designees can be any department employee or volunteer designated by the requesting Department Head who has a complete understanding of this policy and has appropriate content and technical experience.
2. All City of Sierra Madre social networking sites shall adhere to applicable state, federal and local laws, regulations and policies including all Information Technology and Records Management, and other applicable City policies.
3. Freedom of Information Act and e-discovery laws and policies apply to social media content and therefore content must be able to be managed, stored and retrieved to comply with these laws.
4. City of Sierra Madre social networking sites are subject to State of California public records laws. Relevant City of Sierra Madre and records retention schedules apply to social networking content. Records required to be maintained pursuant to a relevant records retention schedule shall be maintained for the required retention period in a format that preserves the integrity of the original record and is easily accessible using the approved City platforms and tools.
5. All social network sites and entries shall clearly indicate that any articles and any other content posted or submitted for posting are subject to public disclosure.
6. Content submitted for posting that is deemed not suitable for posting by a City of Sierra Madre social networking moderator because it is not topically related to the particular social networking site objective being commented upon, or is deemed prohibited content based on the criteria in Policy Item 9 of this policy, shall be retained pursuant to the records retention schedule along with a description of the reason the specific content is deemed not suitable for posting.
7. The City reserves the right to restrict or remove any content that is deemed in violation of this policy or any applicable law.
8. Each City of Sierra Madre social networking site shall include an introductory statement which clearly specifies the purpose and topical scope of the blog and social network site. Where

possible, social networking sites should link back to the official City of Sierra Madre Internet site for forms, documents and other information.

9. City of Sierra Madre social networking content and comments containing any of the following forms of content shall not be allowed for posting:
  - Comments not topically related to the particular site or blog article being commented upon;
  - Profane language or content;
  - Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, sex, gender, marital status, status with regard to public assistance, national origin, physical or mental disability, sexual orientation, or any other basis protected by law;
  - Sexual content or links to sexual content;
  - Solicitations of commerce;
  - Conduct or encouragement of illegal activity;
  - Information that may tend to compromise the safety or security of the public or public systems;
  - Content that violates a legal ownership interest of any other party; or
  - comments in support of or opposition to political campaigns or ballot measures.
10. All City social networking moderators shall be trained regarding the terms of this City of Sierra Madre policy, including their responsibilities to review content submitted for posting to ensure compliance with the policy.
11. All social networking sites shall clearly indicate they are maintained by the City of Sierra Madre and shall have the City of Sierra Madre logo, contact information, and "Official" prominently displayed.
12. Where appropriate, City IT security policies shall apply to all social networking sites and articles.
13. Employees representing the City government via social media outlets must conduct themselves at all times as a representative of the City and in accordance with all human resource policies. See - Employee Guidelines for Participating in Social Networking.

14. Employees found in violation of this policy may be subject to disciplinary action, up to and including termination of employment.

**22.03.03. Comments**

1. Comments submitted by members of the public must be directly related to the content of the articles.
2. Submission of comments by members of the public constitutes participation in a limited public forum.
3. City of Sierra Madre blog moderators shall allow comments that are topically related to the particular article being commented and thus within the purpose of the limited public forum, with the exception of the prohibited content listed in Policy - General - Section 9 above.

**22.03.04. Author and Commenter Identification**

1. All City of Sierra Madre blog authors and public commenters shall be clearly identified. Anonymous blog postings shall not be allowed.
2. Public commenters shall use their valid first and last names for all postings.

**22.03.05. Ownership and Moderation**

1. The content of each City of Sierra Madre blog shall be owned by and the sole responsibility of the department producing and using the blog.
2. Documents and articles submitted to a City of Sierra Madre blog shall be moderated by an authorized and trained blog moderator.

**22.03.06. Blog Comments & Responses**

1. All blog articles and comments shall be reviewed and approved by an authorized blog moderator before posting on a City of Sierra Madre blog.
2. All blog articles and comments submitted for posting with attached content shall be scanned using antivirus technology prior to posting.
3. The linked content of embedded hyperlinks within any City of Sierra Madre blog articles or blog comments submitted for posting shall be evaluated prior to posting. Any posted hyperlinks shall be accompanied by a disclaimer stating that the City of Sierra Madre guarantees neither the authenticity, accuracy, appropriateness nor security of the link, web site or content linked thereto.

#### 22.04. *Employee Guidelines for Participating in Social Networking*

The City of Sierra Madre understands that social networking and Internet services have become a common form of communication in the workplace and among stakeholders and citizens. Social networks are online communities of people or organizations that share interests and/or activities and use a wide variety of Internet technology to make the interaction a rich and robust experience. Employees that choose to participate in social networks as a City employee should adhere to the following guidelines.

1. City policies, rules, regulations and standards of conduct apply to employees that engage in social networking activities while conducting City business. Use of City e-mail address and communicating in an official capacity will constitute conducting City business.
2. City employees shall notify their supervisor and the IT department if they intend to create a social networking site or service to conduct City business.
3. Departments have the option of allowing employees to participate in existing social networking sites as part of their job duties. Department Heads may allow or disallow employee participation in any social networking activities in their departments.
4. Employees should protect their privacy, the privacy of citizens, and the information the City holds. Follow all privacy protection laws, i.e., HIPPA, and protect sensitive and confidential City information.
5. Employees shall follow all copyright laws, public records laws, retention laws, fair use and financial disclosure laws and any others laws that might apply to the City or the employee's functional area.
6. Employees should not cite vendors, suppliers, clients, citizens, co-workers or other stakeholders without their approval.
7. An employee should make it clear that when he/she is speaking for his/herself and not on behalf of the City of Sierra Madre. If an employee publishes content on any website outside of the City of Sierra Madre and it has something to do with the work he/she does or subjects associated with the City, the employee must use a disclaimer such as this: "The postings on this site are my own and don't necessarily represent the City's positions or opinions."
8. Employees shall not use ethnic slurs, profanity, personal insults, or engage in any conduct that would not be acceptable in the City's workplace. Employees should avoid comments or topics that may be considered objectionable or inflammatory.
9. If an employee identifies his/herself as a City employee, he/she must ensure his/her profile and related content is consistent with how he/she presents his/herself to colleagues, citizens and other stakeholders.

10. Employees should correct their mistakes, and don't alter previous posts without indicating that you have done so.
11. Employees should frame any comments or opposing views in a positive manner.
12. Employees should add value to the City of Sierra Madre through your interaction. Provide worthwhile information and perspective.

#### 22.05. Preventing Harassment through Social Media

Using social media to communicate to the public or other employees requires the use of good and ethical judgment. The employees' use of social media impacts City employees if employees decide to post complaints or criticism. Employees should avoid using statements, photographs, video or audio that reasonably could be viewed as malicious, obscene, or threatening or that might constitute harassment or bullying. Examples of such conduct might include offensive posts that could contribute to a hostile work environment on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation or any other status protected by law or City policy. Examples of threatening conduct include posting material that would make a reasonable person afraid for his or her safety or the safety of his or her family.

Employees are prohibited from posting any information or rumors that known to be false about the City, co-workers, City clients, or people working on behalf of the City.

Employees may not disclose information that may violate City, client or employee rights. For example, an employee may not disclose another individual's social security number, medical information or financial information in a manner that violates that person's rights.

If an employee's conduct adversely affects his/her job performance, the performance of co-workers, is detrimental to the mission and function of the City or otherwise adversely affects members of the public served by the City, people who work on behalf of the City or the City's legitimate business interests, the City may take disciplinary action against you up to and including termination.

## Section 23. GRIEVANCE PROCEDURE

A grievance is an alleged violation of these Rules, an applicable Memorandum of Understanding (MOU), or a written City policy, and excludes any discipline or proposed discipline. The goal of this procedure is to make every reasonable effort to resolve complaints as near as possible to the point of origin.

### 23.01. INFORMAL GRIEVANCE PROCEDURE

The grievant and the City's representative shall make every effort to resolve the grievance at the lowest level of supervision. Thus, the grievant shall attempt to discuss the grievance with the immediate supervisor before resorting to the Formal Grievance Procedure. However, if the grievant is unable to resolve the grievance informally before the time period for filing a Formal Grievance expires (10 days from the date the grievance arose), the grievant must proceed to the Formal Grievance Procedure in accordance with the time limits therein or he/she will have waived the right to proceed with the Formal Grievance Procedure.

### 23.02. FORMAL GRIEVANCE PROCEDURE

#### 23.02.01. First Level of Review

The grievant shall present the formal grievance in writing to his/her supervisor within ten (10) days from the alleged occurrence of the violation.

The written grievance shall contain the following information:

- Name of grievant and job title;
- Department/Section;
- Clear and concise statement of the nature of the grievance including the circumstances and dates involved;
- The specific provision(s) of the MOU, Rules, or written policy alleged to have been violated;
- Requested remedy;
- Name of the grievant's representative, if any;
- Date and signature of the grievant.

The supervisor shall render a decision and comments in writing and return them to the grievant within ten (10) days after receiving the written grievance. If the grievant does not agree with his/her supervisor's decision or if no answer has been received within the specified time period, the grievant may present the grievance in writing to the department head or his designee within five days of the date the supervisor's decision is rendered or should have been rendered pursuant to the specified time period.

#### 23.02.02. Second Level – Department Review

The department head or designee shall upon request discuss the grievance with the grievant, the grievant's representative if any, and with other appropriate persons. The department head or designee shall render a decision and comments in writing and return them to the grievant within

ten (10) days after receiving the formal written grievance or after the meeting with the grievant, whichever is later. If the grievant does not agree with the decision reached or if no answer has been received within the specified time period, the grievant may appeal the formal grievance to the next level of the grievance procedure. In order to do so, the grievant must submit the grievance to the Personnel Officer, along with a written request that the grievance be considered at the Third Level, within ten (10) days of the date the department head's decision is rendered, or should have been rendered, pursuant to the specified time period.

#### 23.02.03. Third Level – City Manager

If the grievance is submitted to the City Manager for review and settlement, the City Manager may elect the methods he/she considers appropriate for the study of the issues and shall render a written decision to the parties within fifteen (15) days. The City Manager's decision shall be the final determination.

### 23.03. GENERAL PROVISIONS

The grievant is entitled to representation of his/her choice at any point in the grievance procedure.

Failure by the grievant to meet any of the specified time lines shall constitute a withdrawal and waiver of the grievance. Failure by the City to meet any of the specified time lines shall entitle the grievant to proceed to the next level of review.

Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level shall be considered as maximum, and every effort should be made to expedite the process. If the last day of the specified time period falls on the weekend or a City observed holiday, it shall be moved to the next working day. Otherwise, the time specified may be extended only by mutual written consent.

Probationary employees may not grieve a rejection from probation.

Employees shall be assured of freedom from reprisal and challenges to performance evaluations for using the grievance procedures.

The Personnel Office shall act as a central repository for all grievance records.

Any decision or finding involving an unbudgeted expenditure or budgetary actions, resolutions, and ordinances of the City Council, etc. must be submitted to the City Council for ratification before that decision can become final and binding.

Failure on the part of an employee or his representative to appear in any case without good cause shall result in forfeiture of the case and responsibility for payment for all associated costs by the employee.



## Section 24. DISCIPLINARY ACTION

It is the City policy that discipline shall be imposed in a fair and equitable manner. This City follows a system of progressive discipline when appropriate, but may impose discharge for a first offense if the situation warrants such action. Disciplinary action includes: written reprimand, suspension without pay, reduction in pay, demotion and discharge.

Unless otherwise specified by a memorandum of understanding, the following constitutes the City's policy regarding disciplinary actions:

### 24.01. POLICY COVERAGE

The following categories of persons can be terminated "at-will" and have no rights to any of the pre-or post-disciplinary processes or procedures in this Policy: (1) temporary employees, (2) provisional or seasonal employees, (3) probationary employees, (4) any person who serves pursuant to a contract, and (5) any person who is designated "at-will" in any City policy, document, acknowledgement, resolution or ordinance. Notwithstanding any provision in this policy, any regular employee who is exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) is not subject to any disciplinary penalty which is inconsistent with his or her FLSA overtime-exempt status.

### 24.02. CAUSE FOR DISCIPLINE

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

- Dishonesty;
- Incompetence;
- Insubordination;
- Inefficiency;
- Disobedience
- Neglect of duty;
- Actions which adversely affect the safety of the employee or of others;
- Violation of City policy regarding employee drug and alcohol abuse;
- Unexcused or excessive absences, including tardiness;
- Abuse of sick leave;
- Working overtime without prior authorization;
- Violation of the rules, regulations or orders established by a supervisor, department or City Council;
- Conviction or commission of a crime which adversely affects employment;
- Discourtesy to the public or fellow employees;
- Misuse or abuse of City property or equipment;
- Substandard job performance;
- Willful disobedience or insubordination;
- Outside employment which conflicts with the employee's position and has not been specifically approved by the department head and Personnel Officer;

## Section 24. Disciplinary Action

- Harassment of or retaliation against fellow employees;
- Falsification of any City report or record (including application form) or work time keeping records;
- Fraud in securing employment, or otherwise making a false statement on an application for employment;
- Violation of any City policy;
- Violation of any State, local, or Federal law
- Other acts which are incompatible with service to the public including, but not limited to, any conduct or behavior, either on or off duty, which causes discredit or would reasonably tend to cause discredit to fall upon the City, its officers, agents or departments.

### 24.03. IMPOSITION OF DISCIPLINARY ACTION

Disciplinary action may be imposed upon an employee as follows:

The Department Head shall serve a notice of intended disciplinary action upon the employee stating the disciplinary action that is being proposed, the charges upon which the proposed disciplinary action is based, and a general description of the facts and/or circumstances supporting the charges. The notice shall inform the employee that he or she may respond to the notice in writing and/or in person. Any written response must be submitted to the Department Head within five business days of receipt of the notice. If the employee wishes to respond to the notice in person, he/she must submit a written request for a meeting with the Department Head. The request must be submitted to the Department Head within five business days of receipt of the notice.

If a timely request is made by the employee, the Department Head shall conduct an informal meeting with the employee to permit the employee to respond to the notice. The employee is entitled to be represented at the meeting by an attorney or association representative. The meeting shall be conducted at a time and in the manner determined by the Department Head. The Department Head shall have the authority to impose, reject, or modify the proposed disciplinary action. If a timely request for a meeting is not made by the employee, the Department Head may immediately impose the proposed disciplinary action.

The Department Head shall give the employee written notice of his/her decision which shall, in the absence of an appeal, be considered final and conclusive. At this time the disciplinary action shall be imposed.

#### 24.04. APPEALS

A permanent employee, against whom disciplinary action has been taken, may appeal to the City Manager within 10 business days after receiving a copy of the Department Head's decision and by filing a written answer to such decision with the Department Head. Appeal can be made on the following grounds:

- That the procedures set forth herein have not been followed.
- That the action taken was not in accord with the facts.

Upon receipt of a timely appeal, the Department Head shall advise the City Manager thereof and shall forward a copy of the statement of charges the Department Head's notice of decision on and the employee's answer to such decision. The City Manager shall give the appealing party written notice of the time and place of the hearing to be held before the City Manager upon such appeal. The hearing shall be limited to items which are disputed by the employee and contained within employee's written answer to the Department Head's decision. All items not disputed by the employee shall be deemed admitted by the employee for the purposes of the hearing.

#### 24.05. HEARING PROCEDURE

Hearings shall be conducted in the manner most conducive to determination of the truth, and the City Manager shall not be bound by technical rules of evidence. Decisions made by the City Manager shall not be invalidated by any informality of the proceedings.

The formal rules of evidence shall not apply. All hearings shall be conducted in an orderly and expeditious manner with a view to the presentation of all material facts so that a fair and impartial decision may be made. The City Manager shall have full authority at all times to maintain orderly procedure and to restrict the hearing to facts and witnesses that are relevant to the appeal, and that are not unduly time consuming, cumulative, prejudicial, confusing or misleading.

Each side will be permitted an opening statement (Department Head or designee first) and closing arguments (Department Head or designee first, employee second, followed by rebuttal by Department Head or designee). The Department Head or designee shall first present the witnesses and evidence to sustain the charges. Then, the employee shall present his/her witnesses and evidence in defense. Each side will be allowed to examine and cross-examine witnesses. The hearing may be recorded by a certified shorthand reporter.

The City Manager shall have the authority to issue subpoenas to compel the attendance of witnesses. If any person in proceedings before the City Manager disobeys or resists any lawful order or fails to respond to a lawfully issued subpoena, refuses to take the oath or affirmation as a witness, or thereafter refuses to be examined, or is guilty of misconduct during the hearing or so near the hearing location as to obstruct the proceeding, the City Manager may, pursuant to the authority of Government Code sections 11455.10 et seq., certify the facts to the Superior Court and request the Court to issue an order directing the person to appear before the Court to show cause why he or she should not be punished for contempt.

*Section 24. Disciplinary Action*

Each party may be represented by an attorney. Each party shall bear its own costs, including attorney fees, in connection with the proceeding.

In his/her discretion, the City Manager may designate a neutral hearing officer to conduct the hearing. The hearing officer shall have the same powers as the City Manager in conducting the hearing on behalf of the City Manager. The hearing officer shall render a recommended decision to the City Manager who shall set forth proposed findings of fact and conclusions of law in support of the recommended decision. The City Manager may adopt, modify, or reject the recommended decision. The City shall bear the costs of the neutral hearing officer.

The final decision by the City Manager shall be subject to judicial review under Code of Civil Procedure section 1094.5 within the time limits described in Code of Civil Procedure section 1094.6.