

CITY OF BRISBANE  
PERSONNEL RULES & REGULATIONS

Adopted by the Brisbane City Council

Date

PERSONNEL RULES AND REGULATIONS

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### **RULE 1. PURPOSE**

These Rules and Regulations are established in accordance with Ordinance No. 136 of the City of Brisbane Municipal Code, as adopted by the City Council on July 22, 1968, and as amended by Ordinance No. 277 on December 21, 1981.

Commented [TA1]: Add in new amendment date

These Rules and Regulations are intended to implement the personnel system established by means of that Ordinance and to insure that the basic principles and objectives embodied therein are fulfilled, to wit:

1. The establishment of an equitable and uniform procedure for dealing with personnel matters.
2. The recruitment to the City service of the most competent personnel available.
3. The assurance that appointment and promotions of personnel shall be based upon merit and fitness.
4. The provision for a reasonable degree of security for qualified personnel.

## RULE 2. COVERAGE

These Rules and Regulations shall apply only to personnel holding positions in the Classified Service unless a broader coverage is expressly extended by a specific provision or procedure contained herein.

**Commented [GN2]:** Added "regular" and deleted reference to department heads throughout the document.

The Classified Service shall consist of all regular full-time and regular part-time positions except:

1. The City Manager and City Attorney.
2. All elected officials and members of appointive boards, commissions and committees.
3. All temporary personnel whether employed directly by the City or retained under contract for services.
4. All volunteer personnel.
5. Regular part-time positions funded for less than 1040 hours in a fiscal year.

All personnel excluded from the Classified Service as provided above shall comprise the Exempt Service.

Nothing herein shall preclude the City Council, upon recommendation of the Personnel Officer, from extending a provision or provisions of these Rules to all or certain categories of Exempt personnel. Such action shall constitute an amendment to these Rules and shall be effected pursuant to Rule 3.01.



### RULE 3. GENERAL PROVISIONS

#### 3.01 AMENDMENTS TO RULES

Amendments to these Rules shall be proposed by the Personnel Officer to the City Council.

Notice of proposed amendments shall be publicly posted and also furnished to each recognized employee organization at least five days prior to consideration by the City Council. Such notice shall include the content of the proposed amendment as well as the date, time and place on which it is to be heard by the City Council. At the time of consideration, interested parties may appear and be heard.

Amendments to these Rules shall be by resolution and shall become effective upon adoption by the City Council.

#### 3.02 VIOLATION OF RULES

Violation of the provisions of these Rules shall be grounds for rejection, discharge, suspension, demotion, or other disciplinary action.

#### 3.03 EQUAL EMPLOYMENT OPPORTUNITY

The City strictly enforces policies that protect employee's equal employment opportunity rights and those of their co-workers. No question in any test, in any application form, or in any other personnel proceeding, or of any City official or employee, shall be so framed as to attempt to elicit information concerning political or religious opinions or affiliations of an applicant, eligible candidate, or employee. The City is committed to equal employment opportunity. It is the policy of the City to ensure:

1. equal opportunity to all employees and applicants;
2. that employees are selected and promoted based on merit and without discrimination; and
3. that reasonable accommodations for disabilities are provided to qualified employees and applicants who require them.

The City prohibits discrimination on the basis of age (over 40), race, creed, color, religion, national origin, ancestry, veteran's status, physical or mental disability, marital status, gender identity, gender expression, military status, sexual orientation, sex (sexual, gender based, pregnancy/childbirth), political affiliation or on any other basis prohibited by applicable federal and State law.

The City also prohibits retaliation against any employee for making a good-faith complaint of discrimination or harassment, for assisting another employee in doing so, or for participating in an investigation of a discrimination or harassment complaint.

**Commented [GN3]:** Updated EEO section to comply with amendments to the laws and regulations including new bases for protection (i.e., gender identity and gender expression).

### 3.04 POLICY AGAINST DISCRIMINATION AND HARASSMENT IN THE WORKPLACE

#### I. PURPOSE

The City of Brisbane is committed to providing a work environment free of discrimination and discriminatory harassment. This policy defines discrimination and discriminatory harassment and sets forth a procedure for the investigation and resolution of complaints of such conduct by or against any employee or applicant or from a person providing services to the City pursuant to a contract.

#### II. POLICY

Discrimination and discriminatory harassment violates this Policy<sup>1</sup> and Section 3 of the City's Personnel Rules and Regulations, and will not be tolerated. To violate this policy, discrimination and discriminatory harassment of an applicant, employee, volunteer, intern, visitor, or person providing services pursuant to a contract are conduct based on the following actual or perceived protected characteristics: race, religious creed, sex (sexual, gender based, pregnancy/childbirth), national origin, ancestry, disability, medical condition, marital status, age over 40, military status, gender identity, gender expression, sexual orientation or association with a person on the basis of that person's actual or perceived protected characteristic. Retaliation against any individual for making a complaint of discrimination or discriminatory harassment or for participating in an investigation or disciplinary proceeding thereto also violates this policy. All employees who violate this policy may be subject to disciplinary action, up to and including termination.

This policy applies to all terms and conditions of employment, including but not limited to hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, training opportunities and compensation.

#### III. DEFINITION

##### A. Discrimination

Discrimination includes but is not limited to:

1. Any behavior or practice which treats a person differently because of that person's actual or perceived protected characteristic or association with a person on the basis of that person's actual or perceived protected characteristic;
2. Systematic exclusion of a person because of that person's actual or perceived protected characteristic;

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<sup>1</sup> A violation of this policy does not necessarily constitute a violation of state and/or federal law, although discriminatory harassment is prohibited by both.

3. Ignoring, failing to take seriously, blaming a person who reports or complains of conduct prohibited by this policy, or suggesting that he or she is “thin skinned,” “too sensitive” or that he or she does not have a sense of humor;
4. Continuing behavior directed at a person’s protected characteristic; and/or
5. Engaging in harassment, as more specifically defined below.

B. Discriminatory Harassment

Harassment can consist of virtually any form or combination of verbal, physical, visual or environmental conduct. It need not be explicit nor even specifically directed at the victim. Sexually harassing conduct can occur between people of the same or different genders. Harassment includes, but is not limited to, the following misconduct:

1. Verbal: Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person’s actual or perceived protected characteristic. This may include, but is not limited to, inappropriate comments regarding an individual’s body, physical appearance, attire, sexual prowess, marital status, pregnancy, childbirth or sexual orientation; unwelcome flirting or propositions; demands for sexual favors; verbal abuse, threats or intimidation of a sexual nature; or sexist, patronizing or ridiculing statements that convey derogatory attitudes about a particular gender.
2. Physical: Inappropriate or offensive touching, assault or physical interference with free movement when directed at an individual on the basis of that person’s actual or perceived protected characteristic. This may include, but is not limited to, kissing, patting, lingering or intimate touches, grabbing, massaging, pinching, leering, staring, unnecessarily brushing against or blocking another person, whistling or sexual gestures.
3. Visual or Written: The display or circulation of offensive or derogatory visual or written material related to race, religious creed, sex, national origin, ancestry, disability, medical condition, marital status, age over 40 or sexual orientation. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, notes, letters, invitations, computer graphics or electronic media transmissions.
4. Environmental: A work environment that is permeated with sexually-oriented talk, innuendo, insults or abuse not relevant to the subject matter of the job. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements. An environment may be hostile if unwelcome sexual behavior is directed specifically at an

individual or if the individual merely witnesses unlawful harassment in his/her immediate surroundings. The determination of whether an environment is hostile depends on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening and whether the conduct unreasonably interferes with an individual's work.

5. 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. A welcome sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing.
6. By definition, sexual harassment is not within the course and scope of an individual's employment with the City of Brisbane.

#### IV. PROHIBITED BEHAVIOR BY SUPERVISORS/MANAGERS

- A. No supervisor, manager or other authority figure may condition any employment, employee benefit or continued employment in this City on an applicant's or employee's acquiescence to any of the behavior defined above.
- B. Also, all supervisors and managers are required to maintain confidentiality to the extent possible in communicating or investigating any claim of alleged discrimination or discriminatory harassment. No person shall destroy evidence relevant to an investigation conducted pursuant to this policy.

#### V. PROHIBITED BEHAVIOR BY ALL PERSONS

- A. No supervisor, manager or any other person in this City shall create a hostile or offensive work environment for any other person by engaging in any discriminatory or retaliatory conduct or by tolerating such on the part of any employee.
- B. No supervisor, manager or any other person in this City may retaliate against any applicant or employee because that person has opposed a practice prohibited by this policy or has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing conducted pursuant to this policy.
- C. No supervisor, manager or any other person in the City shall assist any individual in doing any act which constitutes discrimination, discriminatory harassment or retaliation against any employee.
- D. Both supervisory and non-supervisory employees may be held individually liable for civil damages for engaging in any harassing conduct or for aiding and abetting harassment.

VI. OBLIGATIONS OF SUPERVISORS/MANAGERS

Commented [GN4]: C was added as a result in an update in the law effective 2018.

- A. A copy of this policy shall be provided to all employees, as well as displayed in prominent locations throughout the City. Also, a copy of this policy shall appear in any publication which sets forth the comprehensive rules, regulations, procedures and standards of conduct for employees.
- B. A copy of the information sheet on sexual harassment prepared by the Department of Fair Employment and Housing is available to all employees upon request to the Human Resources Department. Also, further information from the Department of Fair Employment and Housing is available at its website, [www.dfeh.ca.gov](http://www.dfeh.ca.gov).
- C. All supervisors and managers must participate in mandatory sexual harassment prevention training (including training about gender identity, gender expression, and sexual orientation) once every two years.

VII. OBLIGATIONS OF ALL EMPLOYEES

Commented [GN5]: Deleted references to Human Resources Administrator as obsolete and changed references to "Administrative Services Director and/or his or her Designee."

- A. Whenever possible, any employee who believes that he or she is experiencing discrimination or harassment is encouraged to inform the person that the particular conduct is unwelcome, offensive, unprofessional or highly inappropriate. If this does not resolve the matter or if the employee feels uncomfortable, threatened or has difficulty expressing his/her concern, the employee should report the matter to a supervisor, as set forth below.
- B. All employees shall report any conduct which fits the definition of discrimination or discriminatory harassment to their direct supervisor, Department head or the Administrative Services Director and/or his or her Designee. This includes conduct of non-employees, such as sales representatives or service vendors or harassing conduct toward such contractors. Also, all employees may make a report through the Employee Protection Line which is monitored by an independent third party. An anonymous report may be made at any time, 24 hours a day, 7 days a week, through the Employee Protection Line at 1-800-576-5262 (organization code number 10126), or an employee may file a complaint with the Equal Employment Opportunity Commission at 415-356-5100 or the Fair Employment and Housing Commission at 1-800-884-1684.
- C. All persons shall report to their direct supervisor, the Department head or the Administrative Services Director and/or his or her Designee any instances of abusive conduct, discrimination or discriminatory harassment which they have directly observed, whether or not reported by the employee who is the object of the discrimination or harassment.
- D. All employees shall cooperate with any authorized investigation of alleged discrimination or discriminatory harassment.

- E. Any employee who makes a report or complaint which the employee knows or should know is false, under this policy, shall be subject to disciplinary action, up to and including termination.

#### VIII. INVESTIGATIVE/CORRECTIVE ACTION

- A. All persons shall immediately report to their direct supervisor, the Department head or the Administrative Services Director and/or his or her Designee any evidence or complaints of discrimination or discriminatory harassment made to them. Any supervisor or manager who receives a complaint regarding discrimination or discriminatory harassment shall immediately report it to the Administrative Services Director and/or his or her Designee.
- B. The Administrative Services Director and/or his or her Designee shall authorize the investigation or conduct the investigation of any incident of alleged discrimination or discriminatory harassment reported to them. The investigation shall be conducted in a way which ensures, to the extent feasible, the privacy of the parties involved.
- C. The person designated to investigate shall immediately report, in writing, the findings of fact to the Administrative Services Director and/or his or her Designee who, in turn, will determine whether the policy has been violated and communicate that conclusion to the complainant. Disciplinary action shall be decided in accordance with City policy and after consultation with the City Manager and the Human Resources Department.
- D. Under no circumstances shall an employee who believes that he or she has been the victim of discrimination or discriminatory harassment be required to first report that complaint to a supervisor if that person is the individual who has engaged in the alleged discriminatory or harassing conduct.
- E. No employee shall retaliate against another employee who reports an incident pursuant to this policy. Employees found to have violated this section may be subject to disciplinary action, up to and including termination.

#### 3.05 OUTSIDE EMPLOYMENT

The City expects employees to devote full attention to their City responsibilities during working hours. City employees shall not carry on, concurrently with their public employment, any other employment, business or undertaking which conflicts or in any way interferes with their City employment.

Outside employment shall not be undertaken by full-time employees in the Classified Service unless the department head and the appointing authority first approve the employment and

Commented [GN6]: Modified slightly by adding first sentence of first paragraph.

determine that it will not adversely affect the employee's quality of work or availability for City service.

Under no circumstances shall an employee be authorized to perform any function related to outside employment or activities during working hours.

### 3.06 POLITICAL ACTIVITIES

**Commented [GN7]:** Added this standalone policy to the Personnel Rules

It is unlawful for City employees to use public resources or personnel to engage in political activity relating to elective offices and ballot measures. City employees may not engage in political activities while on duty or in the workplace. Employees may not use City resources, such as photocopier or fax machines, telephones, postage, or email, for political activities.

The ban on engaging in political activity while on duty prohibits such activities as donning paraphernalia, such as buttons, while in City uniforms, circulating petitions, addressing campaign mailers or engaging in any other political activities that use City resources or divert employees from their assigned duties.

City employees are prohibited from using their official positions to influence elections, and from using City funds or resources for political or election activities. Further, City employees may not participate in political activities of any kind while in uniform (i.e., part or all of a uniform they are required or authorized to wear when engaged in official duties).

Violation of these rules may result in considerable civil and criminal penalties, as well as discipline, up to and including dismissal.

The political activities of City employees shall be governed by the provisions of applicable State and Federal law.

### 3.07 ACCEPTANCE OF GIFTS

**Commented [GN8]:** Added this standalone policy to the Personnel Rules and added language that allowed gifts delivered unsolicited to City offices can be kept so long as such gifts are shared amongst the staff.

Employees may not accept any gift that is intended to influence the employee in the performance of his/her job. Employees may not solicit or accept any gift from any person or entity who has a contract with the employee's department or who has attempted to influence the employee in a governmental decision during the past twelve (12) months. Employees may not solicit or accept any gifts from any subordinate, or any candidate or applicant for a position. These prohibitions do not apply to employee gift exchanges during birthdays and holidays, for example.

Consumable, non-alcoholic gifts, such as boxes of candy, fruit, baked goods, etc..., delivered to City offices by businesses or residents who provide such gifts at holidays or similar times shall be shared by all staff of the office.

If the employee is required to file a Statement of Economic Interests ("SEI") financial disclosure, he or she cannot accept gifts worth more than the amount specified in the California Government Code in a calendar year from certain sources. At the time of hire or promotion, the City will inform the employee whether or not they are required to file an SEI.

**RULE 4. PERSONNEL OFFICER**

The City Manager shall be the Personnel Officer. In this capacity, the City Manager, or his or her designated representative, shall be responsible for discharging the following functions related to the administration of the City personnel system:

Administer all provisions of Ordinance No. 136, and of these Rules except as may be specifically reserved to the City Council.

Prepare and recommend to the City Council amendments to Ordinance No. 136 and to these Rules, subject to advance approval as to legality by the City Attorney.

Prepare the complete classification and pay plan encompassing positions in the Classified Service and revisions thereto.

Conduct the complete examination and selection process for positions in the Classified Service, including the publication of examination announcements, the development of appropriate examinations and the certification of individuals eligible for appointment.

The Personnel Officer is empowered to recommend to the City Council that any one or more of the aforementioned functions be performed under contract by a qualified person, agency or organization.



## **RULE 5. DEFINITIONS**

**Commented [GN9]:** Added definition for Full Time Employee, Part Time Employee and Regular before other classes of employees

The terms used in these Rules shall have the meaning indicated as follows unless the context clearly indicates otherwise:

**5.01 ALLOCATION:** The assignment of a position to its proper job classification in accordance with its duties and levels of responsibility.

**5.02 APPOINTING AUTHORITY:** The City Manager.

**5.03 APPOINTMENT:** The offer and acceptance of a position in the Classified Service pursuant to Rule 10 of these Regulations.

**5.04 APPOINTMENTS:**

- a. **Original** – The initial appointment of an employee to a position in the Classified Service.
- b. **Promotional** – A subsequent appointment of an employee to a position in a higher classification in the Classified Service.
- c. **Temporary** – The appointment of an eligible or, where no employment lists exists, a qualified person to fill a position in the Classified Service for a limited period of time.

**5.05 CANDIDATE:** An applicant accepted for participation in the examination process.

**5.06 CERTIFICATION:** The submission of names of eligible from an appropriate list or lists to a department heard by the Personnel Officer.

**5.07 CITY:** The City of Brisbane

**5.08 CLASS:** A group of positions having duties and levels of responsibility sufficiently similar that the same job title, examples of duties, minimum qualifications, methods of selection and compensation may be applied.

**5.09 CLASSIFIED SERVICE:** Those positions or classes of positions set forth in Rule 2 of these Regulations.

**5.10 CLASSIFICATION PLAN:** The arrangement of positions in classes, together with the title for and specification describing each classification.

**5.11 DAYS:** Calendar days unless otherwise indicated.

5.12 DEMOTION: A change of status of an employee from a position in one classification to a position in another carrying a lower maximum rate of pay.

5.13 DISCHARGE/DISSMISSAL: Removal of an employee from City employment.

5.14 ELIGIBLE: Any person on an open-competitive or promotional employment list for a given classification.

5.15 EMPLOYMENT LIST:

- a. Open-competitive - a list of candidates who have qualified in an examination open to all qualified individuals and who are eligible for appointment.
- b. Promotional/Internal - a list of candidates who have qualified in an examination open only to qualified City employees and who are eligible for appointment.
- c. Re-employment - a list of former employees who have been laid off and who are eligible for re-employment in their former classification.
- d. Reinstatement - a list of former employees who resigned from the Classified Service in good standing and who are eligible for reinstatement to their former classification or to a comparable classification carrying the same or lower maximum rate of pay.

5.16 EXEMPT SERVICE: Those positions and employment categories set forth in Rule 2 of these Regulations.

5.17 FULL-TIME EMPLOYEE: An employee who is employed in a budgeted position which is regularly scheduled for eighty (80) hours or more of work in each pay period.

5.18 IMMEDIATE FAMILY: Employee's spouse, parents, children, sister, brother, grandparents, and grandchildren.

5.19 LAYOFF: Termination of employment due to lack of work, funds or need.

5.20 LEAVE OF ABSENCE: Permission to be absent from duty for a specified purpose, with the right to return before or upon the expiration of the leave period.

5.21 REGULAR EMPLOYEE: An employee who has completed the prescribed probationary period for his or her classification.

5.22 REGULAR POSITION: Any full-time or part-time budgeted position in the Classified Service which will require appointment for more than 1040 hours in a fiscal year.

5.23 PART-TIME EMPLOYEE: An employee who is employed in a budgeted position which is regularly scheduled for less than eighty (80) hours of work per pay period and/or less than 1040 hours in a fiscal year. Unless otherwise specified in these Regulations, the term “part-time employee” shall include temporary, as-needed, seasonal and limited term employees. Part-time employees may also include those who work nearly full-time schedules that are not guaranteed, consistent or result from working more than one part-time position.

5.24 PERSONNEL ORDINANCE: Ordinance No. 136 which creates a personnel system for the City, and all amendments thereto.

5.25 PERSONNEL OFFICER: The City Manager or his or her designated representative.

5.26 POSITION: A combination of duties regularly assigned to be performed by one person.

5.27 PROBATIONARY EMPLOYEE: An employee whose regular status under an original or promotional appointment is contingent upon successful completion of a prescribed period of observation to determine fitness for the work being performed.

5.28 PROBATIONARY PERIOD: A prescribed period of time under an original or promotional appointment where the employee’s performance is observed to determine fitness for the work being performed.

5.29 PROMOTION: Advancement from a position in one classification to a position in another carrying a higher maximum rate of pay.

5.30 RESIGNATION: A voluntary termination of employment.

5.31 SEPARATION: Any termination of employment.

5.32 SPECIFICATION: The official description of a job classification including: the title; a statement of duties and levels of responsibility; and standards of employment such as desired training, experience, knowledge, skills and abilities.

5.33 SUSPENSION: An involuntary absence imposed by the appointing authority for disciplinary purposes or pending investigation of charges.

5.34 TRANSFER: A change between positions within the same classification or a similar classification carrying the same maximum rate of pay.

5.35 VACANCY: Any unfilled position in the Classified Service.

5.36 WAIVER: The voluntary relinquishment by an eligible of the right to consideration for appointment to a specific position.

5.37 YEAR: The calendar year unless otherwise specified

## RULE 6. CLASSIFICATION AND PAY PLAN

### 6.01 RESPONSIBILITY

The responsibility for the development and administration of the City's Classification and Pay Plan shall reside with the Personnel Officer. Amendments to the Plan caused by modifications to positions, classes and salary ranges shall be submitted by the Personnel Officer to the City Council for adoption.

### 6.02 THE PLAN

The Plan shall cover all positions in the Classified Service and shall consist of the following components:

- a. An Allocation List reflecting the number and departmental location of positions allocated to the respective job classification.

The allocation of a position or positions to the appropriate classification shall be based upon common job characteristics, which shall include the:

- i. Basic tasks performed.
- ii. Basic skills and abilities required.
- iii. Minimum education, experience and training considered prerequisite for standard performance.
- iv. Working conditions.
- v. Amount and type of supervision given.
- vi. Amount and type of supervision exercised.

The title established for each classification shall be generally descriptive of the type and level of work performed by the positions allocated to it. The official class title shall be that used in all Personnel or other City documents applicable or referring to the class, its positions or the employees appointed to it.

A Class Specification Manual containing specifications for all job classifications currently in the Classified Service. The class specification is intended to clearly set forth the basic work tasks, knowledge, skills, abilities and minimum employment qualifications applicable to each classification. The specifications shall not be construed as an all-inclusive list of tasks performed or be interpreted as restricting the assignment of related tasks not specifically listed therein: or as

limiting the authority of supervisory personnel to assign, direct and control the work of subordinate employees.

Each class specification shall contain the following information:

- i. The class title.
  - ii. A brief definition of the scope, nature and responsibilities of the class.
  - iii. A listing of examples of typical tasks performed.
  - iv. A statement delineating characteristics which distinguish the class from related classifications.
  - v. The knowledge, skills and abilities required.
  - vi. The minimum employment qualifications in terms of education, experience, training and personal or physical characteristics.
- b. Pay Plan to which each classification shall be assigned a specific salary range or salary rate in accordance with such factors as:
- i. The duties and responsibilities of the individual classification relative to those of related classifications in the City service.
  - ii. Existing levels of compensation for generally comparable work in public and/or private employment.
  - iii. The availability of qualified personnel for the individual classification.

Commented [GN10]: Added "or" to b.ii. for "public and/or private employment"

The Pay Plan shall be modified as necessary to reflect Council-approved general or special salary adjustments, classification actions and other actions impacting upon the individual classification's salary level.

### 6.03 MAINTENANCE OF PLAN

When it is proposed that a new position be created in the Classified Service or an existing one reclassified or abolished, the department head proposing such action shall submit the justification therefor to the Personnel Officer who shall conduct whatever study may be required.

The Personnel Officer shall have the authority to initiate at any time a study to determine the appropriateness of any position's classification allocation. An employee shall also have the right to request such a review, which shall not be subject to the grievance procedure set forth in these Rules.

The Personnel Officer shall make the final determination on all actions arising under this provision, subject to approval by the City council where the determination results in an amendment to the Plan.

#### 6.04 SALARY ADMINISTRATION

- a. Upon original appointment, the employee shall be assigned the first step in the salary range applicable to the classification of appointment; provided, however, that the appointing authority may appoint at a higher step in that range if he or she determines that it is not feasible to recruit personnel at that level, or that the appointee possesses exceptional qualifications.

**Commented [GN11]:** Deleted language where the City Council sets salaries for management employees who are not on a 5 step salary range and is based on job performance and related factors. Added language about the retroactivity if the performance evaluation is submitted after eligibility for increases. Modified language related to pay anniversary dates differing from employment anniversary dates

Upon promotional appointments within the Classified Service, the employee shall be assigned that step in the new range which produces the equivalent of at least one full step salary increases over the employee's former salary step. This provision, however, shall not require placement of any employee at a salary level in excess of the fifth step of the new range.

Advancements to higher steps in the employee's salary range shall not be automatic, but shall depend upon increased value of the employee to the City service. This shall be determined by such means as recommendations of the immediate supervisor and department head, length of service, job performance, work record and special training undertaken. Eligibility for such step increases shall be as follows:

Second Step - upon satisfactory completion of six (6) months of the employee's probationary period as set forth in Rule 11 of these Regulations.

Third, Fourth and Fifth Steps - upon satisfactory completion of twelve (12) months' satisfactory service in each lower step.

In order for any step increase to be granted, a performance review must be submitted to the Personnel Officer prior to the date on which the employee will become eligible for such increase. If the performance review is submitted after the date the employee is eligible for an increase, the increase will be retroactive to the employee's anniversary date. This report must indicate at least satisfactory work performance and conform to the procedures governing performance ratings as set forth in Rule 11 of these Regulations.

Final approval of all merit salary increases provided for in this section shall rest with the appointing authority. It shall be the joint responsibility of the Personnel Officer and department head to insure that the required performance evaluation is submitted in a timely and complete fashion. In no event shall a merit increase be granted before the requirements of this provision have been satisfied.

The appointing authority may, in his or her discretion, grant merit increases prior to the completion of the in-grade eligibility requirements set forth above. The basis for such action shall be outstanding performance as demonstrated by department head recommendations and performance reports. This provision shall not apply to any employee who has not yet completed his or her probationary period.

#### 6.05 ANNIVERSARY DATE

The employment anniversary date shall be the date of hire under original appointment to a position in the Classified Service. Irrespective of subsequent personnel transactions including but not limited to reclassification, transfer, promotion or demotion, the employment anniversary date shall remain unchanged and be controlling for purposes of establishing total time in the Classified Service and for establishing eligibility for related benefits as vacation leave. Unpaid breaks in service may affect an employee's anniversary date, when allowable by law.

Pay anniversary dates differ from employment anniversary dates and shall be modified to reflect changes in appointment status such as promotion, demotion or reclassification. Modifications to such dates shall coincide with the effective date of the change in appointment status. The new pay anniversary date shall control for purposes of determining eligibility for future merit increases in the new class.



## RULE 7. EMPLOYMENT ANNOUNCEMENTS AND APPLICATIONS

### 7.01 JOB ANNOUNCEMENTS

**Commented [GN12]:** Add alternative methods for posting job announcements and information on whether the position is exempt.

All examinations for classifications in the Classified Service shall be published by distributing announcements of the examination to all City departments and through such other sources as are deemed necessary by the Personnel Officer to attract a sufficient number of qualified applicants. In addition, announcements of all open-competitive examinations shall be published or posted with an appropriate agency or advertisement regarding the position in venues appropriate for the position, including print or on-line media.

Announcements shall specify:

- a. The class title.
- b. The current monthly salary rate.
- c. Whether the position is exempt or non-exempt for purposes of the Fair Labor Standards Act.
- d. The nature of the work to be performed.
- e. The minimum job requirements.
- f. The place and last date to file application.
- g. Such other information as will assist applicants in understanding the nature of employment and the specific-examination procedure.

The Personnel Officer may extend the filing period for any examination based upon considerations such as the quantity and quality of and applications received.

### 7.02 APPLICATION FORM

All applications for employment must be made on official, standard forms furnished by the Personnel Officer. Such applications shall not be returned to the individual applicant, nor shall the names of any applicant be made public.

Information requested on the application form shall be relevant, conform to applicable legal requirements and may provide for employment and personal references, physicians' statements, fingerprinting and such other information deemed reasonable and necessary by the Personnel Officer.

### 7.03 ACCEPTANCE OF APPLICATION

All applications must be filed in the Personnel Office by the official closing date of the filing period, be complete and bear an original or electronic signature of the applicant. Failure to conform to these requirements shall result in their rejection by the Personnel Officer. In addition, an application may be rejected on any of the following grounds;

- a. The applicant's failure to satisfy the employment standards prescribed for the classification.
- b. The applicant having made a false statement of material fact or having practiced deception, fraud or misconduct in connection with his or her employment application.

The foregoing shall also constitute grounds for disqualification or discharge at any point during or subsequent to the examination process, or following appointment.

The Personnel Officer may establish prior to the commencement of recruitment, a limit on the number of applications which may be accepted for the examination. This condition shall be clearly noted in the examination announcement and shall be administered in accordance with the date and time on which the individual application is received by the Personnel Office.

#### 7.04 NOTICE TO APPLICANTS

Each applicant accepted or rejected for examination shall be so notified prior to the established date of examination by means of electronic mail or mail directed to the address shown on the application. Reasons for rejection shall be indicated in such notices.

Applications which are rejected as being incomplete may be corrected and returned prior to the official closing date for filing applications. This opportunity shall not be construed as mandatory and its use shall be at the sole discretion of the Personnel Officer based upon such factors as number of acceptable applications, the official closing date and impact upon the examination process.

#### 7.05 CRIMINAL BACKGROUND CHECKS AND INVESTIGATION

Except for applicants to positions in the police department or to any position required by state and federal law for which the City is required to conduct a conviction history background check, the City shall not require an applicant for employment to disclose, orally or in writing, or on any application for employment, information concerning any conviction history until the City has made a conditional offer of employment.

As a prerequisite to employment for certain positions, when legally permissible, the City may require a City-selected applicant to complete a questionnaire regarding criminal history, and to successfully pass a criminal background check in accordance with City policy, which may

**Commented [GN13]:** Includes recent changes to the Labor Code related "ban the box" and modified the language to bring it up to date. Has been updated to comply with AB 1008 effective 1/1/2018

include a live scan fingerprint examination and other job-related criminal background investigation procedures. The City shall pay the cost of the criminal background check. In accordance with California Labor Code sections 432.7 and 432.8, the City will not require an applicant to disclose information concerning an arrest or detention that did not result in a conviction, information concerning a referral to, and participation in, any pretrial or post-trial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law and the City will not require an applicant to disclose information regarding a conviction related to the possession of marijuana where the conviction is more than two years old.

The City may obtain criminal background information on prospective full time and hourly employees once the City has made a conditional offer to the candidate. If a criminal background check of an applicant reveals any conviction for a crime(s), the City shall make an individualized assessment of whether a particular conviction has a direct and adverse relationship to the specific duties of the position that justify denying the applicant the position. If the City makes a preliminary decision that the conviction history disqualifies the applicant, the City will notify the applicant of the preliminary decision in writing and provide the applicant an opportunity to respond before making a final decision. These above provisions do not apply for those positions in the police department or to any position required by state and federal law for which the City is required to conduct a conviction history background check.

Any information obtained from the Department of Justice shall be used, in part, to determine whether the selected applicant shall be offered a position with the City. This criminal history information is confidential and shall not be disclosed, except to those individuals designated to make employment decisions at the City.

Pursuant to California Penal Code section 111077, the Attorney General is responsible for the security of Criminal Offender Record Information (CORI) and has the authority to establish regulations to assure the security of CORI against unauthorized access and disclosures by individuals and/or public and private agencies at all levels of operation in this State. Misuse of CORI is a criminal offense. Violation of this policy regarding CORI may result in suspension, dismissal, and/or criminal or civil prosecution.

## RULE 8. EMPLOYMENT EXAMINATIONS

### 8.01 TYPES OF EXAMINATIONS

Prior to the distribution of any examination announcement, the Personnel Officer shall determine whether the examination is to be administered on an open-competitive basis or on a promotional basis.

Where an open-competitive examination is to be utilized, applications may be accepted from any qualified individual, subject to limitations which may be imposed on the scope of recruitment or number of applications based upon the known labor market for the individual class of employment.

Promotional examinations shall be open only to qualified, regular City employees. Applications may be accepted from otherwise qualified probationary employees provided that the probationary period must be satisfied prior to appointment.

At the discretion of the Personnel Officer, the examination may be administered on both an open-competitive and promotional basis. In such instances, eligibles on the promotional employment list shall be certified ahead of those on open lists.

In making a determination concerning the type of examination to be conducted, the Personnel Officer shall consider such relevant factors as the complexity of the work performed by the classification, the known labor market for such personnel and the availability within the City service of positions or classification which are likely to yield a sufficient number of qualified applicants. Wherever feasible and consistent with the best interests of the City service, promotional opportunities shall be provided to employees in the Classified Service.

### 8.02 CONTINUOUS TESTING

The Personnel Officer may, as needs of the service require, conduct recruitment for certain classes of employment on a continuous basis which would permit the acceptance, testing and placement of qualified applicants on open employment lists as they become available. This type of examination shall only be utilized where the need for qualified personnel occurs frequently and/or where there is demonstrated shortage of qualified persons. This process may either be instituted on an interim or ongoing basis and, in all cases, shall be administered in full compliance with applicable provisions of this Rule and of Rules 7, 9, and 10 of these Regulations.

### 8.03 COMPONENTS OF EXAMINATIONS

**Commented [GN14]:** Add "assessment of skills specific or related to the job"

The Personnel Officer shall adopt selection techniques which are impartial and related to the primary tasks of the job classification. The examination for a given class of employment may include any of the following components:

- a. A written test measuring the candidate's job knowledge.
- b. An evaluation of each application accepted using objective and standard criteria to measure the candidate's qualifications in terms of training and experience.
- c. A performance test whereby candidates demonstrate the degree of job knowledge and ability possessed.
- d. A physical agility test whereby candidates demonstrate their physical capacity to perform a tasks or series of tasks directly related to the job.
- e. A personal interview designated to evaluate the candidate's personal characteristics, background and job knowledge.
- f. A physical examination.
- g. An assessment of skills specific or related to the job.
- h. Such other examinations which, in the judgment of the Personnel Officer, are necessary to evaluate the candidate's capacity to perform the job tasks. These may include, but not be limited to, a psychiatric examination, background investigation and reference checks.

All components of an examination which require evaluative judgments shall be administered using at least one competent rater.

### 8.04 CONDUCT OF EXAMINATIONS

**Commented [GN15]:** Deletes the requirement that the City Council must provide prior approval before the Personnel Officer can contract with an organization for testing purposes.

It shall be the responsibility of the Personnel Officer to assure that the examination process is conducted in an objective, timely and efficient manner. The Personnel Officer may contract with any competent individual, organization or agency for preparation and/or administration of a given examination or portion thereof.

Moreover, the Personnel Officer, with City Council approval, may engage in cooperative examination programs with other local public jurisdictions; provided, however, that participation in such programs does not serve to diminish the quantity and quality of applicants who would otherwise be available to the City or cause undue delays in completion of the examination process.

#### 8.05 SCORING OF EXAMINATIONS

A candidate's final score in the examination shall be for qualification purposes only and be the average of the candidate's score in each competitive part of the examination. On any examination where test scores are to be weighted by relative significance or difficulty, notice to that effect shall be included in the examination announcement. At the discretion of the Personnel Officer, one or more examination components may be for qualifying purposes only.

**Commented [GN16]:** Removes the bright line 70% requirement for a passing score and have the passing score be determined by each test.

Failure on the part of a candidate to pass any one phase of the examination shall result in that candidate being eliminated from consideration for employment. Except for tests designated as "qualifying only," candidates shall be required to attain a score of not less than passing on each test. A passing score will be determined on a test by test basis based on the difficulty of the test, the quality of competition and the needs of the City service. Performance or skills based examinations are pass or fail.

#### 8.06 NOTIFICATION OF EXAMINATION RESULTS

Following each phase of the examination, all candidates shall be advised of their satisfactory completion or failure of that test. Upon completion of the examination process, each candidate successfully completing all phases shall be placed on the appropriate employment list in accordance with Rule 9 of these Regulations.

#### 8.07 REVIEW OF EXAMINATION

When the City contracts with a third-party agency to administer and score qualification examinations and where permitted or provided by the testing agency, candidates shall be allowed to review an answer sheet. If an applicant wishes to appeal the content of the examination questions or their examination score, candidates will be provided with contact information for the testing service.

**Commented [GN17]:** Updates the process for how candidates can "appeal" examination results when the examination is proctored by a third party or when it is administered by the City.

If the City administers and scores qualification examinations, candidates shall be allowed to review a keyed copy of the written examination but not their own. This review period shall be three (3) working days from the date the results of that test are mailed. The Personnel Officer shall act promptly on any question raised by a candidate alleging an error in the computation of scores or in the content of the questions. Should the Personnel Officer determine that any such claim is justified, scores applying to that test shall be recomputed accordingly and candidates so notified where affected by the recomputation.

No successive phase of the examination process shall be administered during this period of review.

No appeal regarding any phase of an examination may be made after five (5) days from the date the results of that phase are mailed or otherwise directly provided to candidates.

All examination materials shall remain confidential and no copying of questions or answers from any paper made available for inspection shall be permitted. Any candidate violating this provision is subject to disqualification from the examination, disbarment from future examination and, on promotional examinations, to disciplinary action. Decisions regarding disqualification and disbarment shall reside with the Personnel Officer; decisions regarding disciplinary action shall be processed in accordance with Rule 13 of these Regulations.

#### 8.08 EXAMINATION RECORDS

Applications and related examination records shall be retained for the life of the employment list. Applications and examination records of appointees may be retained for a longer period as determined by the Personnel Officer.

## RULE 9. EMPLOYMENT LISTS

### 9.01 PLACEMENT ON LISTS

Candidates who successfully complete all components of the examination shall be placed on the appropriate employment list. Preparation and maintenance of employment lists under these Rules shall be the responsibility of the Personnel Officer.

### 9.02 DURATION OF LISTS

All open-competitive and promotional lists shall remain in effect for one year unless exhausted or abolished within that period as provided below. The Personnel Officer may extend any such list for up to six months, not more than two times. The effective date of a list shall be that date on which it is approved for posting by the Personnel Officer.

The Personnel Officer may abolish any employment list which has fewer than three available eligibles on it.

### 9.03 RE-EMPLOYMENT LIST

A regular or probationary employee laid-off in accordance with Rule 12.02 of these Regulations shall at his or her request, be placed on a re-employment list for his or her former classification. Where more than one employ in the same classification is laid-off, the names of such employees shall be placed on the list in accordance with the date of layoff.

Employees placed on such a list shall remain eligible for recall for a period of one year from the effective date of layoff. Recall shall be to the employee's former classification and be in the reverse order of layoff, with the last employee laid-off to be the first employee offered re-employment.

A former employee refusing re-employment shall automatically be removed from that list. The failure of a former employee to respond to a recall notice within ten (10) days of its mailing shall be deemed a refusal of re-employment. Such notices shall be by certified mail directed to the last address of record. The Personnel Officer may extend or waive this response period where circumstances warrant.

In its discretion, the City may reinstate a probationary or regular employee who resigns in good standing pursuant to Regulation 12.01 of these Regulations within one year of resignation.

### 9.04 REMOVAL FROM LISTS

The Personnel Officer shall remove the names of eligibles from promotional and open-competitive employment lists:

**Commented [GN18]:** Deletes reinstatement lists language and provides the City with the discretion to reinstate probationary or regular employee who resigns in good standing within one year of resignation.



- a. Upon written request of the eligible.
- b. Upon appointment to a regular position in the class for which the list was established.
- c. Upon failure of the eligible to respond within ten (10) days of mailing to a notice of certification sent by certified mail to his or her last address of record.
- d. Upon the eligible having been refused appointment after two (2) certifications and employment interviews.
- e. Upon the eligible having waived certification or refused appointment two times.
- f. Upon resignation, layoff or discharge from the City service.
- g. On any of the grounds set forth in Rule 7.03 of these Regulations.
- h. For failure of the eligible to continue to meet any of the employment standards established for the class.

Notification of removal, and the reasons therefor, shall be sent to the eligible by certified mail at his or her last address of record.

## RULE 10. EMPLOYMENT APPOINTMENTS

Commented [GN19]: Deletes language on Lateral Transfers.

### 10.01 FILLING OF VACANCIES

Except as provided below and where appropriate lists exist, vacancies in the Classified Service will be filled by appointment in the following order:

- a. Re-employment.
- b. Promotional.
- c. Open-competitive.

However, nothing herein shall preclude filling such vacancies by means of transfer, demotion or reinstatement as provided in Rule 12 of these Regulations with prior approval of the Personnel Officer. If appointment is not made in this manner and there are fewer than three available eligibles on the applicable promotional or open list, the Personnel Officer may either:

- a. Open a new examination and, where applicable, cancel the existing list. The Personnel Officer may also authorize a temporary appointment for the interim period as provided in Rule 10.03; or
- b. Declare an alternate list as appropriate in accordance with Rule 10.04.

### 10.02 CERTIFICATION OF ELIGIBLES

When a vacancy is to be filled from either a promotional or an open-competitive list, the names of all eligibles on the appropriate list shall be certified to the department head by the Personnel Officer. Where both a promotional and an open-competitive list exist for the same classification, the complete promotional list shall be certified for an employment interview prior to the certification of any eligible from the open list.

Following interview and recommendation by the department head, the appointing authority shall appoint from among those eligibles certified and interviewed. Appointment shall be discretionary where there were fewer than three eligible.

### 10.03 TEMPORARY AND SEASONAL APPOINTMENTS

The Personnel Officer may authorize temporary, interim or emergency appointments to meet short-term employment needs such as periods of peak workload, illness or pending the establishment of a new eligible list. Emergency appointments shall be made at the discretion of the Personnel Officer.

Commented [GN20]: Adds "seasonal" class of employees and giving the Personnel Officer the ability to authorize seasonal appointments. Also adds language giving the Personnel Officer/City to make emergency, as needed or temporary appointments by passing the normal recruitment process and that they are "at will."

The Personnel Officer may authorize seasonal appointments. A seasonal employee who has been selected to fill a part-time or full-time classification for a specifically limited period of time that occurs during a specified seasonal duration is classified as a "Seasonal Employee".

The City may make such temporary, emergency, as needed, or seasonal appointments without following the rules regarding recruitment and selection stated herein, or at the discretion of the Personnel Officer, from an appropriate employment list or from among other qualified persons where there is no active list or where there are insufficient eligibles directly available for appointment. Unless extended by the Personnel Officer, temporary, emergency, as needed and seasonal appointees shall not be employed for more than 1040 hours in a fiscal year. Temporary, emergency, as needed and seasonal employees shall not be covered by these Rules nor shall the period of temporary appointment constitute satisfactory completion of any part of a probationary period for any class in the Classified Service. Temporary, emergency, as needed, and seasonal employees serve at the pleasure of the Department Head and may be removed at any time without cause, notice or any right of appeal.

Unless required by law, temporary, emergency, as needed and seasonal employees are not eligible for the benefits described in these Rules and Regulations.

#### 10.04 ALTERNATE EMPLOYMENT LISTS

In the absence of an existing employment list for a classification in which a vacancy exists, the Personnel Officer may authorize certifications from an active list for another classification having similar duties and employment standards. Appointments made in this manner shall be the equivalent in all respects to having appointed from a list for the classification in which the vacancy occurred.

#### 10.05 APPOINTMENT OF RELATIVES

The following policies shall govern the employment of members of the relatives of any official or employee of the City:

- a. Relatives of the following shall not be appointed to any City position: elected and Council-appointed officials.
- b. Relatives of City employees shall not work in the same department as the employee unless approved by the Personnel Officer and/or his or her designee.
- c. The appointing authority may waive the restriction in Paragraph b., above, if the affected department head and the appointing authority determine that because of the nature of the department and the work assignments in question, relatives would have minimal job related contact with one another and neither would be placed in such a position as to supervise or evaluate the other and such

**Commented [GN21]:** Defines relatives and clarifies that relatives cannot be a supervisor/support relationship nor one that would impact the safety, morale or security of the City.

In b, adds "unless approved by the Personnel Officer and/or his or her designee" for instances where family members are co-workers in the same department.

employment would not adversely affect safety, morale, or security, of City operations. Family members shall not be in a supervisor/subordinate relationship

- d. The provisions of this rule shall not affect personnel who are in the City's employment on the effective date of the adoption of these Rules.

Relatives are defined as persons related by blood, adoption, or marriage or registered domestic partnership, or any relative residing in the immediate household of the employee (including, but not limited to: spouse or domestic partner, parent, child, grandparent, brother, sister, in-laws, aunt, uncle, step relatives).

## RULE 11. PROBATIONARY PERIOD AND PERFORMANCE RATINGS

### 11.01 OBJECTIVE OF PROBATIONARY PERIOD

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

### 11.02 DURATION

All original appointees to positions in public safety classifications shall serve a probationary period of twenty-four (24) months. All other appointees, including lateral transfers and promotional public safety, shall serve a probationary period of not less than six (6) months, nor more than twelve (12) months.

Where the probationer loses time from the job, whether paid or unpaid, in sufficient amounts as to detract from the stated objectives of Rule 11.01, the appointing authority may extend the period of probation beyond the limits contained in the preceding paragraph. This extension may not exceed the aggregate amount of lost time which caused the extension. The probationer shall be so advised prior to the effective date of the extension.

### 11.03 EVALUATIONS

It shall be the duty of each department head and immediate supervisor to investigate carefully the probationer's adjustment and performance to determine whether or not the probationer is qualified for regular status. The department head shall submit to the Personnel Officer an evaluation of the probationer's performance at time specified by the Officer, but no less than twice during the employee's probationary period.

The final probationary report on each probationer shall include, and earlier reports may include, the department head's recommendation regarding retention.

### 11.04 REJECTION DURING PROBATIONARY PERIOD

During the probationary period, an appointee may be rejected at any time by the appointing authority without cause and without right of appeal. Notice of rejection shall be served in writing on the probationer.

An employee rejected during the probationary period from a position in the Classified Service to which he has been promoted shall be reinstated to a position in the class from which he was promoted unless the rejection results in dismissal from the City service. Where rejection results

in dismissal, the employee shall have the right to appeal such action in accordance with Rule 14 and shall be furnished advance notice pursuant to Rule 13.02.

11.05 PERFORMANCE REPORTS

Performance reports shall be completed periodically for all personnel in positions in the Classified Service. Such reports may be required more frequently by the Personnel Officer.

**Commented [GN22]:** Modifies language to allow for periodic review (flexibility) as opposed to annual reviews.

## **RULE 12. PERSONNEL ACTIONS: NON-DISCIPLINARY**

### **12.01 RESIGNATION**

**Commented [GN23]:** Moves the reinstatement from resignation in good standing language to Rule 9.03

An employee desiring to leave the Classified Service in good standing shall submit a letter of resignation to his or her immediate supervisor. This letter shall be submitted no later than two weeks in advance of the effective date of separation, except under extraordinary circumstances. The letter of resignation shall be forwarded to the Personnel Officer, together with a final evaluation of the employee's performance prepared by the immediate supervisor and approved by the department head.

Upon separation, the resigning employee's name shall be removed from all promotional eligible lists, but at the employee's request, shall be retained on any open-competitive eligible list subject to the provisions of Rule 9.05 of these Regulations.

### **12.02 LAYOFF**

**Commented [GN24]:** Adds "seasonal"

The City Council may abolish any position in the Classified Service due to lack of funds, work or need.

The layoff of employees resulting from the elimination of positions shall be governed by the following procedures:

- a. Layoffs shall be made from within the affected job classification in reverse order of total time in the Classified Service, including any period of probation, paid leave or active military leave. Except as provided under Rule 17.13 of these Regulations, no services credits shall be earned during any leave of absence without pay. Where time in service is equal between two (2) or more affected employees, their test scores shall serve as the determining factor.
- b. The order of layoff in the affected classification shall be:
  - i. Temporary/Seasonal employees.
  - ii. Probationary employees.
  - iii. Regular employees.

Probationary and regular employees in the Classified Service who, under paragraph a. above, are scheduled to be laid off shall receive at least twenty-one (21) days' written notice to this effect.

In lieu of layoff, a regular employee may elect transfer or demotion to a vacant position in the Classified Service which the City intends to fill and for which the employee is qualified. Such actions shall be governed by the terms of Rules

12.03 and 12.04, and in no event shall result in an employee being placed in a classification carrying a higher maximum rate of pay.

Within ten (10) days from the date layoff notices are issued, an employee who would otherwise be laid off may elect to displace an employee in a classification carrying a lower or the same maximum rate of pay; provided, however, that the displacing employee must have held regular status in such classification and have greater time in the Classified Service than the employee being displaced.

A probationary or regular employee displaced in accordance with this paragraph shall, in turn, be provided the same notice and displacement privilege as set forth in this paragraph.

Regular and probationary personnel laid off in accordance with this Rule shall, at their request, be placed on a re-employment list as provided by Rule 9 .03 of these Regulations. If an employee is re-employed from such a list, all service credits and other benefits accrued to the date of layoff shall be restored. In no event, however, shall the City be required to restore credits for vacation and other benefits paid out at the time of layoff.

At the time of layoff, the employee's name shall be removed from all promotional eligible lists, but, at employee's request, shall be retained on open-competitive lists subject to the provisions of Rule 9.05 of these Regulations.

A probationary or regular employee laid off pursuant to this Rule, shall have the right of appeal directly to Step 3 of the Grievance Procedure contained in Rule 15 of these Regulations. An appeal filed under these circumstances shall not in any way be construed as stemming from a disciplinary action and the sole issue appropriate for determination shall be questions concerning interpretation or administration of the layoff procedure. An appeal filed under this paragraph shall not serve to suspend or delay layoff proceedings unless the appointing authority determines otherwise.

In no event shall the appointing authority be empowered to hear and rule upon the City Council's judgment as to the merit and necessity of the elimination of positions.

12.03 SEPARATION FROM EMPLOYMENT – SEASONAL AND/OR TEMPORARY EMPLOYEES

Seasonal or temporary employees who are not scheduled for assignment for a calendar year will be separated from employment and removed from payroll. Former seasonal or temporary employees who wish to return to City service must reapply for employment.

12.04 TRANSFER

**Commented [GN25]:** Deletes the section on Demotions and moves it to Rule 13.03. Adds language for seasonal employees being separated if not scheduled for a calendar year.

**Commented [GN26]:** Provides the Personnel Officer with the final authority to authorize a transfer, requires that an employee seeking transfer meet the minimum qualifications for the position and that this section does not apply where the City relocates an employee from one location to another.



An employee may be transferred by the appointing authority from one position to another position in the same classification or in a comparable classification carrying the same maximum salary rate and which the employee is qualified to perform. Where a transfer would involve two departments or two divisions of the same department, the transfer shall be subject to the approval of both managers unless it is being made for the purpose of economy or efficiency. The Personnel Officer has the final authority to authorize a transfer. The transferred employee must meet the minimum qualifications of the position. Advance written notice of this action, together with its effective date, shall be provided the employee and the affected managers. This section does not apply to the location of employees. The City retains the right to organize its workforce which includes moving employees from location to location.

## RULE 13. PERSONNEL ACTIONS: DISCIPLINARY

### 13.01 ACTION BY CITY

The appointing authority may take disciplinary action against an employee in the Classified Service for misconduct including, but not limited to:

- Chronic or excessive absenteeism or tardiness;
- Incompetence, inefficiency or neglect of duty;
- Insubordination;
- Failure to follow work rules;
- Misstatement of fact on an application or other personnel document;
- Falsification of records such as timesheets or official City records;
- Disclosure of confidential information to unauthorized sources;
- Discourteous or disrespectful treatment of the public, other employees or City officials;
- Abusive conduct, which is defined as malicious conduct that a reasonable person would find hostile, offensive and unrelated to the City's business interest, towards the public, other employees or City officials;
- Negligent damage to or waste of public property, equipment or supplies or unauthorized use of public property, supplies or equipment for personal or private purposes;
- Unfitness for duty;
- Conduct either during or outside of duty hours, to the extent authorized by law, which damages the City or its reputation;
- Absence without authorized leave; or
- Violation of the City Personnel Policies and Procedures, Administrative Rules, Departmental Rules and Regulations, Safety Rules, Resolutions, Ordinances and Codes.

**Commented [GN27]:** Adds additional ground for City to take disciplinary action including bullet points 7-10, 11 and 12 and fine tunes other bullet points including 1-2 and 8.

The disciplinary action(s) taken may include reprimand, suspension, pay reduction, demotion, discharge or any combination of these other appropriate penalties.

All disciplinary action taken against an employee in the Classified Service must receive the prior approval of the appointing authority except under emergency circumstances which dictate immediate suspension of the employee by the department head or supervisor. In such cases, the employee's department head shall immediately report the action taken to the appointing authority who shall review the case and make a determination concerning the appropriateness of the suspension and of further disciplinary action.

All actions resulting in salary reductions or demotions shall be subject to review by the appointing authority and the department head involved within thirty (30) days following the effective date of the initial action and at regular intervals thereafter.

Employees shall have the right to appeal disciplinary actions pursuant to Rule 14 of the Regulations.

#### 13.02 NOTICE OF PROPOSED DISCIPLINARY ACTION

**Commented [SL28]:** I'm adding a bit to this section to make sure it complies with Skelly.

The provisions of this Rule shall apply only to regular employees in disciplinary actions involving discharge, demotion, reduction in pay or suspension in excess of five (5) working days. The appointing authority may extend the provisions of this Rule to other forms of discipline where in his or her opinion the circumstances warrant it.

The City shall provide the affected employee with written notice prior to taking disciplinary action, except where circumstances dictate the City is taking immediate action to remove the employee from the work place. In such cases, written notice, as set forth below, shall be provided the employee within three (3) working days from the date of the action.

In all cases, written notice of proposed disciplinary action shall be served on the employee personally or by registered mail, with a copy of the notice to be placed in the employee's personnel file.

The written notice shall contain the following information:

- a. The disciplinary action proposed.
- b. The effective date of the action.
- c. The reason or cause for the action.
- d. Copies of all materials upon which the action is based.

- e. That the employee has the right to respond, either orally or in writing, to the authority imposing the discipline.

Except in instances where disciplinary action must be imposed immediately, the notice shall be provided to the employee no later than five (5) working days before the disciplinary action is to be effective. Where immediate disciplinary action has been imposed, such action will not become final until the aforementioned notice has been furnished the employee and the employee has been provided no less than five (5) working days from the receipt of the notice to respond to the authority initially imposing the discipline.

### 13.03 DEMOTION

Commented [GN29]: Moved from Rule 12.

Based upon an employee's request or upon an employee's demonstrated inability to perform the tasks of the position, the appointing authority may demote an employee to a position in a classification which carries a lower maximum rate of pay and which the employee is qualified to perform. Under these circumstances, the employee's new rate of pay shall be that step in the new salary range which most closely corresponds to the employee's former salary step.

Where such action is based upon an employee's inability to perform the work of the current position, the employee may appeal the action of the appointing authority pursuant to Rule 15 of these Regulations.

Advance written notice of demotion, together with the effective date, shall be provided the employee and the employee's department head.

**RULE 14. APPEALS PROCEDURE**

**14.01 SCOPE OF PROCEDURE**

The appeals procedure contained herein shall apply only to appeals of disciplinary action taken under Rule 13 of these Regulations.

Disputes concerning the Personnel Ordinance, the Personnel Rules and Regulations and any memorandum of agreement between the City and an employee organization representing City employees shall be processed in accordance with the Grievance Procedure as set forth in Rule 15 of these regulations.

**Commented [TA30]:** Do the MOUs have a grievance procedure? Normally the MOU prevails when conflicts arise between the Personnel Rules and the MOUs

**14.02 APPEALS TO APPOINTING AUTHORITY**

An employee who has passed probation may appeal any proposed disciplinary action imposed under Rule 13 of these Regulations involving a discharge, demotion, or suspension in excess of five days to the appointing authority. This appeal must be filed in writing with the appointing authority as soon as possible, but no more than five (5) working days after receipt of the notice of proposed disciplinary action. The employee may choose to respond to the notice of proposed disciplinary action in writing or in person, or both. If the employee elects to respond in person, the appointing authority, or his designated representative, shall schedule a meeting with the employee and/or his/her representative.

**Commented [GN31]:** This provision has been updated to ensure compliance with Skelly protections.

Following this informal meeting, the appointing authority, or his/her designated representative, shall make his or her recommendation regarding the proposed disciplinary action in writing within ten (10) working days of the meeting date.

In rendering his or her decision, the appointing authority shall have the latitude to reaffirm the disciplinary action, reverse it, or modify it. Where the appointing authority's decision modifies or reverses an action which resulted in loss of pay, benefits or service credits, that decision shall automatically serve to restore such losses to the extent of the modification or reversal.

**14.03 APPEALS TO ADVISORY ARBITRATION**

If the employee is not satisfied with the decision of the appointing authority under Rule 14.02, the employee may appeal that decision to advisory arbitration. This appeal shall be in writing and filed with the Personnel Officer within ten (10) working days of receipt of the appointing authority's decision.

**Commented [GN32]:** Modifies this section by adding timelines for selecting an arbitrator and scheduling hearing dates.

The appeal shall be signed by the employee, request advisory arbitration, set forth the matter being appealed, and the remedy sought.

Within thirty (30) days of submitting a request for advisory arbitration, the employee and the City shall begin the process for selecting an arbitrator and scheduling a hearing date. Any extension of the thirty (30) day timelines must be requested in writing by either party and agreed upon by both parties. An arbitrator may be selected by mutual agreement of the employee and City. However, should the parties fail to mutually agree on an arbitrator, they shall make a joint request of the State Mediation and Conciliation Services for a list of five qualified arbitrators. The arbitrator shall be selected from the list by the parties alternately striking names with the first strike determined by a coin toss.

#### 14.04 HEARINGS

The parties shall use their best efforts to, within thirty (30) days following the receipt of a written request for advisory arbitration, exchange a written summary of the evidence they intend to offer and a list of witnesses used by each side. If exchanged, this information shall be submitted to the arbitrator five (5) days prior to the hearing.

The employee may be represented by any person as he or she may select and may at the hearing produce on his or her behalf relevant oral or documentary evidence.

#### 14.05 FINDINGS AND DISPOSITION

The advisory decision and award of the arbitrator shall be made solely upon the evidence and arguments presented to the arbitrator by the respective parties. The arbitrator shall have no power to alter, amend, change, add to or subtract from any of the terms of these Personnel Rules and Regulations. In rendering its advisory decision, the arbitrator shall have the latitude to reaffirm the disciplinary action, reverse it, or modify it, including increasing the penalty initially imposed. The City Council will act within sixty (60) days of receiving notice of the decision to adopt or reject the advisory decision.

#### 14.06 GENERAL CONDITIONS

The intent of the time limits set forth in this Rule are to expedite hearing of the employee's appeal. They shall be adhered to unless expressly extended by mutual agreement, upon written request of the employee, by the City Manager under Rule 14.02.

Failure on the part of the employee to comply with such time limits or any extensions thereto, shall constitute a withdrawal of the appeal without further recourse to resubmittal under this procedure. Failure on the part of the appointing authority to comply with such time limits or extensions thereto shall result in the appeal being moved directly to the City Council.

Petitions for judicial review of administrative determinations made under this Rule shall be governed by the provisions of Section 1094.6 of the California Code of Civil Procedures.

**Commented [GN33]:** Modifies process substantially to allow for pre-hearing "discovery." Eliminates language on hearing before the City Council and the City Council hearing process.

**Commented [GN34]:** Eliminates the hearing before the City Council and delegates the arbitration hearing to an arbitrator. Advisory arbitration award giving the City Council ultimate authority to adopt or reject the decision.

**Commented [GN35]:** Adds language sharing the cost of arbitration, but individual attorneys' fees are the responsibility of each party.

The cost of selecting and employing the arbitrator shall be borne equally by the parties to the arbitration. All other costs such as, but not limited to, attorney's fees and witness fees shall be borne only by the party incurring that cost.

## RULE 15. GRIEVANCE PROCEDURE

### 15.01 DEFINITION

A grievance is defined as any dispute involving the interpretation, application or alleged violation of:

- a. A current memorandum of understanding between the City and a recognized employee organization.
- b. The City's Personnel Ordinance and these Rules where the provision in dispute is within the scope of representation.

Should any dispute concern an agreement, rule or action which prescribes a separate appeal procedure, that dispute shall be excluded from this procedure.

### 15.02 INFORMAL AND FORMAL GRIEVANCES

Step 1 - An employee who has a grievance shall bring it to the attention of his or her immediate supervisor within five (5) working days of the occurrence of the act which is the basis for the dispute. Where the grievance concerns a matter of proper compensation or a matter which could not reasonably be discovered by the employee within five (5) working days of its occurrence, the grievance on such a matter shall be raised within five (5) working days from the date the employee knew or should have known of the occurrence. If the employee and the immediate supervisor are unable to resolve the grievance within five (5) working days of the date it is raised with the immediate supervisor, the employee shall have the right to submit a formal grievance which shall contain the information set forth below.

- a. The name of the grievant.
- b. The grievant's department and specific work site.
- c. The name of the grievant's immediate supervisor.
- d. A statement of the nature of the grievance including date and place of occurrence.
- e. The specific provision, policy or procedure alleged to have been violated.
- f. The remedy sought by the grievant.
- g. The name of the individual or organization, if any, designated by the grievant to represent him or her in the processing of the grievance. However, in no event, shall an employee organization other than the one which formally represents the position occupied by the grievant be designated as the grievant's representative.

**Commented [GN36]:** Reduces the days to submit grievances from 20 working days to 5 working days. Modifies arbitration to advisory. Adds language for the parties to share in the cost of arbitration except for attorneys' fees.



Formal grievances shall be processed beginning with Step 2 of this procedure.

Step 2 - An employee dissatisfied with the decision of the immediate supervisor in Step 1 may submit the grievance to his or her department head within seven (7) working days from the date of the immediate supervisor's decision. The department head shall respond to the grievance in writing within seven (7) working days from the date of its receipt.

Step 3 - If the employee is dissatisfied with the decision of the department head in Step 2, he or she may submit the grievance to the appointing authority within ten (10) working days from receipt of the department head's response. The appointing authority, or his or her designated representative, shall respond to the grievance in writing within ten (10) working days of its receipt. Within this period, the appointing authority, at his or her discretion, may conduct an informal hearing involving the parties to the dispute,

Step 4 - If the employee is dissatisfied with the decision of the appointing authority, he or she may submit the grievance to the advisory arbitration in accordance with Rules 14.03, 14.04 and 14.05 of these Regulations.

#### 15.03 GENERAL CONDITIONS

- a. Any time limit set forth in Rule 15.02 may be extended by mutual written agreement between the City and the grievant or the recognized employee organization representing him or her.
- b. Failure on the part of the grievant or his designated representative to comply with the time limits of this procedure or any extension thereto shall constitute a withdrawal of the grievance without further recourse to resubmittal under this procedure. Failure on the part of the City to comply with prescribed time limits or extensions thereto shall result in the grievance being moved to the next step of the procedure.
- c. Except as provided in Rule 15.02, the grievant shall be entitled to have a representative of his own choosing present at any grievance meeting with the City.
- d. A representative of a recognized employee organization which represents the grievant's classification shall be entitled to be present at any hearing held in conjunction with Step 3 and Step 4 of this procedure.
- e. Nothing herein shall preclude the use of alternate means of resolving the grievance at Step 3 and Step 4 of this procedure. Such means must be jointly agreed to by the City and the employee and/or the recognized employee organization which represents his classification.

Decisions rendered in this manner shall be advisory only and shall be submitted to the City Council for approval, modification or reversal. Such action on the part of the City Council shall constitute final disposition of the grievance without further right of appeal under rule 14.03.

- f. The cost of selecting and employing the arbitrator shall be borne equally by the parties to the arbitration. All other costs such as, but not limited to, attorney's fees and witness fees shall be borne only by the party incurring that cost.

## **RULE 16. EMPLOYEE RELATIONS REGULATIONS**

### **16.01 STATEMENT OF PURPOSE**

These Regulations implement Chapter 10, Division 4, Title I of the Government Code of the State of California (Sections 3500 et seq) entitled "Local Public Employee Organizations" by providing a uniform and reasonable basis for the conduct of employer-employee relations between the City and its employees and employee organizations.

Nothing contained herein shall be deemed to supersede the provisions of State law or City ordinances, resolutions and rules which establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations.

### **16.02 DEFINITIONS**

As used herein, the following terms shall have the meanings indicated:

- a. **APPROPRIATE UNIT:** A unit of classes of positions established for representation purposes in accordance with Rule 16.09.
- b. **CERTIFICATION:** The process and act of recognizing an employee organization as the bargaining representative for an appropriate bargaining unit.
- c. **CITY:** The City of Brisbane, a municipal corporation, and where appropriate herein, "City" refers to the City Council, the governing body of said City, or any duly authorized management employee as herein defined.
- d. **CONFIDENTIAL EMPLOYEE:** An employee who assists and acts in a confidential capacity to officials or officers who formulate, determine and implement management employee relations policies.
- e. **CONSULT or CONSULTATION:** To communicate verbally or in writing for the purpose of presenting and obtaining views or advising of intended actions.
- f. **DECERTIFICATION:** The process and act of rescinding the rights of a recognized employee organization to act as the bargaining representative for an appropriate bargaining unit.
- g. **EMPLOYEE:** Persons employed by the City on a regular full or part-time basis excluding persons elected by popular vote or appointed to serve on boards or commissions by the City Council.

**Commented [GN37]:** Adds definitions for City, Consult/Consultation, Employee Organization, Employer Employee Relations, Exclusive Recognition, and Fact Finding.

- h. EMPLOYEE ORGANIZATION: An organization which includes employees of the City and which has as one of its primary purposes representing such employees in their employment relations with the City.
- i. EMPLOYER-EMPLOYEE RELATIONS: The relationship between the City and its employees and their employee organizations, or when used in a general sense, the relationship between City management and employees or employee organizations.
- j. EXCLUSIVE RECOGNITION: The rights accorded to a recognized employee organization certified in accordance with Rule 16.09 as the only organization entitled to represent employees on matters within the scope of representation.
- k. FACT FINDING: The identification of the issues in a particular dispute, review of the positions of the parties, identification of factual differences by one or more impartial fact-finders, and the making of recommendations for settlement if mutually requested.
- l. IMPASSE: A deadlock in negotiations between the City and a recognized employee organization over matters which they are required to meet and confer in good faith.
- m. MANAGEMENT EMPLOYEE: An employee having significant responsibility for formulating, administering or managing the implementation of City policies or programs.
- n. MANAGEMENT REPRESENTATIVE: The City Manager, or any other management employee, person or organization duly designated as such by the City Council or by the City Manager.
- o. MEDIATION: The efforts of an impartial third party or parties functioning as an intermediary to assist the parties in reaching a voluntary resolution of an impasse through interpretation, suggestion and advice.
- p. MEET AND CONFER: The mutual obligation of the City and its recognized employee organizations to meet promptly upon request of either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals and to endeavor to reach agreement on matters within the scope of representation prior to the adoption of the City's final budget for the ensuing year. The process should include adequate time for the resolution of impasses as specified in Rule 16.12. This process does not require either party to agree to a proposal or to make a concession.

- q. MEMORANDUM OF UNDERSTANDING: A written agreement on matters subject to negotiation reached by management representatives and representatives of a recognized, employee organization, which shall only be binding upon approval by the City Council.
- r. MUNICIPAL EMPLOYEE RELATIONS OFFICER: The City Manager or his or her duly authorized representative.
- s. NEGOTIATE: To meet and confer.
- t. PEACE OFFICER: An employee who is a full-time peace officer as that term is defined in Section 830.1 of the California Penal Code.
- u. PROFESSIONAL EMPLOYEE: An employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction.
- v. RECOGNIZED EMPLOYEE ORGANIZATION: An organization certified in accordance with Rule 16.09.
- w. SCOPE OF REPRESENTATION: All matters relating to employment conditions and employer-employee relations including, but not limited to, wages, hours, and other terms and conditions of employment: except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or administrative order.
- x. SHOWING OF INTEREST: The submission of evidence of employee support by employee organizations for the purpose of certification or decertification in the manner prescribed in Rules 16.09 and 16.10.

### 16.03 EMPLOYEE RIGHTS

Except as otherwise provided by law or by these regulations, City employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing. Employees shall also have the right to refuse to join or participate in the activities of such organizations and shall have the right to represent themselves individually in their employment relations with the City. However, no such individual settlement or grievance adjustment shall be contrary to the terms of an existing memorandum of understanding covering a recognized employee organization which has been accorded exclusive representation rights for that class or position in accordance with Rule 16.09.

Neither the City nor any employee organization shall interfere with, intimidate, restrain, coerce or discriminate against any employee in the exercise of these rights.

#### 16.04 CITY RIGHTS

Commented [GN38]: Delineates City Rights

The City retains all rights to manage its operations except as those rights may be subject to the meet and confer process or restricted by a current memorandum of understanding; nor shall it be required to meet and confer on any subject pre-empted by Federal or State law. Subject to the requirements of the Government Code, the City retains its rights:

- a. To determine the mission of each of its constituent departments, commissions, boards and agencies;
- b. To set standards of services offered to the public;
- c. To determine the procedures and standards of selection for employment and promotion;
- d. To direct its employees, take disciplinary action for proper cause and to determine the content of job classifications, and to relieve its employees from duty because of lack of work or for other legitimate reasons;
- e. To maintain the efficiency of governmental operations, determine the methods, means and personnel by which City operations are to be conducted;
- f. To take all necessary actions to carry out its mission in emergencies and to exercise complete control and discretion over its organization and the technology of performing its work; and
- g. The exercise of such City rights by the City shall not preclude employees or their representatives from the exercise of their rights under the Government Code or under this resolution.

#### 16.05 RIGHTS OF EMPLOYEE ORGANIZATIONS

Recognized employee organizations shall have the right, except as otherwise provided in these regulations, to represent employees within the appropriate bargaining unit concerning matters within the scope of representation. Recognized employee organizations may establish reasonable restrictions and provisions regarding membership in and dismissal from the organization.

#### 16.06 NOTICE TO RECOGNIZED EMPLOYEE ORGANIZATIONS

The City shall give reasonable advance written notice to each affected, recognized employee organization of any action directly relating to the scope of representation proposed for adoption by the City Council. Each affected organization shall be provided an opportunity to meet with the City Council on the proposed action.

Where circumstances dictate immediate action by the Council which prevents advance notice to employee organizations, the Council shall furnish such notice and opportunity to meet as soon as possible following its action.

16.07 NOTICE TO CITY

Each recognized employee organization shall promptly notify the Municipal Employee Relations Officer in writing of any change in its officers, representatives, affiliation status or of any other information contained in its petition for recognition filed pursuant to Rule 16.09.

16.08 CRITERIA FOR DETERMINATION OF APPROPRIATE BARGAINING UNITS

**Commented [GN39]:** Updates criteria for determining appropriate bargaining units including sub (d) and (e).

No employee organization shall be certified or decertified without the Municipal Employee Relations Officer making a final determination on the appropriateness of the bargaining unit(s) concerned.

Such determination shall result in the broadest feasible grouping of classes and positions which share an identifiable community of interest and which do not serve to cause undue fragmentation of classes or proliferation of units. Factors to be considered in assessing community of interest shall include similarity of job duties, qualifications, compensation and general working conditions. These additional criteria may also apply:

- a. The proposed unit's effect on and compatibility with efficient operation of the City, the delivery of its services to the community and its organizational structure.
- b. The history of representation in the City and in similar types of public and, where appropriate, private employment.
- c. The proposed unit's effect on the City's classification and compensation structure and on the bargaining relationship of dividing a single classification or a series of related classifications among two or more bargaining units.
- d. The proposed unit's effect on the efficient operation of the City and on sound employer-employee relations.
- e. Fragmentation of units is to be avoided and a proposed unit must include at least 5% of the total of City employees.

Irrespective of the foregoing provisions:

- a. No unit shall be deemed appropriate solely on the basis of the extent to which the employees concerned have organized.

- b. Notwithstanding the Mid-Management/Professional Employees Group, the City shall ensure that management and confidential employees shall not be allocated to a bargaining unit which also includes non-management and non-confidential employees; nor shall they be represented by any employee organization which represents non-management or non-confidential employees; nor shall they represent any employee organization which represents non-management or non-confidential employees. This paragraph shall not otherwise serve to limit the rights set forth in Rule 16.03.
- c. Professional employee shall not be denied the right of separate representation from non-professional personnel; provided however that nothing herein shall serve to create an automatic right to separate representation of employees in one profession from those in other professions.
- d. Full-time peace officers, as that term is defined in Section 830 of the California Penal Code, shall have the right of separate representation from non-peace officers provided that the employee organization seeking representation rights for such employees is composed solely of peace officers and is not subordinate to any other organization.

16.09 ESTABLISHMENT OF BARGAINING UNITS AND REPRESENTATION RIGHTS

- a. Timing of Petitions: A petition seeking to modify a unit established pursuant to this Section and/or to decertify the existing bargaining representative shall only be valid if filed between 180 days and 150 days prior to the expiration date of an approved memorandum of understanding which covers the subject bargaining unit. Where no memorandum of understanding is in effect for the subject unit or group of employees, all petitions must be filed in the month of January.
- b. Content of Petitions: An employee organization seeking recognition shall file with the Municipal Employee Relations Officer a petition containing the following information and documentation:
  - i. Name and address of the employee organization.
  - ii. Names and titles of its officers
  - iii. Names and titles at representatives who are authorized to speak on behalf of the employee organization in dealing with the City.
  - iv. A statement that the employee organization has, as one of its primary purposes, the representation of employees in their employment relations with the City.



- v. A statement as to other the organization is a chapter, local or affiliate of any employee organization and, if so, the name and address of such other organization
  - vi. A copy of the employee organization's constitution and bylaws
  - vii. A designation of not more than two individuals, and their addresses, to whom notice sent by regular mail service will be deemed sufficient notice to the organization for any purpose.
  - viii. A statement that the organization has no restriction on membership based on race, color, creed, sex, national origin, political affiliations or marital status.
  - ix. A statement that the organization is aware of and agrees to abide by these rules and regulations, subject to its right to challenge by court action any provision it deems to be invalid or unreasonable.
  - x. The specific job classifications included in the proposed unit.
  - xi. Submission of evidence that at least 30% of the employees in the proposed unit have designated the employee organization as their representative for employee relations purposes. This showing of interest can take the form of authorization cards, petitions or dues deduction authorizations. In all cases, these must be signed and personally dated by the individual employee within ninety (90) days of the date the petition for recognition is filed.
  - xii. A request that the Municipal Employee Relations Officer grant exclusive recognition to the organization as the bargaining representative for the proposed unit.
- c. Action by City: The Municipal Employee Relations Officer shall determine if the petition meets all requirements of this Section and if the proposed unit is an appropriate one in accordance with the provisions of Rule 16.08. Verification of showing of interest furnished by the organization shall be based upon the City payroll register as of the period immediately preceding filing of the petition.

Written notice of the petition's acceptance or rejection shall be furnished the petitioning organization within fifteen (15) days of its receipt by the Municipal Employee Relations Officer. Where the petition has been accepted, written notice shall also be furnished all employees whose classes are to be included in the bargaining unit and all other recognized employee organizations of the City. No

further action on the petition shall be taken by the Municipal Employee Relations Officer for thirty (30) from the date such notice of provided.

If no challenging petition, as provided in paragraph d. below, is filed within the aforementioned thirty-day period, the Municipal Employee Relations Officer shall order a representation election in accordance with paragraph f of this Sect on.

Where the Municipal Employee Relations Officer determines that either the petition is defective or that the proposed unit is inappropriate, he shall deny it and so notify the petitioning employee organization. Such notices shall be in writing and shall specify the causes for rejection.

If grounds for rejection were due to technical deficiencies in form, the organization may amend its petition accordingly, provided the amended petition is received by the Municipal Employee Relations Officer by the end of the appropriate filing period as set forth in paragraph a of this Section. If grounds for rejection were due to inappropriateness of the bargaining unit, the Municipal Employee Relations Officer shall, at the request of the employee organization, consult with it on this matter. If consultation produces no change in the initial determination of the Municipal Employee Relations Officer, the employee organization may appeal this decision pursuant to paragraph e of this Section.

- d. Challenging Petitions: Within the thirty-day period following the acceptance of a petition for recognition, any other employee organization may submit a challenging petition requesting recognition as the representative for the subject unit or for a broader or narrower unit than prescribed in the original petition. The challenging petition must meet all requirements set forth in paragraph b of this Section. A thirty percent (30%) showing of interest shall be required where the proposed unit is different than that named in the original petition and ten percent (10%) where it is the same.

Where the challenging petition seeks the same unit encompassed by the original petition or subsequently stipulated to by the organization and the City, it shall be accepted provided it meets all requirements for the filing of a valid petition. It shall then be permitted to participate in the representation election as an intervening party.

Where the challenging petition seeks a unit other than that specified in the original petition or that stipulated to by the petitioning organization and the City, the Municipal Employee Relations Officer shall conduct a hearing involving all petitioning organizations in order to determine the more appropriate unit. Within ten (10) days following the conclusion of such a hearing, the Municipal Employee

Relations Officer shall determine the appropriate unit and so notify the affected employee organizations and all employees in classes to be included in the bargaining unit.

This determination may be appealed by any petitioning organization as provided below.

- e. Appeals: A petitioning employee organization dissatisfied with the Municipal Employee Relations Officer's determination of the appropriate bargaining unit may, within fifteen (15) days of notification of that official's decision, request the intervention of the California State Mediation and Conciliation Service (SMCS) for mediation or for recommendation for resolving the dispute pursuant to Government Code Sections 3507.1 and 3507.3. It is understood that the recommendation for resolving the dispute would be limited to the recommendation of an appropriate dispute resolution procedure.
- f. Election Procedure: Upon final determination of the appropriate bargaining unit and of the eligible employee organization(s), the Municipal Employee Relations Officer shall arrange for a secret ballot election to be conducted by the California State Mediation and Conciliation Service.

The ballot shall include all employee organizations who filed valid petitions in accordance with this Section, and also a choice of "no organization". For purposes of decertification elections, the incumbent employee organization shall also be placed on the ballot unless it waives this right in writing.

Employees eligible to vote shall be those who were employed in a position in the appropriate unit as of the last pay period preceding the election.

The employee organization receiving a numerical majority of the valid votes cast shall be certified as a recognized employee organization and be granted exclusive recognition for the appropriate bargaining unit. In the event there are only two (2) choices on the ballot, and the voting results in a tie, no organization shall be certified. Where the ballot contains more than two choices and no organization receives a majority of the valid votes cast, a run-off election shall be arranged. The ballot for this election shall include the two choices which received the greatest and second greatest number of valid votes in the initial election. A tie vote in the run-off election shall also result in no organization being certified.

The results of the election(s) shall be certified by the Municipal Employee Relations Officer to the City Council and to the petitioning employee

organizations. Employees in the appropriate bargaining unit shall also be notified of the election results.

#### 16.10 DECERTIFICATION OF RECOGNIZED EMPLOYEE ORGANIZATIONS

An employee organization or employees represented by a recognized employee organization may file a petition seeking the decertification of that recognized employee organization on the grounds that it no longer represents the majority of employees in the appropriate bargaining unit.

The timing of the petition shall be governed by Rule 16.09. However, in no case, shall a decertification petition be filed within twelve (12) months from the date the recognized employee organization was certified, nor shall two (2) representation elections be held affecting the same unit, or portions thereof, within a twelve-month period.

All decertification petitions shall specify the bargaining unit and incumbent employee organization at issue; demonstrate a 30% showing of interest on the part of employees in the subject bargaining unit who no longer desire to be represented by the recognized employee organization; and an allegation that the organization no longer represents a majority of the employees in the appropriate bargaining unit. In addition, an employee organization seeking certification as an recognized employee organization for the unit in question, shall include all information required in Rule 16.09, paragraph b.

The City shall have the right to request a representation election if it has reasonable and objective grounds for believing that a recognized employee organization no longer represents the majority of employees in an appropriate bargaining unit. Such grounds may include, but not be limited to, substantial modifications in the classification plan resulting in the elimination or reallocation of classes once in the bargaining unit.

Except in extraordinary circumstances, the City's request shall be subject to the timing requirements of this Section and of Rule 16.09 and shall only be acted upon with the prior approval of the City Council.

The procedures set forth in Rule 16.09 shall govern matters concerning appropriateness of a proposed unit, notification of the parties, waiting periods, appeals and elections. Further, an employee organization desiring to intervene in the proceedings shall be subject to the provisions of Rule 16.09, paragraph d. concerning Challenging Petitions.

#### 16.11 MODIFICATION OF ESTABLISHED UNIT

Commented [GN40]: Adds this section. Comply with labor law.

A Petition for Modification of an established unit may be filed by an employee organization with the Municipal Employee Relations Officer during the period for filing a Petition for Decertification. The Petition for Modification shall contain all of the information set forth in Section 16.10, along with a statement of all relevant facts in support of the proposed modified

unit. The Petition shall be accompanied by written proof that at least 30% of the employees within the proposed modified unit have designated the employee organization to represent them in their employment relations with the City; provided, however, the employee organization may request that such written proof be submitted to a mutually agreed upon disinterested third party. The Municipal Employee Relations Officer shall hold a hearing on the Petition for Modification, at which time affected employee organizations may be heard. Thereafter, the Municipal Employee Relations Officer shall determine the appropriate unit or units as between the existing unit and the proposed modified unit. If the Municipal Employee Relations Officer determines that the proposed modification unit is the appropriate unit, then he shall follow the procedures set forth in Section 16.08 for determining formal recognition rights in such unit.

#### 16.12 MAINTENANCE OF BARGAINING UNITS

When a new classification is created or an existing one reclassified or eliminated, the Municipal Employee Relations Officer shall amend the class composition of the respective bargaining unit(s) accordingly and shall so notify the affected, recognized employee organization(s) in writing.

An employee organization disagreeing with such an allocation, reallocation or deletion may request a meeting with the Municipal Employee Relations Officer for the purpose of clarifying the determination and discussing any disagreement between the parties. If this meeting fails to resolve the issue, the employee organization may appeal the Municipal Employee Relations Officer's decision as provided in Rule 16.09, paragraph e.

#### 16.13 IMPASSE PROCEDURE

If the meet and confer process has reached an impasse as defined in Rule 16.02, either party may initiate the Impasse Procedure by filing with the other party a written request for an impasse meeting, together with a statement of its position on all disputed issues. An impasse meeting shall then be scheduled by the Municipal Employee Relations Officer. The purpose of such an impasse meeting shall be to review the positions of the parties in a final effort to resolve such disputed issue or issues or, if the dispute is not resolved, to discuss utilization of alternative methods of dispute settlement. Such methods would include:

- a. Mutual agreement to submit the impasse to mediation. All mediation proceedings would be conducted in closed- session, with the mediator to make no public recommendations or take any position concerning the issues.
- b. A determination by the City Council after a hearing on the merits of the dispute.
- c. Any other dispute-settlement procedure to which the parties mutually agree or which the City Council may order.

**Commented [GN41]:** Updates impasse procedure to include fact finding under AB 646.

- d. Factfinding at the bargaining unit's request pursuant to Government Code sections 3505.4, 3505.5, 3505.7 and PERB Regulation 32802.

If the parties agree to submit the impasse directly to the City Council or if it assumes jurisdiction over it for any other reason, the City council shall take such action regarding the impasse as it, in its discretion, deems appropriate. Any action taken by the City Council shall be final and binding.

If the parties proceed to fact-finding pursuant to paragraph d above, in addition to the statutory and regulatory requirements for such proceeding, the following shall apply, so long as state law requires the parties to proceed to fact-finding at the employer organization's request:

- a. The parties will designate the fact-finding panel within five (5) days from the declaration of impasse regardless of whether the recognized employee organization has requested fact-finding or whether the parties have mutually decided to proceed to mediation. The parties will contact the designated panel-members to ensure that they are available for a fact-finding hearing within the statutory timelines set forth in the Government Code.
- b. At the fact-finding hearing, unless mutual agreement otherwise, the parties shall select one or two advocates to present facts related to the fact-finding criteria set forth in Gov. Code section 3505.4 in an informal manner without the use of witness testimony.
- c. The fact-finding report shall include specific consideration of the impacts of any recommendation which will result in an increase cost to the employer, including impact of that additional expense on the ability of the employer to continue to provide services.
- d. To the extent that the fact-finding panel makes findings and recommendations, those shall be made on an issue-by-issue basis.
- e. The fact-finding panel shall limit its findings and recommendations to issues that fall within mandatory subjects of bargaining, unless the parties mutually agree, in writing, to submit issues that are non-mandatory subjects.

#### 16.13 USE OF CITY FACILITIES

Upon reasonable, advance notice, the Municipal Employee Relations Officer may authorize the use of appropriate City facilities by recognized employee organizations for meetings involving City employees they represent. Such meetings shall not conflict with the conduct of normal City business nor be held during on-duty time of the City personnel concerned.

Exceptions to the aforementioned on-duty policy may be granted by the Municipal Employee Relations Officer where it is clearly necessary for a represented employee to confer with his employee representative on a matter concerning employee relations and the City. The time devoted to such meetings shall be kept to a minimum, and the employee representative shall notify the responsible supervisor or manager when arriving at and leaving the work site.

Except as provided above, employee representatives shall not have access to City premises for the conduct of union or association business.

Upon request, the Municipal Employee Relations Officer shall also provide a reasonable amount of space at appropriate City facilities for posting of material by recognized employee organizations. This material shall be subject to review by the Officer prior to posting. Space allotted for this purpose shall be withdrawn should any posted material contain inflammatory or other objectionable content.

#### 16.14 ADMINISTRATION AND AMENDMENTS

The Municipal Employee Relations Officer shall be responsible for establishing such rules and procedures as are necessary to implement and administer these regulations after consultation with affected, recognized employee organizations.

The Officer shall also be responsible for recommending for enactment by the City Council such amendments as are necessary to ensure that these regulations remain in compliance with applicable law, judicial interpretations and sound employer-employee relations practices. Such amendments shall be adopted as necessary following prior notice and discussion with affected, recognized employee organizations.

**Commented [GN42]:** Deletes language that bans prohibited activity (i.e., strikes) because a wholesale ban on the right to strike is unlawful. Parties can negotiate a no strike clause in an MOU, for example, and safety employees (police and fire) are barred by law from striking, but all other employees have a right to strike.

#### 16.15 CONSTRUCTION

- a. Nothing in these regulations shall be construed to deny any person or employee the rights granted by Federal and State law.
- b. The rights, powers and authority of the City Council in all matters, including the right to maintain any legal action, shall not be modified or restricted by these regulations.
- c. The provisions of these regulations are not intended to conflict with the provisions of Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Section 3500, et seq).

## RULE 17. ATTENDANCE AND LEAVES

The provisions of this Rule are extended to full-time employees in the Exempt Service pursuant to Personnel Ordinance No. \_\_\_

### 17.01 WORK WEEK

In general, the established work week shall be forty (40) hours and seven (7) days. The work week is generally described in the applicable MOUs. Employees in public safety positions or who work Alternative Work Schedules may have work periods or work weeks that vary. The working hours of employees shall be subject to applicable state and/or federal laws and regulations. Nothing in this section changes the work week as described in applicable MOUs.

**Commented [TA43]:** LCW recommends that these rules include a standard work week, but the work week varies too much to include.

### 17.02 ATTENDANCE

Employees shall be in attendance at their work in accordance with rules and policies regarding hours of work, leaves and related conditions. Department heads shall be responsible for maintaining employee attendance records which shall be reported to the Personnel Officer in the form and at the times prescribed by him or her.

**Commented [TA44]:** Added language on Job Abandonment as recommended by LCW

Except in extraordinary circumstances, an employee who is unable to report for work at the beginning of his or her established shift shall notify his or her immediate supervisor as soon as practicable, but at least within the hour before the commencement of such shift. Failure to provide this notification may result in the unreported period of absence for the first day being considered as leave without pay. An employee who is absent without notification for more than one work day shall be subject to disciplinary action, including discharge, pursuant to Rule 13 of these Regulations. An employee's absence without notification or leave for more than three (3) consecutive work shifts may be deemed to have resigned as a result of job abandonment and may result in termination of employment. The one-hour notification provision shall not preclude a department head, with approval of the Personnel Officer, from requiring an earlier notification where it is warranted due to operational needs.

In order to insure employee availability for the protection of life and property and to otherwise serve the health, safety and welfare of the community, the appointing authority is authorized to establish reasonable response time for employees to report to work after call to duty under emergency conditions. This response time may vary by operating unit, the type of personnel involved and the type of emergency, but shall not serve to require employees to reside within City boundaries.



17.03 OVERTIME

**Commented [GN45]:** LCW recommended language on OT and Comp time. I utilized but edited some language from current MOUs. If you prefer I can add more extensive language specific to your city's practices

Non-exempt employees required to work in excess of the employee's normally assigned work hours which exceed forty (40) hours of paid status in a workweek, unless a Fair Labor Standards Act Section 7k exemption (for fire protection and law enforcement personnel) applies, shall be compensated for each overtime hour as authorized by employee's supervisor at a rate of one-and one-half (1 1/2) times the employee's regular rate of pay.

Employees who are eligible to earn overtime shall be eligible to earn compensatory time off (CTO) at the rate of one-and-one-half times for every hour of overtime. CTO is capped at eighty (80) hours unless otherwise provided by an applicable MOU. An employee who has requested to use accumulated compensatory time off is permitted to use such time within a reasonable period after making the request unless, in the opinion of the department head or designee, the request would unduly disrupt the operations of the department.

17.02 VACATION LEAVE

**Commented [GN46]:** Modifies hours that regular full time employees may accrue annual and the cap. Moves the part time regular employees to its own separate section under this rule.

a. Regular Full-Time Employees

All regular full-time personnel in the Classified Service shall be entitled to annual vacation leave as provided below.

<u>Years of Continuous Service</u>	<u>Miscellaneous</u>	<u>Maximum Accrual</u>	<u>Public Safety</u>	<u>Maximum Accrual</u>
First 4 years	80 Hours	160 Hours	84 Hours	168 Hours
After 4 years	120 Hours	240 Hours	126 Hours	252 Hours
After 9 years	160 Hours	320 Hours	168 Hours	336 Hours

For purposes of computing annual vacation leave, a working day shall be considered as one-fifth (1/5) of the number of working or duty hours in the established work week.

Subject to approval of the appointing authority, the department and employee shall schedule the times at which vacation leave is to be taken with due consideration being given to the desires of the employee and the operational needs of the department. Use of vacation leave in less than one-day increments shall be discouraged.

If operational needs are such that an employee cannot take all or part of his or her annual vacation in a particular calendar year, such vacation either shall be taken during the following calendar year or paid for at the discretion of the appointing authority.

Based upon operational needs or employee preference, the use of vacation leave earned in a given year may be deferred to the following year. However, the total amount of vacation deferred shall not exceed 160 hour in the case of miscellaneous personnel or 168 hours in the case of public safety personnel without the approval of the appointing authority. All vacation deferments approved by the department head or the appointing authority shall be furnished to the Personnel Officer in such form as may be specified by him or her. Vacation accruals shall not exceed the maximum accrual caps stated above except where impacted by deferments and where excess accrual has been pre-approved by the Personnel Officer.

In the event a City holiday falls during the period of a miscellaneous employee's vacation leave, that day shall not be charged against the employee's vacation accrual and the leave shall be extended accordingly. When an illness or injury occurs during his or her vacation leave, the days of illness shall not be charged against the employee's vacation accrual. Such days of illness will be charged to sick leave subject to the same sick leave verification requirements stated in Section 17.03.

Employees who leave the City service during their first six months of employment under original appointments shall not receive any vacation leave or payment therefor. All other employees in the Classified Service shall, upon separation in good standing, be entitled to receive payment at their current base rate of pay for all vacation credits earned, but not taken as of the effective date of separation. However, no such payment shall be made for vacation leave credited in advance of being earned.

b. Regular Part-Time Employees.

Part-time employees in the Classified Service shall be provided vacation leave and other paid leave benefits on a pro rata basis. Part-time employees who work 1,040 hours or more per year shall be eligible for the paid leave benefits in this Rules and Regulations on a pro rata basis.

On January 1 of each year, eligible employees shall be credited with the full amount of annual vacation due under the above accrual schedule, provided that:

- i. No credits will be given during the first six months of service under an original appointment.
- ii. Credits will be prorated for eligible employees who have less than one full year of service as of January 1. Such pro rata shall include the first six months of service upon its attainment.
- iii. Only employee leaving the City service prior to the completion of the year for which vacation credits were advanced shall reimburse the City for that amount taken, but not earned.

**17.03 SICK LEAVE**

Employees in the Classified Service shall be provided paid sick leave as set forth below. These benefits shall not be considered as a right which an employee may use at his or her discretion, but shall be allowed only where justified by necessity and actual personal sickness or disability.

The accrual and usage of sick leave shall be governed by the following provisions:

- a. Full time employees shall earn sick leave at the rate of 8 hours for each calendar month of service, except that public safety personnel shall accrue such leave at the rate of 8.4 hours per month. For purposes of this section, a workday shall constitute one-fifth of the number of working or duty hours in the established workweek.  
  
Sick leave credits shall carry over from year to year. Employees separating from the City service shall not be entitled to any payment of unused, accrued leave.
- b. New employees shall be entitled to use accrued paid sick days beginning on the 90<sup>th</sup> day of employment. New employees shall be provided with 24 hours of sick leave upon their 90<sup>th</sup> day of employment.
- c. Part-time employees shall accrue in accordance with the minimum requirements as provided by state law. Eligible employees may take up to twenty-four (24) hours or three (3) days of paid sick leave per year.
- d. In order to be entitled to sick leave, an employee who, because of illness or injury, is unable to report for work shall so notify his or her immediate supervisor one hour before the commencement of the shift. As set forth in Rule 17.01 of these Regulations, a department head may require an earlier notification where it is warranted due to operational needs.

**Commented [GN47]:** Updates language to include Healthy Families, Healthy Workplaces Act and modifications to Kin Care (i.e., definition of family members). Add language regarding Fitness for Duty upon return to work from a serious health condition and for part time employees.

The Healthy Workplaces Healthy Families Act lets employees use paid sick leave for a variety of reasons, so at least for the first 3 days of sick leave that fall within the protections of the Act, the employee doesn't need to get approval from the Department Head. Additionally, for the first 3 days of sick leave that fall within the protection of the Act, we can't specify that they can't use leave for these specific reasons.

Failure to provide such notification without good reason may result in that day of absence being treated as a leave of absence without pay. The determination in this regard shall be made by the department head, subject to final approval by the appointing authority. Where the period of absence due to illness or injury is not known at the outset, it shall be the responsibility of the employee to remain in contact with his or her immediate supervisor, on a daily basis if deemed necessary by the supervisor.

Where the absence is, or is expected to be, for more than three workdays, the employee may be required to file a physician's certificate or a personal affidavit with the Personnel Officer, stating the cause of absence. At its discretion, the City may establish other methods of verification as it deems appropriate.

The payment of sick leave may be suspended by the appointing authority where he has reasonable grounds to believe that absences on a given day or days are an abuse of this policy or are the result of a concerted action on the part of two or more employees which is related to a labor dispute with the City directly or one in which the City is involved as a third party.

- e. Where an illness or injury is job-related and covered by State Worker's Compensation, accrued sick leave and vacation credits shall be applied to make up the difference between State benefits and full, base salary. However, sick leave shall not be paid for any absence of a public safety employee resulting from illness or injury arising out of the course of employment by the City, up to one year pursuant to Labor Code section 4850.
- f. In accordance with California Labor Code section 233 ("Kin Care") and the Healthy Workplaces, Health Families Act of 2014 an employee may use up one-half their yearly accrual of sick leave each calendar year or three accrued sick days whichever is greater, where the employee's presence is required due to serious illness or injury of a member of his or her immediate family. "Immediate family" shall be defined as the employee's spouse or registered domestic partner, children, parents, siblings, grandparents and grandchildren. The employee's "child" includes a biological, foster, or adopted child, a stepchild, a legal ward, a child of the employee's registered domestic partner, or a child to whom the employee stands *in loco parentis*. The employee's "parent" includes biological, adoptive, or foster parent, stepparent, legal guardian or an employee or the employee's spouse or registered domestic partner or person who stood *in loco parentis* when the employee was a minor child.

The Personnel Officer may approve use of leave for this purpose for other than the family members defined above.

Use of not more than three accrued sick days per year may be used for an employee who is a victim of domestic violence, sexual assault, or stalking for the purposes allowed by state law.

Public Safety Personnel and Miscellaneous Personnel shall be charged for time off for this benefit and those in Rules 17.04 and 17.05 against applicable balances on an hour for hour basis, with a minimum increment of two hours. For example, if an employee is sick for three days and the employee works a four/ten schedule, the employee will be charged 30 hours (three days x ten hours/day) of sick leave.

- g. Fitness for Duty. An employee who takes leave for his or her own serious health condition will be required to produce a fitness for duty certification in order to be able to return to work following an extended sick leave, if reasonable safety concerns exist regarding the employee's ability to perform his or her duties, based on the serious health condition for which the employee took sick leave. The fitness for duty certification must verify that the employee is able to perform his or her essential job functions with or without accommodation.

#### 17.04 BEREAVEMENT LEAVE

Up to five working days per occurrence may be granted by the department head to employees where there has been a death in the employee's immediate family as that term is defined in Rule 17.03. The Personnel Officer may approve use of leave for this purpose for other than the family members defined above. Extensions to such leaves due to unusual circumstances may be approved by the Personnel Officer.

#### 17.05 SCHOOL ACTIVITY LEAVE

In accordance with California Labor Code §§ 230.7 and 230.8, regular employees may take up to forty (40) hours off per year, but no more than eight (8) hours in any calendar month, for school activities for their children in kindergarten through twelfth grade or licensed daycare facility.

School activity leave can be used for the following child-related activities:

- I.1. Finding, enrolling, or reenrolling a child in school or with a licensed child care provider;
- II.2. Participating in the activities of a school or licensed child care provider; or
- III.3. To address a school or child care provider emergency. A school or child care provider emergency is an emergency where the employee's child cannot remain at the school or with the child care provider because the school or child care provider has requested the child be picked up, the child has behavior or discipline problems, there is an unexpected closure, or there is a natural disaster.

**Commented [GN48]:** Renaming this section and the section right below it to the two types of leaves for school activities: school activity leave and school appearance leave.

The way it's currently structured is a bit confusing and seems like there are two different provisions both relating to the same thing: School Activity Leave.

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The employee must use existing accrued leave or compensatory time off during such leave (otherwise the leave is unpaid) and the employee must give reasonable notice to his or her supervisor of the planned school leave. The City may request documentation stating that the parent attended/participated in the school event. If both parents work for the City and request leave for the same event, the City may decide to grant the leave only to the parent who first reasonably requested the leave or may approve the leave for both.

#### 17.06 SCHOOL APPEARANCE LEAVE

**Commented [GN49]:** Renaming this to School Appearance Leave.

The City will grant time off to employees to attend to disciplinary matters that involve the suspension or expulsion of their children from day care, kindergarten, or grades one through 12.

To be eligible for discipline leave, the day care or school must request in writing that the employee attend, and the employee must be the child's parent or guardian. The City may require proof of the need for the leave.

Employees must provide reasonable advanced notice and documentation substantiating the need for school appearance leave.

School appearance leave is unpaid. Employees must use accrued leave before taking unpaid time off for this purpose.

#### 17.07 FAMILY AND MEDICAL LEAVE ("FMLA")

**Commented [GN50]:** Added from the City's standalone policy and updated to reflect recent changes in the law.

FMLA requires the City to provide up to twelve (12) weeks of unpaid, job-protected family care or medical leave per year for eligible employees who have a qualifying reason to take such leave. FMLA does not supersede any Memoranda of Understanding that provide greater family or medical leave rights. FMLA is a federal law that is enforced by the U.S. Department of Labor Employment Standards Administration, Wage and Hour Division. In 1993 the California Family Rights Acts (CFRA) was amended to conform to the FMLA. CFRA is a state law and is enforced by the California Department of Fair Employment and Housing (DFEH).

##### a. Eligibility

To be eligible for leave under FMLA/CFRA, an employee must meet both of the following requirements:

- i. An employee must have at least twelve (12) months of City service; and
- ii. The employee, on the date in which any FMLA/CFRA leave is to commence, must have worked at least 1,250 hours (actual time worked) during the prior twelve months (the hours need not be consecutive).

b. Qualifying Events

An eligible employee may take FMLA/CFRA leave for any of the following reasons:

- i. The birth of an employee's child.
- ii. Placement of a child with an employee for adoption or foster care.
- iii. To care for a spouse, domestic partner, child or parent with a serious health condition.
- iv. An employee's own serious health condition.
- v. A qualifying exigency arising out of the fact that an employee's spouse, domestic partner, child or parent is on active military duty or has been notified of an impending order to active duty ("Qualifying Exigency Leave").
- vi. To care for a military service member who is undergoing treatment for a serious injury or illness incurred in the line of active duty, or a veteran who is being treated for a serious injury or illness that occurred in the line of active duty during the five years preceding the date of treatment, if the employee is the spouse, domestic partner, child, parent or next of kin of the service member ("Military Caregiver Leave").

c. Amount of Leave

**Twelve Weeks**

An eligible employee working full-time is entitled to up to twelve (12) workweeks (or sixty (60) workdays, or four hundred eighty (480) hours) of leave during a twelve month period<sup>2</sup> when leave is taken for the following reasons:

- i. Birth of an employee's child (Leave must be concluded within twelve (12) months of the birth of the child);
- ii. Placement of a child with an employee for adoption or foster care (Leave must be concluded within twelve (12) months of the placement of the child);
- iii. To care for a family member with a serious health condition;
- iv. The employee's own serious health condition; and
- v. A qualifying exigency arising from an employee's family member being on active duty or called to active duty.

The twelve (12) month period for calculating this leave entitlement is a "rolling" period measured backward from the date leave is taken. Each time an employee takes FMLA/CFRA leave, the remaining leave entitlement will be any balance of

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<sup>2</sup> The length of leave for part-time regular employees is pro-rated according to the number of hours worked per week.

twelve (12) workweeks which have not been used during the twelve (12)-month period.

When FMLA/CFRA leave is taken for the birth, adoption, or foster care placement of a child, the leave must be completed within one (1) year of the qualifying event. Additionally, the basic minimum duration of such leave is two (2) weeks, with the exception that on any two (2) occasions the Personnel Officer may grant a request for FMLA/CFRA leave of less than two (2) weeks duration.

A leave of twelve (12) weeks is provided to either parent for birth, adoption, or foster care placement of a child. However, FMLA/CFRA limits the total aggregate number of workweeks of leave to which a husband and wife are both entitled, if they work for the same employer, to a total of twelve (12) workweeks (combined between the two parents). In other words, married parents who both work for the City are only entitled to take twelve (12) weeks of leave under FMLA/CFRA. The limitation does not apply to unmarried parents. Parents may be on leave simultaneously.

#### **Twenty Six Weeks**

An eligible employee is entitled to up to twenty-six (26) workweeks of military caregiver leave during a single twelve (12) month period. The twelve (12) month period begins on the first day the employee takes leave and ends twelve (12) months after that date.

Unlike other types of family medical leave, military caregiver leave is a one-time entitlement only; it does not renew annually. This leave entitlement does not increase the amount of leave an employee may take for other FMLA/CFRA qualifying reasons during the single 12-month period. For example, an employee may combine military caregiver leave with other types of family medical leave during a single 12-month period. However, the employee is limited to taking a maximum of twenty-six (26) weeks of leave in such circumstances.

#### **Fifteen Days**

When applicable, an eligible family member may take the qualifying exigency leave up to a maximum of fifteen (15) days to match a military member's Rest and Recuperation leave orders.

#### d. **Intermittent Leave**

When necessary, family medical leave may be taken intermittently or the employee may be authorized to work on a reduced schedule. The City will require the employee to provide certification supporting the need for intermittent leave or



a reduced work schedule. Employees are required to make a reasonable effort to schedule intermittent leave so as not to disrupt the City's operations.

When an employee is taking intermittent leave or working a reduced schedule, the employee may be transferred to an alternate position, with equivalent pay and benefits, that accommodates the periods of leave better than the employee's regular position.

An employee who wishes to take intermittent leave or work a reduced schedule after the birth of a child or placement of a child for adoption or foster care must obtain his or her supervisor's approval.

e. Leave Runs Concurrently

With the exception of CFRA baby bonding leave, FMLA and CFRA leave run concurrently. The leave also runs concurrently with workers' compensation leave; the one exception being for sworn police and fire employees. In accordance with California Labor Code section 4850, sworn employees who are injured in the course of their duties are entitled to take up to one (1) year of paid leave. This leave does not run concurrently with CFRA leave.

f. Certifications

An employee will be required to submit adequate certification to support the need for FMLA/CFRA leave. Absent extenuating circumstances, the certification must be returned within fifteen (15) days after the City requests the certification. If the certification is untimely or inadequate, the employee's request for family medical leave may be denied or delayed.

Any certification provided by an employee will be held in strict confidence and maintained in a file separate from the employee's personnel file.

g. FMLA/CFRA Leave Definitions

**Child**

For purposes of leave taken for birth or placement of a child or to care for a family member with a serious health condition, child means a biological, adopted, foster child, stepchild, legal ward, or a child for whom the employee is acting as a parent. The child must be under 18 years old or, if over 18 years old, incapable of self-care due to a physical or mental disability.

For purposes of military caregiver or qualifying exigency leave, child means a biological, adopted, foster child, stepchild, legal ward, or a child of any age for whom the employee is acting as a parent.

**Domestic Partner**

Domestic Partners are two adults, of the same sex and at least 18 years of age or of the opposite sex and over 62 years of age, who have chosen to share one another's lives in an intimate and committed relationship of mutual caring, who share a common residence and are jointly responsible for each other's basic living expenses incurred during the domestic partnership. Neither person is married or a member of another domestic partnership. The two persons are not related by blood in a way that would prevent them from being married to each other in this state and both persons are capable of consenting to the domestic partnership.

The individuals must have also filed a declaration of Domestic Partnership with the Secretary of State pursuant to Division 2.5 of the Family Code, Section 297. Further information and the Declaration are available at [www.ss.ca.gov/bussiness/sf/sf\\_dp.htm](http://www.ss.ca.gov/bussiness/sf/sf_dp.htm). Further, neither person may have previously filed a Declaration of Domestic Partnership with the Secretary of State that has not yet been terminated pursuant to Division 2.5 of the Family Code, Section 299.

**Health Care Provider**

A Health Care Provider includes the following:

- i. A doctor of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices.
- ii. A podiatrist, dentist, clinical psychologist, optometrist, or chiropractor authorized to practice and performing within the scope of his or her practice under state law.
- iii. A nurse practitioner, or nurse-midwife, or clinical social worker authorized to practice, and performing within the scope of his or her practice, as defined under state law.
- iv. A Christian Science practitioner listed with the First Church of Christ Scientist in Boston Massachusetts.
- v. A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country and who is performing within the scope of his or her practice as defined under that law.

**Next of Kin**

For purposes of military caregiver leave, next of kin means the nearest blood relative other than the service member's spouse, domestic partner, parent or child, in the following order: blood relatives who have been granted legal custody of the service member by court decree, siblings, grandparents, aunts and uncles, and first

cousins, unless the service member has designated in writing another person as his or her nearest blood relative.

**Parent**

A biological, foster, or adoptive parent, a step-parent, legal guardian, conservator, or other person standing in loco parentis to a child. The term does not include parents-in-law.

**Qualifying Exigency**

Leave needed to participate in any of the following activities, so long as the need for leave relates to the active duty of a service member or a call to active duty:

- i. Addressing issues arising from a short-notice deployment (defined as seven (7) days or less).
- ii. Attending military sponsored events.
- iii. Arranging for childcare.
- iv. Arranging for care of a parent when a service member's parent is incapable of self-care.
- v. Participating in school activities.
- vi. Making or updating financial or legal arrangements.
- vii. Attending counseling.
- viii. Spending time with a service member who is on short-term rest and recuperation leave during the period of deployment (leave limited to up to fifteen (15) days for each instance of rest and recuperation).
- ix. Participating in post-deployment activities, such as arrival ceremonies, reintegration briefings, and other military sponsored events for a period of ninety (90) days following termination of the service member's active duty status.
- x. Addressing any other issues arising out of the service member's active duty or call to active duty, provided that the City and employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of such leave.

**Serious Health Condition**

A serious health condition means an illness, injury, impairment or physical or mental condition that involves any of the following:

- i. Any period of incapacity or treatment connected with in-patient care (i.e. an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such in-patient care.

- ii. Any period of incapacity of more than three (3) consecutive calendar days, and any subsequent treatment or period of incapacity, relating to the same condition, that involves: continuing treatment two (2) or more times by a health care provider within thirty (30) days of the first day of incapacity, or treatment by a health care provider on at least one (1) occasion which results in continuing treatment under the health care provider's supervision.
- iii. Any period of incapacity or treatment for incapacity due to a chronic serious health condition. A chronic health condition is one which requires periodic visits (at least two times per year) to a health care provider for treatment, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy.)
- iv. Any period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, or the terminal stages of a disease.) The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
- v. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health provider. Such treatments may be either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity for more than three (3) consecutive calendar days in the absence of medical treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

**Serious Injury or Illness**

For purposes of military caregiver leave, a serious injury or illness is defined as:

- i. an injury or illness incurred by a service member in the line of duty that renders the service member unfit to perform the duties of his or her position, or
- ii. an injury or illness that existed before the service member's active duty and was aggravated by service in the line of duty.

With respect to service members who are veterans, a serious injury or illness is defined as any injury or illness incurred by a service member in the line of duty, or existing before the beginning of the service member's active duty and aggravated by service in the line of duty, and that manifested itself before or after the service member became a veteran.

**Spouse**

A husband or wife as defined or recognized under State Law.

h. Procedures For FMLA/CFRA Leave

The following procedures must be followed when an employee requests FMLA/CFRA leave or a supervisor becomes aware of circumstances that indicate an employee may qualify for FMLA/CFRA leave:

**Request For FMLA/CFRA Leave**

- i. At least thirty (30) days prior to commencement of the leave the employee must inform his or her supervisor of the need for FMLA/CFRA leave.
- ii. If the leave was not foreseeable thirty (30) day prior, the employee must give notice as soon as practicable.
- iii. When leave is taken for a medical or other FMLA/CFRA related appointment, the employee must make a reasonable effort to schedule the appointment at a time that minimizes disruption to the City's operation.

**Time Frame**

- i. The same day the supervisor receives a request for FMLA/CFRA leave or becomes aware of circumstances indicating that an employee may qualify for FMLA/CFRA leave, the supervisor shall contact the Human Resources Department.
- ii. The same day the Human Resources Department is contacted by the supervisor, Human Resources will determine whether the absence meets one of the conditions for FMLA/CFRA leave. It will also be determined at that time whether the employee meets the eligibility requirements.
- iii. The next business day, or as soon as is practicable, the supervisor and Human Resources will meet with the employee. The employee will receive the FMLA memorandum, provisionally designating the leave as FMLA; the FMLA/CFRA Summary; Permission to Contact Health Care Provider Form, the Physician Medical Certification Form, Physical Requirements Checklist Form, and any other certification forms the employee is required to complete which the employee must return to Human Resources within fifteen (15) days.
- iv. The employee must read and sign acknowledging they understand their rights and the City's FMLA/CFRA procedures, and return to Human Resources within one (1) business day, or as soon as is practicable, but within no more than three (3) business days.

**Final Determination**

Upon receipt of the aforementioned Family Medical Leave Forms:

- i. The Human Resources Department will review the forms and make a final determination as to whether the absence meets the conditions for FMLA/CFRA leave. The forms are then forwarded to the Personnel Officer for final approval or denial.

- ii. The original signed Family Medical Leave Request Form is returned to the employee and a copy is retained in the Human Resources FMLA files. The returned request form will serve as the final designation of approval or denial of FMLA/CFRA leave.

Section 17.08 PREGNANCY DISABILITY LEAVE (PDL)

a. Leave Entitlement

Pursuant to the California Pregnancy Disability Leave Act and California Family Rights Act (CFRA), an employee may take the following unpaid leaves of absence relating to pregnancy and the birth of an employee's child:

**Up To Four Months Of Pregnancy Disability Leave**

An employee is entitled to up to four (4) months of pregnancy disability leave for any period of actual disability caused by the employee's pregnancy, childbirth or related medical conditions. (Time off needed for prenatal care, severe morning sickness, doctor ordered bed rest, childbirth, and recovery from childbirth are all covered.) Pregnancy disability leave may be taken intermittently or on a reduced leave schedule when medically necessary.

**An Additional Twelve Weeks Of "Baby Bonding" Leave**

In addition to pregnancy disability leave, an employee is entitled to another twelve (12) weeks of leave under CFRA, provided that the employee has not previously exhausted her CFRA leave prior to the pregnancy disability leave.

b. Employee Eligibility

Unlike family medical leave, there are no eligibility requirements for pregnancy disability leave such as length of employment or hours worked.

c. Medical Certifications and Releases

An employee requesting pregnancy disability leave will be required to provide a medical certification from a health care provider supporting the need for leave.

**Content of certification**

The certification shall contain the following information: (1) the date the employee became (or will become) disabled due to pregnancy; (2) the probable duration of the disability; and (3) a statement that the employee is unable to perform one or more of the essential functions of her position.

**Fitness for duty certification**

Prior to being allowed to return to work from pregnancy disability leave, the employee may be required to submit a certification from her health care provider

stating that she is able to perform her essential job functions with or without accommodation.

d. Notice of Need for Pregnancy Disability Leave

An employee must provide the City with reasonable advance notice of the need for pregnancy disability leave and the anticipated timing and duration of the leave:

**Foreseeable leave**

If the need for leave is foreseeable, an employee must provide the City with at least thirty (30) days' notice.

**Unforeseeable leave**

If it is not practicable for an employee to provide thirty (30) days' notice, the employee must notify the City of the need for leave as soon as practicable.

Section 17.09 Benefits and Reinstatement During and After FMLA / CFRA / PDL Leave

a. Seniority

Family medical leave will not be treated as a break in service for purposes of seniority, and vesting or eligibility to participate in pension and retirement plans.

b. Paid Leave

FMLA, CFRA and PDL are unpaid leaves. An employee may use paid leave credits such as vacation, sick leave, executive/management leave and/or compensatory time off during otherwise unpaid FMLA/CFRA leave. The use of paid time off during family medical leave does not extend the length of the family medical leave. Employees may also be eligible for some compensation through the City's long term disability policy. Employees should see Human Resources for more information. Paid leaves due to job-related accidents or injuries under 4850 Leave (sworn only) or Temporary Disability (non-sworn) are not counted as an employee's FMLA/CFRA leave.

c. Continuance Of Benefits

The City will continue to maintain all fringe benefits if the employee chooses to use his or her accrued vacation, sick leave or compensatory time off during family leave.

During unpaid family leave, the City will maintain the employee's coverage under the group health plan, including vision, dental, and the Employee Assistance Plan. The employee may pay the monthly premium for any other benefits not covered during unpaid family leave. It is the employee's responsibility to make the

payment for the monthly premium to the Finance Department on the first of the month proceeding the coverage. Failure to remit the monthly premium within 30 days of the due date will result in the discontinuance of coverage. Contributions to the P.E.R.S. retirement plan will be suspended during unpaid family leave.

If an employee elects not to return to work upon completion of family leave, the City may recover from the employee its contribution towards the group health plan, unless the employee's failure to return is due to the continuation, recurrence or onset of a serious health condition of the employee or the employee's family member or circumstances beyond the employee's control. Coverage under the City's group health plan will cease at the end of the month it is confirmed that the employee will not be returning to work. The employee is then eligible for continuation of health care coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA).

d. Benefits If Discretionary Leave Is Granted

If an employee is granted additional time off as unpaid leave after all legally mandated leaves are exhausted, the employee is required to pay the full cost of the premium including the City's portion in accordance with the City's policy on Leave Without Pay.

e. Failure To Return From Leave

An employee who fails to return to work after exhausting FMLA/CFRA leave loses his or her right to reinstatement under FMLA/CFRA. However, an employee who has taken leave for his or her serious health condition may have a right to reasonable accommodation under the Americans with Disabilities Act (ADA) and/or Fair Employment and Housing Act (FEHA).

f. Reinstatement From Leave

An employee is entitled to be returned to the same position the employee held when the leave commenced or to an equivalent position. An employee taking leave has no greater rights because of the leave than if the employee had been continuously employed. Therefore, the City may deny reinstatement if the employee would have been laid off or otherwise terminated during the leave for reasons unrelated to the leave, or if preserving the position would substantially undermine the City's ability to operate safely and efficiently. An employee who fails to return to work after the termination of leave loses his or her reinstatement rights.

17.10 PERSONAL LEAVE

**Commented [GN51]:** Updated to one day of personal leave and provide an example of appropriate use.



Employees may use up to one day per year of sick leave for purposes of conducting personal business which cannot otherwise be accommodated on the employee's own time. Employees must provide their department head with a reason for leave and use of this leave must be approved in advance by the department head and shall be deducted from the employee's sick leave balance. Examples of appropriate uses of personal leave include attending court for a personal matter such as small claims court or an appointment at the Department of Motor Vehicles.

#### 17.11 MILITARY LEAVE

Military leave shall be granted in accordance with the provisions of the State Military and Veterans Code § 395. An employee requesting leave for this purpose shall 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.

#### 17.12 JURY DUTY AND COURT APPEARANCES

An employee who is called to serve as a juror shall be entitled to leave during the period of such service or while necessarily being present in court as the result of such a summons. Under these circumstances, the employee shall be paid his or her full salary for this period, provided the employee remits jury fees received to the City. Such fees shall not include mileage reimbursements or subsistence payments.

An employee who is subpoenaed to appear in court in an official capacity shall be allowed to do so without loss of compensation. An employee subpoenaed to appear in court in a manner unrelated to his or her official capacity as a city employee shall be permitted time off without pay. If the employee elects, accrued vacation may be used for this purpose.

#### 17.13 LEAVE TO ADDRESS JUDICIAL PROCEEDINGS RELATED TO SERIOUS CRIMES

The City will not discharge, discriminate or retaliate against an employee who takes time off to serve on a jury, who are victims of crime and must attend court proceedings, or who need time off for court-related proceedings concerning domestic violence and sexual assault. Employees may take time off to appear in court proceedings for the following serious crimes as defined by Labor Code § 230.5 including but not limited to:

- a. Felony child abuse likely to produce great bodily harm or death;
- c. Assault resulting in the death of a child under eight years of age;

**Commented [GN52]:** Added to reflect a change in the law. This allows the employee to take time off without retaliation or discrimination to ensure the health, safety and welfare of the employee or their child(ren). It is unclear if this Labor Code provision applies if the child is the victim of the serious crime or domestic violence and not the employee.

- d. Felony domestic violence; and
- e. Felony stalking.

The City also may not take adverse employment actions against employees who take time off of work to address issues arising as a result of domestic violence or sexual assault such as taking time off:

- a. To seek medical attention for injuries caused by the violence;
- b. To obtain services related to the violence; and
- c. To obtain counseling or participate in safety planning and activities related thereto to address the violence or assault.

Employees must, however, provide the City with reasonable notice of the need for leave in accordance with California Labor Code §§230 and 230.1.

#### 17.14 VOTING

**Commented [GN53]:** Added to reflect change in the law.

In accordance with California Elections Code § 14000, an employee is entitled to paid and unpaid time off to vote if the employee does not have sufficient time outside of working hours to vote in statewide elections.

Employees shall be granted as much time needed in order to vote, but only a maximum of two (2) hours may be taken as paid leave. The employee must take the time off at either the beginning or end of the employee's shift.

#### 17.15 EMERGENCY DUTY LEAVE

**Commented [GN54]:** Added to reflect change in the law.

In accordance with California Labor Code §§ 230.3 and 230.4, employees shall be granted time off to perform emergency duty as a volunteer firefighter, a reserve peace officer or emergency rescue personnel. An employee who is a volunteer firefighter shall be permitted a temporary leave of absence not to exceed an aggregate of fourteen (14) days per calendar year, for the purpose of engaging in fire or law enforcement training as a volunteer firefighter, a reserve peace officer or emergency rescue personnel.

#### 17.16 HOLIDAYS

The City shall observe the following holidays for miscellaneous employees:

January 1  
February 12  
The third Monday in February  
The last Monday in May  
July 4  
The first Monday in September  
The second Monday in October

November 11  
Thanksgiving Day  
Day After Thanksgiving  
Four hours on the work day prior to the  
observance of December 25 and  
January 1 holidays  
Christmas Day

A City holiday shall also be observed on any day proclaimed by the President, Governor or Mayor of the City as a public holiday.

Where any of the aforementioned holidays falls on a Sunday, the following Monday shall be observed as the holiday. Where the holiday falls on a Saturday, the preceding Friday shall be observed as the holiday.

When a City holiday falls on an employee's regularly scheduled time off which is other than Saturday or Sunday, other time off shall be granted,

Employees required to work on any City holiday shall be entitled to compensatory time off equal to the number of holiday hours worked.

None of the provisions of this section shall apply to public safety personnel in the Classified Service, who shall receive compensation in lieu of holiday observance in the amount of six percent (6%) of their base salary.

#### 17.17 ADMINISTRATIVE LEAVE

The appointing authority may place an employee in the Classified Service on administrative leave where, in his or her judgment, such action would be in the best interest of the City service. This leave may be with or without pay. Its application may include, but not be limited to, situations where disciplinary matters are pending.

#### 17.18 OTHER LEAVES WITHOUT PAY

The appointing authority may grant an employee a leave of absence without pay for a definite period not to exceed three months. Department heads may grant such leaves not to exceed five working days.

The request for leave, and the reasons therefor, shall be submitted in writing by the employee and must be approved in advance by the appointing authority or the department head, as appropriate.

**Commented [GN55]:** Deleted from this section were Maternity Leave and Medical Leave which are covered by FMLA, PDL and the other leaves articulated above.

On expiration of the approved leave, the employee shall be reinstated to his or her former position or to a comparable one if the former position is abolished during the period of leave and the employee otherwise would not have been laid off. Based upon unforeseeable changes in operating requirements, the appointing authority may recall the employee from leave prior to its expiration.

Failure on the part of an employee to return to work on the date originally scheduled or subsequently modified shall be considered as a resignation.

17.19 LEAVES OF ABSENCE WITHOUT PAY: EFFECT ON SENIORITY AND BENEFITS

Except as provided under State law for employees on military leaves of absence, employees on leaves of absence without pay shall not, after the first 30 days of such leave, accrue service or leave credits, nor shall the City be required to maintain contributions toward group insurance coverages. During the period of such leaves, all service and leave credits shall be retained at the levels existing as of the effective date of the leave.

## **RULE 18: REASONABLE ACCOMMODATION POLICY**

**Commented [GN56]:** Added from the City's standalone policy and updated to reflect changes to the law include a confidentiality section as recommended by LCW.

### **18.01 STATEMENT OF POLICY**

The City shall provide Reasonable Accommodation to all disabled applicants and employees within the meaning of the California Fair Employment and Housing Act (Government Code § 12940), Title I of the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.), and according to the terms and conditions of this Policy.

### **18.02 EMPLOYEE'S/APPLICANT'S REQUEST FOR REASONABLE ACCOMMODATION**

Prior to providing Reasonable Accommodation to an employee or applicant, the City shall require the employee or applicant to certify that they qualify as a person with a disability as set forth in Section 18.02(B) below. The following protocols have been developed to assist with Reasonable Accommodation requests.

- a. Applicant Request for Reasonable Accommodation: The City will require all persons applying for an employment position who are requesting Reasonable Accommodation to complete and submit to Human Resources the City's Applicant Request For Accommodation Form at least two (2) workdays prior to the employment examination. In support of a Reasonable Accommodation request, an applicant will also be required to submit certification of disability status from a health care provider at the applicant's own expense.

If the applicant is determined to be disabled, the request will be processed and a decision made as to the reasonableness of the applicant's request. If the applicant is determined not to be disabled or the request cannot be fulfilled, the applicant will be contacted by Human Resources and discussion will occur relating to the specifics of the City's determination.

- b. Employee Request for Reasonable Accommodation: An employee or temporary agency employee with a disability who is in need of Reasonable Accommodation(s) shall inform their direct supervisor of the need for accommodation either in writing or verbally. Once verbally expressed, the supervisor shall ensure that the employee is provided with a copy of this Policy and necessary forms. The employee is then to provide his or her supervisor with a completed City Employee Request for Reasonable Accommodation/Medical Certification Form. The employee can request assistance from department personnel to complete the required form.

The employee assumes the cost of obtaining the medical certification supporting the need for accommodation unless the employee's department, in conjunction with Human Resources, determines that a Fitness-For-Duty examination is required to

obtain the needed information. In that case, the cost of the examination will be paid by the employee's department and/or the City.

Once it is determined that the employee has a qualifying disability, then the City will engage in an interactive process with the employee to determine if Reasonable Accommodation can be made.

- c. Perception of an Employee/Applicant as Disabled: If an employee or applicant is perceived to be in need of Reasonable Accommodation by others in the organization, the City will take steps to determine if engaging in the interactive process with the employee or applicant is necessary. If the employee's supervisor and manager believe that the employee may be disabled and in need of an accommodation, then a meeting will be scheduled by Human Resources with the employee to determine if the employee is disabled and in need of accommodation. A Fitness-For-Duty examination may also be scheduled to obtain necessary certification to determine if the employee is disabled.

#### 18.03 INTERACTIVE PROCESS

After receipt of medical certification confirming that an employee or applicant is disabled, the City will arrange for a discussion (or multiple discussions) with the employee, in person or via telephone conference call. (This is referred to as "the Interactive Process.") The purpose of these discussion(s) is to fully assess all possible Reasonable Accommodations. During the Interactive Process, the City's Reasonable Accommodation Assessment Form will be completed by the City participants and the completed form sent to Human Resources for maintenance in a file kept separate from the employee's personnel file. (Any information relating to the employee's request for accommodation shall be kept confidential to the extent permitted by law.) Once the Interactive Process is complete, the employee or applicant will be informed as to whether Reasonable Accommodation can be provided.

The refusal or failure of an employee or applicant to participate or cooperate in the Interactive Process may result in a denial of accommodation.

#### 18.04 PROVIDING REASONABLE ACCOMMODATION

Reasonable Accommodation is any appropriate measure that would allow an applicant or employee with a disability to perform the essential functions of the job. It can include making facilities accessible to individuals with disabilities, restructuring jobs, modifying work schedules, providing a leave of absence, buying or modifying equipment, modifying examinations and policies, reassigning an employee to a vacant, funded position, or other reasonable accommodations.

There are three Reasonable Accommodation options that ought to be considered with each request. These are:

- A. Offer of modified work: Disabled employee or applicant is accommodated into their current classification (or position being applied for) through modifications to facilities or schedule, equipment purchases, modifying examinations, changing policies etc., that allow the employee or applicant to perform the Essential Functions of the position.

This option should be exhausted before the other two options below are explored. If modified work is offered, options 2 and 3 typically need not be explored. However, if an employee or applicant does not believe that the offer of modified work will meet their accommodation needs then option 2 and 3 below shall be discussed before a final decision is made as to whether accommodation can be provided.

- B. Offer of an extended leave of absence: An employee with a disability may be entitled to FMLA and other paid and unpaid leaves. In addition, it may be necessary for additional leave to be provided as an accommodation under this Policy and state and federal law. However, an extension of a leave of absence in excess of legal or policy requirements will only be granted if the employee's medical condition is expected to improve and a leave would facilitate a return to work in a specified period of time. The City is not required to provide an employee with an indefinite leave of absence.
- C. Offer of reassignment: Disabled employee is placed into a vacant position that is open and budgeted, and for which the employee is qualified. Reassignment must not violate any contractual provisions. The City is not required to promote an employee or create a position that does not exist as a Reasonable Accommodation. If there are multiple positions to which an employee can be reassigned, the City will consider the employee's preference before making a placement decision. If there are no funded, vacant comparable positions available, the City may reassign the employee to a lower graded or lower paid position.

The examples of accommodations identified above are not exclusive. Other accommodations may be available depending upon the particular circumstances of each situation.

#### 18.05 LENGTH OF REASONABLE ACCOMMODATION

Disabled employees may be provided with short-term or long-term accommodation depending on the medical certification listing the need. However, any accommodation regardless of the length of time it has been provided, can be revisited should the employee or the City believe that the accommodation is no longer effective or safe.

- A. Short-Term Disabilities:

Employees who are temporarily disabled may be provided with temporary accommodation through modifications to their current assignment or through a temporary assignment into alternate work. A temporary assignment does not constitute any right to the temporary assignment on a permanent basis. Employees who are provided with temporary accommodation must sign the City's Temporary Duty Agreement Form. An employee who refuses to sign this form will not be provided with Temporary Duty and will be placed on the appropriate leave of absence in accordance with other City policies and contractual agreements.

B. Long-Term/Permanent Disabilities:

When an employee provides medical certification that they are in need of permanent accommodation the City will provide Reasonable Accommodation within the guidelines of applicable state and federal laws. Depending on the circumstances the City may provide a temporary accommodation to allow time to review the effectiveness of a permanent accommodation. In all assignments, no permanently disabled employee will be provided with accommodation unless the accommodation would allow them to perform all of the essential functions of the position and providing the accommodation would not create an Undue Hardship or Direct Threat to the City, employee or staff.

18.06 CASE BY CASE DETERMINATION

The City determines in its sole discretion whether Reasonable Accommodation(s) can be made and the type of accommodation(s) to provide. The City will not provide accommodations(s) that pose an Undue Hardship upon the City's finances or operations, or that would endanger the health or safety of the employee or others. The City will inform the employee of its decision as to Reasonable Accommodation(s) in writing.

18.07 DEFINITIONS

- A. Direct Threat: No accommodation is required if the accommodation request would place the employee or applicant in imminent and substantial danger, or if the accommodation would place others in substantial danger and no Reasonable Accommodation exists that would remove or reduce the danger.
- B. "Disability" The Fair Employment and Housing Act (FEHA) defines two categories of disability: mental disability and physical disability. Each category contains its own specific definitions. Additionally, under the FEHA, an employee with a "medical condition" is also entitled to accommodation. The following are



the specific definitions of physical disability, mental disability, and medical condition as outlined in the FEHA:

1. *Physical Disability:* Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that affects one or more of several body systems and limits a major life activity. The body systems listed include the neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine systems. A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity, such as working, if it makes the achievement of the major life activity difficult.

When determining whether a person has a disability, the City cannot take into consideration any medication or assistive device, such as wheelchairs, eyeglasses or hearing aids that an employee may use to accommodate the disability. However, if these devices or mitigating measures “limit a major life activity”, they should be taken into consideration.

Physical disability also includes any other health impairment that requires special education or related services; having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment which is known to the employer; and being perceived or treated by the employer as having any of the aforementioned conditions.

2. *Mental Disability:* Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity, or having any other mental or psychological disorder or condition that requires special education or related services. An employee who has a record or history of a mental or psychological disorder or condition which is known to the employer, or who is regarded or treated by the employer as having a mental disorder or condition, is also protected.
3. *Medical Condition:* Having any cancer-related physical or mental health impairment from a diagnosis, record or history of cancer; or a genetic characteristic which includes any scientifically or medically identifiable gene or chromosome, or combination or alteration of a gene or chromosome, or any inherited characteristic that may derive from a person or the person’s family member that is known to be a cause of a disease or disorder, or that is associated with a statistically increased risk of development of a disease or disorder though presently not associated with any disease or disorder symptoms.

4. *Exclusions:* Sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs, are specifically excluded and are not protected under the FEHA. Conditions that are mild, which do not limit a major life activity, as determined on a case-by-case basis may also be excluded (e.g., common cold, seasonal or common influenza, minor cuts, sprains, muscle aches, soreness, bruises, or abrasions, non-migraine headaches, and minor and non-chronic gastrointestinal disorders.)

Physical and mental limitations are not required to be “substantial” to qualify as a disability, and “working” is a major life activity regardless of whether the actual or perceived working limitation implicates a particular employment or a broad class of jobs.

- C. “Essential Functions: Essential functions are the basic job duties that an applicant or employee must be able to perform, with or without Reasonable Accommodation. Factors to consider in determining if a function is essential include: (1) whether the reason the position exists is to perform that function, (2) the number of other employees available to perform the function or among whom the performance of the function can be distributed, and (3) the degree of expertise or skill required to perform the function.

Evidence of whether a particular job function is essential includes, but is not limited to: (1) the employer’s judgment as to which functions are essential, (2) written job descriptions, (3) validated job analysis, (4) the actual work experience of present or past employees in the job, (5) the time spent performing a function, (6) the consequences of not requiring an employee to perform a function, (7) the terms of a collective bargaining agreement, and (8) reference to the importance of the job function in prior performance reviews.

- D. “Health Care Provider” means:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;
2. Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treat or supervise treatment of a serious health condition;
3. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to

practice in California and performing within the scope of their practice as defined under California law;

4. Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under California law and who are performing within the scope of their practice as defined under California law;
5. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
6. Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

- E. "Interactive Process" means timely, good faith communication between the employer and the applicant or employee or, when necessary because of the disability or other circumstances, his or her representative to explore whether or not the applicant or employee needs reasonable accommodation for a disability to perform the essential functions of the job, and, if so, how the person can be reasonably accommodated.

Although the preferences of the applicant or employee in the selection of the accommodation should be considered, the accommodation implemented will be one that is most appropriate for both the employee and the employer.

"Good faith" with respect to the Interactive Process requires the City and the applicant or employee to communicate directly with each other to identify information essential to determining whether Reasonable Accommodation is available and neither party may delay or interfere with the process.

- F. "Reasonable Accommodation" Reasonable Accommodation is any appropriate measure that would allow the applicant or employee with a disability to perform the essential functions of the job. It can include making facilities accessible to individuals with disabilities, restructuring jobs, modifying work schedules, providing a leave of absence, buying or modifying equipment, modifying examinations and policies, reassigning the employee to a vacant, funded position, or other reasonable accommodations.

An employer is not required to lower quality or production standards, provide personal use items (such as glasses), create a new position, promote an employee, or displace (lay-off or bump) other employees. Accommodation is also not required if the Essential Functions cannot be performed even with accommodation, if the

employee poses a Direct Threat to him or herself or co-workers, or if the accommodation would create an Undue Hardship for the City.

- G. Undue Hardship: Undue Hardship is an action requiring significant difficulty or expense in light of the following factors: (1) the nature and cost of the accommodation needed; (2) the overall financial resources of the facility making the accommodation, including the impact of the accommodation upon the facility's operations; (3) the overall financial resources of the City; (4) the type of operations, including the composition, structure and functions of the workforce; and (5) the geographic separateness, administrative, or fiscal relationship of the facility.

#### 18.08 REQUIRED FORMS

- a. Applicants

Applicants must complete the "Applicant Request for Reasonable Accommodation Form" up to two (2) workdays prior to the examination date to be considered.

- b. Employees

Employees must request Reasonable Accommodation in writing to their supervisor or to Human Resources. Employees must submit a completed "Employee Request for Reasonable Accommodation and Disability Certification Form" to their department supervisor.

An employee seeking Temporary Duty due to a temporary disability must submit a "Temporary Duty Agreement Form" to their department supervisor.

- c. Department Management/Human Resources

Supervisors must complete the City's "Reasonable Accommodation Assessment Form" during the interactive meeting with the employee. Departments completing this form must submit a completed form to Human Resources prior to any decision being finalized with eligible employees.

Human Resources Department testing and recruitment staff must complete review of each applicant request for reasonable accommodation in recruitment processes and follow-up with all candidates verbally and in writing.

#### 18.08 CONFIDENTIALITY

Any information obtained regarding the medical condition will be collected and maintained on separate forms, in separate medical files, and treated as a confidential record.

## RULE 19. TRAINING

### 19.01 RESPONSIBILITY FOR TRAINING

The responsibility for developing training programs for employees shall be assumed jointly by the Personnel Officer and department heads. Such training programs may include lecture courses, demonstrations, access to reading matter or such other resources as may be available for the purpose of improving the effectiveness and broadening the knowledge of City officers and employees in the performance of their duties..

### 19.02 CREDIT FOR TRAINING

Participation in and successful completion of special training courses may be considered in making advancements and promotions. Evidence of such activity shall be filed by the employee with the department head and with the Personnel Officer.

## **RULE 20. REPORTS AND RECORDS AND REFERENCES**

### **20.01 PERSONNEL FILES**

The Personnel Officer shall maintain a personnel file for each employee in the service of the City. Information contained in these files shall include class title, the department to which assigned, salary changes in employment status, disciplinary actions and other pertinent information. These records shall be retained in accordance with legal requirements and administrative policy.

Every appointment, transfer, promotion, demotion, change of salary rate, or other temporary or regular change in status of employees shall be reported to the Personnel Officer as prescribed by these rules or by administrative policy.

All personnel records shall be maintained in a manner which will insure maximum security and preserve their confidentiality. Personnel files shall be confidential and access to an employee's file or specific information therein shall not be available to the public or unauthorized employees without the written authorization of the employee or as required by law.

**Commented [GN57]:** Added confidentiality section as recommended by LCW

### **20.02 ARREST FOR A CRIME**

Employees are required to notify the Personnel Officer of any arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial within five (5) days of the arrest.

**Commented [GN58]:** We are allowed to obtain information related to arrests if you are out on bail or pending trial. LCW has cautioned about knowing this information because of the restriction on utilizing this information for an employment decision. We believe we can still ask for the information so long as we do not articulate it in the policies.

### **20.03 EMPLOYEE EXIT INTERVIEWS**

For the purpose of ascertaining potential eligibility for unemployment insurance benefits, all employees separating from the Classified or the Exempt Service for any reason shall be given an interview prior to termination

The interview shall be conducted by the Personnel Officer or his or her designee and shall produce specific information as to the causes and reasons for the separation. This information shall be recorded on a standard form, which the employee shall be requested to sign.

A copy of the completed report shall be transmitted to the employee's immediate supervisor and department head for comment and be returned to the Personnel Officer for retention in the employee's personnel file.

**Commented [GN59]:** City's exit interview forms should be updated.

### **20.04 RESPONDING TO REFERENCE CHECKS FROM OTHER EMPLOYERS**

PURPOSE

**Commented [GN60]:** Deleted policy and procedure on Responding to Lender Inquiries Regarding Verification of Employment and Earnings

This policy and procedure describes how the City will respond to requests for employment reference information from other employers regarding current or former City employees.

#### POLICY

- A. All requests for employment reference information, whether written or verbal, shall be referred to a designated Human Resources representative.
- B. A complete disclosure of reference information to other employers shall only occur if the employee has provided the City with an original copy of a signed release or notification of a release of information form on file in the Human Resources department.
- C. Absent a release, the City shall only confirm the following information if the employee has previously provided it to the employer making the inquiry:
  - 1. Whether the employee is or was employed by the City.
  - 2. Dates of employment.
  - 3. Position(s) held.
- D. No information about job performance, reasons for leaving, or eligibility for rehire shall be provided to any employer without an original copy of a signed and notarized release form on file for the current or former employee.
- E. Managers and supervisors need be aware that failure to refer in-coming calls to the Human Resources Department may subject themselves to individual liability for the results of their actions if the employer with whom the current or former employee is seeking a job does not hire the person in question.

#### PROCEDURES

- A. All requests for reference information on either current or former employees shall be referred to the Human Resources Department. Employees are not authorized to respond to reference checks without the prior approval of a representative from the Human Resource Department.
- B. Upon receipt of a request for reference information, the Human Resources department representative shall determine whether a release is on file in the employee's personnel file or has been provided to the City.

The Human Resources department representative shall only verify whether the employee is or was employed by the City.

Commented [GN61]: Remove references to forms.

1. Prospective employers shall be informed that any detailed information about job performance or other aspects of employment history may only be provided if the current or former employee has an original copy of a signed and notarized release form on file with the Human Resources department.
  2. The Human Resources department representative may elect to accept a copy of a written release form provided by the prospective employer. The Human Resource department representative shall determine if the release is deemed to be equivalent to the City's form. The prospective employer's release form shall also be a signed, notarized original copy. The release shall remain in effect until the expiration date on the form or for 120 days from the signature date on form and shall only be valid for release of reference information to that particular prospective employer.
  3. Current, departing, or former employees shall be offered the opportunity to sign and have notarized the City's release form and have the original copy placed in his or her personnel file. The City's release form shall remain in effect for 120 days and shall only be valid for release of reference information to the prospective employer specified on the form. A copy of the Authorization for Release of Information form is attached to this policy.
- C. At any time, current or former employees may elect to rescind an authorization for release of information. The current or former employee must provide a written request to rescind a release.
- D. All Releases of Information are unconditional, and do not limit in any way what information can be released, subject to the parameters listed below in Item E.
- E. If a valid Release of Information is contained in the employee's personnel file in the Human Resources Department, a representative from this department is authorized to provide prospective employers with information regarding the employee's employment with the City. Managers and supervisors are also authorized to provide prospective employers with information only after confirming with the Human Resources Department that a release form is on file.

Reference information released may include, but is not limited to: dates of employment, job titles held, salary history, duties performed, reasons for leaving or wanting to leave City employment, characterizations of information contained in employee performance evaluations, opinions of supervisors relative to the employee's strengths and weakness and/or suitability for hire into the position they are seeking, whether the employee has ever been formally disciplined and for what, whether the employee would be recommended for rehire, and any other job related information regarding the employee's work history with the City.



- F. Wherever practical, reference information shall be provided to prospective employers verbally, by telephone. Where a written reference check response is requested and provided, a copy of the response shall be kept on file in the Human Resources Department.

**RULE 21. EMPLOYER POLICIES REGARDING EMPLOYEE CONDUCT AND  
ACCOMMODATION AND WORK ENVIRONMENT**

**21.02 DRUG & ALCOHOL FREE WORK PLACE POLICY**

**Commented [GN62]:** Added from City's standalone policy.

**A. PURPOSE**

It is the City of Brisbane's policy to maintain a safe, healthful and productive work environment for all employees. In recognition of the serious responsibilities entrusted to the employees of the City, and considering that alcohol and drugs hinder a person's ability to perform duties safely and effectively, the following policy against alcohol and drug abuse is hereby adopted by the City of Brisbane.

Additionally, this policy is intended to comply with the applicable federal regulations and state law governing drug-free workplace programs, including the Federal Drug-Free Workplace Act of 1988, and similarly, the California Drug-Free Workplace Act of 1990, both which require the establishment of drug-free workplace policies.

Affected employees shall be asked to sign a statement certifying that he or she has received a copy of this policy and understands its contents. Any questions regarding rights and obligations under this Policy shall be referred to the employee's supervisor, Department Head, or Human Resources representative.

This policy does not prohibit alcohol at approved City events and functions.

**B. POLICY STATEMENT**

It is the policy of the City of Brisbane to maintain an alcohol and drug-free workplace. While the City has no intention or desire to intrude into the private lives of its employees, involvement with alcohol and/or drugs on and off the job can take its toll on job performance, employee safety, and safety of the general public. The City's goal is that employees are in a condition to perform their duties in a safe, effective and efficient manner, in the interest of themselves, their fellow workers and the public at large. The presence of alcohol and/or drugs on the job, and the influence of these substances on employees during working hours are inconsistent with this objective and are prohibited.

The term "drugs" referenced in this policy means legal and illegal drugs, controlled substances or prescription drugs for which an employee has no current valid prescription in their name or which are not being used in accordance with the prescription's guidelines.

C. PERSONNEL AFFECTED

This policy covers all City employees and compliance with this policy shall be a condition of employment with the City of Brisbane.

D. POLICY

The City of Brisbane has established the following policy:

1. Any employee who, while on City property, sells, distributes, manufactures, dispenses, possesses, offers for sale or distribution any illegal drugs or controlled substances will be subject to immediate disciplinary action, up to and including termination.
2. Any employee who, while on duty and on City property, uses or consumes alcohol, illegal drugs or controlled substances will be subject to immediate disciplinary action up to and including termination. This prohibition is meant to apply to employees who are on duty and on City property and does not strictly apply to employees who are off duty at social functions held on City property or at City-sponsored functions. Employees who attend social functions in their representative capacities are expected to exercise discretion and judgment when attending such functions where alcohol is furnished.
3. Any employee who is under the influence of alcohol, illegal drugs or controlled substances will be subject to immediate disciplinary action up to and including termination.
4. The prohibition against using drugs at work does not apply to prescription or over-the-counter medications taken by employees which:
  - i. have been lawfully prescribed to, or obtained by, the employee;
  - ii. are being used by the employee in accordance with the prescription's guidelines (if applicable); and
  - iii. before reporting to work under the influence of such medication, the employee has inquired whether the drug manufacturer or the employee's physician warns against driving, operating machinery or performing other work-related, safety-sensitive tasks. If such warnings exist, the employee taking the medication must inform his or her supervisor or the Human Resources Department of such restrictions before reporting to work under the influence of such substance. When informing his or her supervisor(s) or the Human Resources Department of such restrictions, the employee should not identify the medication(s) being used or the reason for its use. The City will evaluate and respond to this information on a case-by-case

**Commented [GN63]:** The second and third sentences are new and have been added to address social situations. This policy is aimed at employees who drink or take drugs on the job. It is not meant to curtail people from having a social time at functions held on City property during "off" hours. However, I've added this language so that it is clear. I have included the term "strictly" so that it provides the City will some flexibility in instances where employees get drunk at a party and assault one another or get behind the wheel. That should still be grounds for discipline.

basis. Responses may include, among other things, temporary job reassignment or modifications, a request for additional medical documentation and consultation, and/or an instruction that the employee not work until the restriction is removed. Any employee reporting to work without first advising the City about warnings accompanying lawfully prescribed or obtained medications will be subject to corrective action up to and including possible termination of employment. An employee's lack of knowledge concerning such warning will not excuse a violation of this rule where an employee has failed to make the inquiries required by this rule.

5. The City reserves the right to search, with or without employee consent, all areas and property in which the City maintains joint control with the employee or full control. Such searches will comply with applicable statutes and regulations. The City may notify the appropriate law enforcement agency when it has reason to believe that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the City.
6. Any employees who are involved in off-the-job illegal drug activity or offenses may be subject to disciplinary action, up to and including termination. In deciding what action to take, the City will take into consideration the nature of any charges or evidence, the employee's present job assignment, the employee's record with the City and other factors relative to the impact of the employee's arrest upon the conduct of City business.
7. Any employee convicted for violating any state or federal criminal drug law by an action committed in the workplace must notify the City within five (5) calendar days of the conviction. Within ten (10) days of such notification or other actual notice, the City will advise any federal agencies that the City is currently contracting with or receiving a grant from of such conviction.
8. Department Heads and Managers will receive training that covers the indicators of controlled substance use. Department Heads and Managers are responsible for noticing such indicators that adversely affect job performance. However, they are not to attempt to diagnose alcohol or drug abuse problems but are to document, in written form, work related incidents (such as attendance, performance or safety).
9. It is the responsibility of the employee to adhere to the policy guidelines. Employees who think they may have an alcohol or drug use problem are urged to voluntarily seek confidential assistance from an Employee Assistance Program counselor, their personal medical insurance plan, or a substance abuse treatment program.

10. Consistent with and subject to the City's policies concerning the Family Medical Leave Act, and personal leaves and vacation policies in the employee's relevant MOU, and the ADA's reasonable accommodation requirements, employees who voluntarily self-identify themselves as having a drug or alcohol problem and who voluntarily requests assistance for such problem will be referred to a substance abuse professional for an evaluation and for an appropriate counseling, treatment or rehabilitation program, if recommended. The cost of the evaluation and any counseling, treatment or rehabilitation is the employee's responsibility. (For further details concerning the employee's payment obligations, employees should refer to their individual medical insurance plan.) Employees may not use this self-identification provision to avoid being disciplined for violations of this policy.
11. The City recognizes the individual's right to confidentiality and privacy. The pertinent information and records of employees with an alcohol or drug problem will be preserved in the same manner as all other confidential medical information.
12. Nothing in this policy shall be deemed to preempt existing departmental policies or to foreclose the City's ability under appropriate circumstances, to enforce the City's policies on testing of employees for alcohol or drugs (i.e. D.O.T. requirements).

E. CONSEQUENCES

1. Employees will be subject to disciplinary action, up to and including termination of employment if he or she is found to be in violation of the City's Drug and Alcohol Free Workplace Policy.
2. An employee who has violated this policy and has received disciplinary actions other than termination shall:
  - i. receive an initial assessment by a qualified Substance Abuse Professional (SAP);
  - ii. complete any treatment/rehabilitation program prescribed by the SAP;
  - iii. be evaluated by the SAP to determine that he or she has properly followed the prescribed rehabilitation program;
  - iv. be subject to unannounced follow-up tests as determined by the SAP following a negative returning to duty test.
3. All expenses related to the cost of treatment or rehabilitation is the responsibility of the employee.

21.03 WHISTLEBLOWER/RETALIATION POLICY

**Commented [GN64]:** Policy City should consider adding.

If any employee reasonably believes that a policy, practice, or activity of the City is in violation of state or federal law, that employee may file a written complaint with the Personnel Officer. If the employee believes that the Personnel Officer is involved in the violation, then the written complaint may be filed with the City Attorney or member of the City Council. It is the intent of the City to adhere to all laws and regulations that apply to the City.

The City will not retaliate against an employee who in good faith, has made a protest or raised a complaint against a practice of the City on the basis of a reasonable good faith belief that the practice is in violation of state or federal law, or a clear mandate of public policy.

21.04 LACTATION ACCOMMODATION POLICY

**Commented [GN65]:** Policy City should consider adding.

The City supports breastfeeding mothers by accommodating a mother who wishes to express breast milk during the workday when separated from her newborn child. Management will provide all employees who wish to express breast milk at work with a reasonable amount of break time. The break time will be required to run concurrently, if possible, with any paid break time already provided. In the event it is not possible for the break time for expressing milk to run concurrently with the paid break time already provided to the employee, additional time will be provided. The employee and her immediate supervisor will agree on the times for these breaks.

The employee will be provided with use of a room, or other location that provides sufficient privacy to the employee. This may be a room with a lock or signage that the room is in use or site location that can be screened for privacy. The employee's normal work area may be used if it allows the employee to express milk in private. Human Resources will work with each nursing mother to determine a private area in which they may express milk.

Retaliation, harassment and discrimination in any way against an employee who chooses to express breast milk in the workplace are strictly prohibited.

21.05 FRAUD PREVENTION POLICY

**Commented [GN66]:** Policy City should consider adding so long as it complies with Finance's Fraud Prevention Policy

The City monitors all operations and is responsible for discerning inconsistencies, investigating situations, and enforcing corrective action. Examples of these practices may include, but are not limited to, inappropriate travel expenses, falsifying time and attendance records, payroll, personal purchasing, equipment, personnel, and other business and financial matters.

It is the responsibility of each employee to report to his or her supervisor/department head, who in turn reports immediately to the Personnel Officer, all instances of misappropriation of funds

and irregular practices. It is the responsibility of the City to investigate all cases of misappropriation of funds and irregular practices.

If the City determines that a misappropriation of funds or irregular practice has occurred, then the Personnel Officer will determine whether a recovery of the City's funds can be made, initiates disciplinary actions as appropriate, and takes necessary precautions to prevent a recurrence of the practice.

#### 21.06 WORKPLACE FREE OF VIOLENCE POLICY

Commented [GN67]: Added from City standalone policy

##### A. POLICY

The City is committed to providing a safe and secure workplace for employees and the public. The City 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.

##### B. PROHIBITED BEHAVIOR

Employees are prohibited from engaging 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.

Employees engaged in City business are prohibited from carrying weapons in violation of any law or this policy. Employees who have legal authority to carry a weapon shall notify the Department head or the Administrative Services Director and/or his or her Designee in writing of what type of weapon is being carried unless said employee is a uniformed public safety employee. Employees who have legal authority to carry weapons violate this policy if they: accidentally discharge or lose their weapon; use, threaten to use, or display the weapon; or violate any law related to carrying a legal weapon while engaged in Town business.

##### C. DEFINITIONS

*“Workplace Violence”*: is 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. Examples of Workplace Violence include, but are not limited to, the following:

1. Threats or acts of physical harm directed toward an individual or his or her family, friends, associates, or property.
2. The destruction of or threat of destruction of City property or another Employee’s property.
3. Harassing or threatening phone calls.
4. Surveillance.
5. Stalking, including cyber stalking.
6. Possession of offensive or defensive weapons (e.g., illegal knives, clubs, mace, pepper spray, tear gas) unless specifically required or authorized and approved by the Administrative Services Director and/or his or her Designee. Weapons are defined as chemical sprays, clubs or batons, and knives, and any other device, tool, chemical agent 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.

D. INCIDENT REPORTING PROCEDURES

1. Employees must immediately report Workplace Violence to their Supervisor. The Supervisor will report the matter to the Department head or the Administrative Services Director and/or his or her Designee.
2. The Department Head or the Administrative Services Director and/or his or her 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.



3. The Department head or the Administrative Services Director and/or his or her Designee will take appropriate steps to provide security, such as:
  - a. Placing the Employee alleged to have engaged in Workplace Violence on administrative leave, pending investigation;
  - b. Asking any threatening or potentially violent person to leave the site; and/or
  - c. Immediately contacting an appropriate law enforcement agency.

E. INVESTIGATION

The Administrative Services Director and/or his or her Designee will ensure that reported violations of this policy are investigated as necessary.

F. MANAGEMENT RESPONSIBILITY

Each Manager and Supervisor has authority to enforce this policy by:

1. Assuring that reports of Workplace Violence are documented accurately and timely;
2. Notifying the Administrative Services Director and/or his or her Designee and/or law enforcement authorities of any incidents;
3. Making all reasonable efforts to maintain a safe and secure workplace; and
4. Maintaining records and follow up actions as to Workplace Violence reports.

G. FOLLOW-UP AND DISCIPLINARY PROCEDURE

An Employee found in violation of this policy will be subject to disciplinary action, up to and including termination of employment. In addition, Employees found in violation of this policy may be subject to criminal prosecution.

21.08 BUILDING ACCESS POLICY

A. PURPOSE

The purpose of this is to set for the procedures for distribution of ID Badges and to standardize the levels of access to City Hall Administration and Police areas for all

Commented [GN68]: Added from City's new standalone policy.

City of Brisbane employees, contractors and council members. This policy also serves to supplement the City's Injury and Illness Prevention Program regarding workplace security.

This policy supersedes the City Hall Building Access Policy, dated April 2, 2010.

**B. PERSONNEL AFFECTED**

This procedure applies to all persons involved in City operations, including but not limited to City employees, contractors, and council members.

**C. POLICY AND PROCEDURE**

**1. Policy Statement**

The City of Brisbane is committed to providing a work environment that is safe, secure and free of violence or the threat of violence. The City has a zero-tolerance policy in regard to workplace violence. Zero tolerance means that the City will investigate all incidents and take appropriate action against the offending employee or non-employee who violates this policy.

**2. Consequences for Violation of this Policy**

a. For City employees and temporary employees, disciplinary action, up to and including termination. There also may be resulting legal action.

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b. For contractors, volunteers and other non-City employees:  
    (1) Oral and/or written warning by Department management;  
    (2) Refusal of service; and/or  
    (3) Criminal prosecution or other legal action.

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**3. City Hall Hours**

a. Regular: City Hall will be open to the public during the following hours:

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    (1) 8:00 AM to 5:00 PM Mondays, Tuesdays and Thursdays  
    (2) 8:00 AM to 8:00 PM Wednesdays  
    (3) 8:00 AM to 1:00 PM Fridays

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2.b. Holidays: City Hall may close or adjust the above business hours for certain designated holidays. When this occurs, special holiday hour schedules will be posted at the entrances.

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3.c. Meetings: The Community Meeting Room doors will be opened approximately one-half hour prior to publicly scheduled meetings. These doors will be locked immediately following the end of such scheduled meetings by the staff member coordinating such meeting.

4.d. Visitors: Visitors should be escorted by staff when accessing employee-only or restricted areas. Under no circumstances should a visitor or guest be left in an employee-only or restricted area unsupervised.

#### ii-4. ID Badge

a. All employees and council members will be issued an ID badge with their name, photo and position information. The ID badge will also include information authorizing the holder to respond as a disaster services worker.

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b. Employees will be required to have ID badge on them while working and show ID badge upon request.

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c. Department Heads and/or Supervisors may require employees to wear ID badge in plain view during working hours. Employees may also be required to wear ID badge in plain view during special assignments or at city events, such as during emergency response periods, at remote job sites, community events, etc.

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d. Contractors and temporary staff with assignments of two or more weeks may be issued an ID badge. Contractor and temporary staff ID badges must be worn in plain view at all times while in employee only areas of the building. Contractor and temporary staff ID badges must be returned to Human Resources at the end of their assignment.

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e. All persons that receive an ID badge must report a lost ID badge to their supervisor immediately. The supervisor must report this to the Police Department for deactivation of the ID badge. There is a \$10 replacement fee for lost ID badges.

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f. ID badges are assigned to distinct individuals and are not to be loaned or shared.

5. City Hall Building Access

a. Based on the employee's position and employment status, access levels to City Hall will generally be assigned as shown in the following table:

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Level	Area	Days	Times	Employee position/status
1	City Hall Admin	Sunday - Saturday	Unrestricted	I. Full-time employees II. Part-time employees assigned to work at City Hall III. Council Members
2	Police	Sunday - Saturday	Unrestricted	I. Sworn Police employees II. Non-sworn Police employees
3	City Hall Admin	As needed for assignment (requires approval)	Varies based on assignment	I. Part-time employees

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b. Access levels may be granted beyond the examples listed above based on the recommendation of the employee's Department Head and concurrence of the City Manager.

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c. Part-time employees who need a temporary adjustment to their assigned access level should submit their request to their Department Head. Such requests approved by the Department Head will be forwarded to Human Resources or their designee to make the appropriate access adjustments. Requests in excess of 30 days require City Manager approval.

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d. Contractors and temporary employees with Department Head and City Manager approval may receive a temporary ID badge with limited hours of access, depending upon the type of work necessary to complete. Prior to issue, the contractor or temporary employee will be required to have fingerprints submitted to the DOJ and/or FBI via Live Scan. Depending on the report received on the fingerprinting, non-employees may be denied an access card/fob.

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e. Employees on a leave of absence for more than 3 weeks will have their ID badge deactivated for building access. Upon return from their leave of absence, the employee should contact human resources to request reactivation of their ID badge.

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6. Master Key Box

- a. The Master Key Box is located in the Finance work space. At present, the box contains the key for the exterior doors leading to the main lobby, and a set of two keys, the first for the exterior doors leading to the Community Meeting Room lobby, and the second for the interior Community Meeting Room doors.
- b. Access to the Master Key Box is generally restricted to employees who either: are routinely responsible to open and unlock the exterior lobby door for the public; or, are routinely responsible for opening the Community Meeting Room for public after-hours meetings.
- c. Employees that utilize keys from the Master Key Box are responsible for ensuring doors they have unlocked are locked properly after business hours or after public after-hour meetings have concluded.

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7. Change in Status

- a. Employees that separate employment with the City are required to turn in their ID badge to their supervisor or Human Resources department immediately. The Police Department must be notified by the supervisor or Human Resources to deactivate the ID badge.
- b. Employees that change their position, status or work location should verify with Human Resources if their access level has changed. If it is determined that building access is not required, the employees' ID badge will be adjusted appropriately.

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21.09 DMV Pull Program Policy

Commented [GN69]: Added from City standalone policy.

A. Purpose

The purpose of the Pull Notice Program Policy is to help the City preserve public safety by only allowing employees who have a valid and acceptable driver's license to operate motor vehicles for City business. Also, the City's liability carrier, Bay Cities Joint Powers Insurance Authority (BJPIA), requires the City to identify and enroll all drivers covered under the scope of this policy, to monitor the driving records received from the Department of Motor Vehicles (DMV), and to take timely and appropriate action as recommended in this policy.

B. Definitions

1. Employee - An employee is defined as someone who is employed full time, part time or is an authorized volunteer of the City and is authorized to use a City vehicle or his/her personal vehicle in the course and scope of his/her job duties.

2. Mandatory Enrollment – Employees who are required to be enrolled in the Department of Motor Vehicles Pull Notice Program are:

➤ An employee whose driving privilege is considered an essential job requirement. The loss of or failure to maintain an acceptable record/license would adversely impact the employee’s ability to perform the essential elements of the job.

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➤ An employee who uses his/her personal vehicle on a regular basis to conduct City business and is reimbursed by the City on a per mile basis.

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➤ An employee who uses his/her personal vehicle to conduct City business and receives monthly compensation in the form of an auto allowance. The loss of or failure to maintain an acceptable record/license would result in the loss of this additional compensation.

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3. Casual Enrollment – Those employees who only drive occasionally to conduct City business. These employees may be enrolled in the Pull Notice Program at the discretion of the Department Head or City Manager.

4. Motor Vehicle Record (MVR) – The official driver record maintained by the DMV on licensed drivers.

5. Negligent Operator Status - The DMV considers the following point structure to be prima facia case of Negligent Operator Status.

1.A. \_\_\_\_\_ Persons holding a Class C License

a. 4 or more points in 12 months

- 8 or more points in 36 months

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2.B. \_\_\_\_\_ Persons holding a Commercial License

- 6 or more points in 12 months

- 8 or more points in 36 months

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An employee deemed a Negligent Operator by the DMV is considered by BCJPIA and the City to be at a higher risk of liability than other drivers.

6. Acceptable MVR – For employees who will be classified under this policy as mandatory or casual drivers, an acceptable MVR would be clear of citations and/or collisions or have a record that is less than 50% of the DMV definition of being a “Negligent Operator” (as defined above).

Where a valid, acceptable California driver’s license is required for employment or the position will be granted an auto allowance, a prospective employee may not be deemed acceptable for employment if his/her record contains more than 3 DMV points, a Driving While Under the Influence of Alcohol/Drugs (D.U.I.) offense, reckless driving offense, or other similar serious violation(s). This may be grounds for rejecting an employment application.

7. Revocation (CVC 13101) - When used in reference to a driver’s license, “revocation” means that the individual’s privilege to drive a motor vehicle is terminated and a new driver’s license may be obtained after the predefined period of time.
8. Suspension (CVC 13102) - When used in reference to a driver’s license, “suspension” means that the individual’s privilege to drive a motor vehicle is temporarily withdrawn.
9. Points - Points are assigned by the DMV for moving violations.
10. Management Intervention - Notification, coaching, and/or counseling of the employee by the Police Chief regarding the employee’s MVR. Management intervention taken shall be documented.

C. Requirements

➤1. An employee who is required to drive as a condition of employment, who uses his/her personal vehicle on a regular basis to conduct City business and is reimbursed by the City on a per mile basis, or who uses his/her personal vehicle to conduct City business and receives monthly compensation in the form of an auto allowance shall be enrolled in the DMV Notice Pull Program.

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➤2. An employee who only drives occasionally to conduct City business may also be enrolled in the Pull Notice Program at the discretion of his/her department head or the City Manager.

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➤3. All mandatory and casual drivers are expected to maintain a valid California driver’s license with an acceptable record. Any employee who has his/her driver’s license suspended or revoked, is arrested for Driving While Under the Influence of Alcohol/Drugs, is arrested/cited for reckless driving, or is arrested/cited for any other serious driving offense shall notify his/her department head immediately. Failure to comply with this notification requirement may

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result in disciplinary, action up to and including termination. Any disciplinary action taken shall be in accordance with the City of Brisbane Personnel Rules and Regulations and/or the current Memorandum of Understanding.

➤4. All mandatory and casual drivers who are within 50% of the DMV definition of being classified a "Negligent Operator" shall be notified, coached, and/or counseled by the Police Chief. This management intervention is viewed as preventative measure. However, it is essential that any management intervention taken is documented.

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➤5. An employee who is a mandatory or casual driver who is arrested for Driving While Under the Influence of Alcohol/Drugs, is arrested/cited for reckless driving, is arrested/cited for any other serious driving offense, or has an excessive number of collisions while driving a City vehicle or while driving his/her own vehicle while conducting City business may be subject to disciplinary action up to and including termination. Any disciplinary action taken shall be in accordance with the City of Brisbane Personnel Rules and Regulations and/or the current Memorandum of Understanding.

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An employee who is a mandatory or casual driver who has his/her driver's license suspended or revoked or designated as a Negligent Operator by the DMV may be subject to termination for failure to meet the job qualification of maintaining a valid drivers' license as described in his/her job description. Any disciplinary action taken shall be in accordance with the City of Brisbane Personnel Rules and Regulations and/or the current Memorandum of Understanding.

#### D. Procedure

The procedure for enrolling designated employees in the DMV Pull Notice Program and managing the information sent and received for the program is as follows:

1. Employees designated for enrollment in the Pull Notice Program shall provide their drivers license number to the City. The Human Resources Department shall complete the enrollment documents within five working days of appointment.

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2. The Motor Vehicle Record information received from the DMV shall be sent to and maintained in confidence in the Human Resources office.

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3. Only the Chief of Police and Human Resource Department staff shall have access to the Motor Vehicle Record information.

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4. The Motor Vehicle Records (MVR) sent to the City by the DMV shall be received and monitored by the Human Resources Administrator. The Human Resources

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Administrator shall notify the Police Chief when an employee's MVR indicates any of the following:

- ☐  the point count is within 50% of the DMV definition of being classified a "Negligent Operator"
- ☐  the license has been suspended or revoked
- ☐  an arrest for Driving While Under the Influence of Alcohol/Drugs
- ☐  an arrest/citation for reckless driving or any other serious driving offense

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5. When an employee terminates employment and/or no longer has driving responsibilities, his/her name will be removed from the Pull Notice Program. The Human Resources Department shall send the DMV notification of the separation from the program within five working days of the employee's separation.

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#### 21.10 TRAVEL, MEETING, CONFERENCES, TRAINING AND MEAL EXPENSES

##### A. PURPOSE

To establish a policy for authorizing attendance at, travel to and reimbursement of expenses for City employees and officials attending conferences, training, meetings, functions and attending to other business that is necessary to the performance of official duty and provides direct benefit to the City. State of California Peace Officers' Training (P.O.S.T.) is not paid by the City, but is reimbursed through a revolving fund and is not included in this policy.

##### B. BACKGROUND

This policy defines the City of Brisbane's procedure for reimbursement of expenses for actual and necessary expenses incurred in the performance of official duties for the City.

##### C. GENERAL

Authorization for travel and expense reimbursement shall be limited to conferences, meetings, training, meals and other functions/activities from which the City derives a specific benefit through attendance. Only that conference, meal, travel, meeting, activity, convention, etc. which serves a municipal purpose and is deemed necessary to the performance of official duties for the City shall be approved and reimbursed.

The City recognizes the benefit of training and attendance at meetings, functions and activities which advance professional knowledge and provide opportunities to exchange information related to municipal government operations and issues.

For purposes of this policy, "City employees" shall mean all employees in the exempt, competitive, part-time, and temporary services, including appointees of the City Manager and contractual employees. "City Officials" shall mean officials appointed by the City Council; the City Attorney and the City Manager.

Implementation of this policy is the responsibility of the City Council for appointed officials and the responsibility of the City Manager for all employees. Council will review all travel expense through the check warrants presented to Council members prior to the release of checks.

The attached chart (Exhibit A) identifies certain conferences and meetings considered to be candidates for attendance by City officials. This chart is to be used in budget development and is not considered to be all-inclusive. Conferences and meetings not listed shall require prior approval before registration.

The City Manager shall authorize and approve travel and reimbursement expenses for employees. The City Manager may designate department heads or other staff members to authorize travel and approve reimbursement requests for employees. The City Manager shall file a memorandum documenting these designations with the Finance Department. A department head may designate another staff member of the department to authorize travel and reimbursement forms for employees of their department by filing the appropriate memorandum with the Finance Department. In any event, employees may not authorize nor approve reimbursement for their own travel and business expenses.

All expenses must be actual and clearly substantiated prior to reimbursement. If a receipt or other documented evidence of the expense incurred is not available, and the expense is \$25.00 or less, an explanation of why documentation cannot be provided, together with the amount, date, place, and essential character of the expense must be provided. If the expense is more than \$25.00, documented evidence, e.g., a receipt is required. Unnecessary or unreasonable expenses will be disallowed. All payments and reimbursements must be in compliance with City Council approved budget appropriations and are subject to the City's internal audit procedures.

Reasonable charges for vehicle parking, rental cars, local transportation, business telephone calls, meals or any other necessary expenses while traveling and/or conducting official City business will be allowed.

No personal expenses, such as laundry, barbering, valet service, or personal telephone calls shall be allowed. Fines for traffic violations, private auto repair and alcoholic beverages are examples of non-allowable expenses.

Additional expenses incurred by family members or guests who accompany a City official or employee shall not be reimbursed.

Compensation received for attendance at a meeting must be deducted from expenses that the City is requested to pay.

A City official or employee may stay with a friend or relative while attending an out-of-town meeting or conference; however, the City will not reimburse for any payment to the friend or relative for lodging, meals, or transportation. Nor will the City pay any "in lieu" amount representing the cost that would have been incurred if the employee had stayed in a hotel or purchased a meal.

Costs incurred while entertaining (as opposed to conducting business with) colleagues or business associates shall not be reimbursed.

The City may issue credit cards for use by employees and City officials. Expenses incurred must be in compliance with the provisions of this policy.

If it is determined that any advance payment or reimbursement does not comply with this policy, the payment or reimbursement must be refunded to the City.

D. Authorization for Travel

City Council Appointed Officials

Attendance of City officials at conferences, seminars, and meetings shall be subject to prior approval by the City Council. Appropriation of funds by the City Council shall occur with the adoption of the annual budget. Appointed officials will notify City Council prior to attending specific conferences.

City Employees including City Manager Appointees

Prior to the commitment or expenditure of any City funds for extended out-of-town conference or meeting reservations or arrangements, the employee shall obtain approval for attendance from the City Manager or his/her designee; out-of-state travel must be approved in advance by the City Manager or his/her designee.

Authorization Form

A Request for Travel and Meeting Expense Authorization form (attached) must be completed and should include an estimate of total expenses and a copy of the conference or meeting notice and registration form must be attached. Any special arrangement, such as car rentals, non-standard rooms, extending the stay for personal reasons, or use of a travel route or mode that is more expensive and/or of a greater than direct route should be identified on this form.

#### Registration Fees

Registration fees must be payable to the conference/sponsoring organization and shall be those expenses indicated in the published information attached to the Travel Expense and Reimbursement Request form to be attached to the payment request form. Any deadlines for receipt of the registration should be identified prominently on the face of the payment request, to ensure timely payment.

#### Lodging Expense

Prepayment of hotel expenses may be made by submittal of a payment request form, with the Travel Expense and Reimbursement Request form attached.

Prepayment may either be made for the first day only, to guarantee the room, or may be for the full number of days, including room tax (if known). Prepayment, or reimbursement of hotel bills, will be limited to the cost of standard accommodations and will cover only the room charges for the City official or employee. Prior approval must be obtained when room rate exceeds \$200 per day or when is more than at the designated conference hotel (Finance Director to adjust annually based upon relevant survey data) for a single person.

If the City official or employee has secured accommodations other than above, it is his or her responsibility to find out the single, standard rate and provide a written explanation of the difference. In no event, will the City reimburse or pay for the difference without an acceptable explanation.

#### E. Transportation

##### Air Transportation

Reimbursement or payment will be limited to economy class commercial air carrier. Air reservations should be made as early as feasible to obtain the greatest discount, and use of alternate, but nearby airports with ground transportation should be considered to take advantage of the lowest fares. Extension of the trip to cover any extra day stay over such as Saturday to obtain a lower airfare, if no City business is to be conducted, should not be used.

##### Rental Vehicles

The necessity for additional transportation requirements at the point of destination of an extended trip, requiring the use of rental car, must be established by the City official or employee on the Travel and Meeting Expense Authorization form, and employees must receive prior approval from the City Manager. Only a standard or economy car models may be rented unless the upgrade is provided by the rental agency at no increase in cost.

Private Vehicles

Private Vehicles may be used for personal or group transportation on extended trips. Reimbursement shall be at the I.R.S. approved rate. Mileage reimbursement shall not exceed the cost of round trip air transportation (economy class), for a reservation made at least 7 days in advance of the trip. Employees and officials with car allowances may not receive mileage reimbursement. Prior submittal of a valid driver license and copy of certificate of automobile liability insurance shall be on file with the City Manager's office to qualify for reimbursement.

City Vehicles

City vehicles normally may not be used for transportation on extended (lasting more than 2 business days) out-of-City trips. Vehicles assigned to specific divisions and/or individuals should also not be used for extended (lasting more than 2 business days) out-of-City trips. Requests for use of City vehicles for this purpose must be approved in advance by the City Manager.

Alternate Transportation Methods

Alternate methods of transportation, such as train or bus transportation, may be used on extended trips. The reimbursement of such expenses by the City shall not exceed the actual cost of round-trip air transportation (economy class), for a reservation made at least 7 days in advance of the trip.

F. **Meals**

Meals will be paid for on a per diem basis. The City will reimburse employees and City officials at the rate provided by the Federal Government for each day for all overnight travel.

The City will pay or reimburse for local meals according to the guidelines below. In addition to necessary receipts, agendas, meeting announcements, etc., requests must also contain the nature of the City business discussed or transacted an explanation of why it was necessary for the conduct of City business to have the meal and the date and duration of the business discussion. Requests must also include the names, occupations and employers of all persons who attended unless impractical because more than 10 people were in attendance (for example a Council of Cities meeting).

1. The following types of meal expenses are eligible for payment or reimbursement:
  - a. Meals, which are an integral part of or directly related to a formal meeting of a recognized organization whose purpose is directly related to City business. Examples of such organizations include the San Mateo County

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Council of Cities, League of California Cities Peninsula Division, committees of the League of California Cities, and various professional associations or groups such as County and State-wide City Managers, Finance Officers, Police & Fire Chiefs, etc. Associations.

- b. Meals or refreshments taken during meetings solely of City employees or City employees and officials which are exclusively working sessions where employees, officials, or employees and officials are required to continue working through a meal period. Whenever possible, meetings should be scheduled to avoid this occurrence.
- c. Meals or refreshments taken during meetings consisting solely of the City Manager and/or City employees which have been planned and scheduled, and for which an agenda has been prepared which indicates that the purpose of the meeting is to conduct City related business. The City Manager or the City Manager's designee must authorize such meetings in advance.

1-d. Meals taken during meetings and/or interviews with prospective job applicants and the interview board.

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2-c. Meals taken during meetings with non-City employees or officials to discuss business directly related to City projects or operations when necessary for the conduct of City business. Such meetings should be held during non-meal periods unless scheduling conflicts make it impractical.

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3-f. Meals taken during assigned training, the conduct of field surveys or attendance at meetings and the individual's normal meal period occurs during the time of travel or assignment. Meal reimbursement for training or professional meetings within a 50-mile radius of the City of Brisbane, conducted between the hours of 8:00 am. and 5:00 pm.; will be limited to lunch expense only, if it is not provided with the event.

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2. Reimbursement guidelines for meals, including tips, per person for business meetings are as follows: Breakfast-\$12.00, Lunch-\$18.00, and Dinner- \$30.00. These guidelines may be exceeded if the charges are reasonable and with proper justification, and approval of the City Manager.

4-3. If a receipt or other documented evidence of the expense incurred is not available, and the expense is \$30.00 or less and within the above guidelines, an explanation of why documentation can't be provided together with the amount, date, place and essential character of the expense must be provided. If the expense is more than \$30.00 or more, documented evidence, e.g. a receipt is required.

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2-4. If a department is hosting a non-luncheon meeting, at which the majority of representatives are non-City employees or officials, on City-related issues, refreshments in an amount not to exceed \$50.00 may be authorized by the department head.

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**G. Incidentals**

The City will reimburse for incidentals such as business telephone calls, local transportation, vehicle parking or other necessary expenses. Such expenses must be accompanied by proof of payment or an appropriate explanation of why documentation could not be provided together with the amount, date, place, and essential character of the expense. The per-day expense for incidentals should not exceed \$30.00.

**H. Advance for Meals and Incidentals**

An employee or official may submit a payment request (supported by a Travel and Meeting Expense Authorization form) for advance funds for payment of meals and incidentals.

**I. Reconciliation and Reimbursement**

Within 10 business days after the City official's or employee's return from the trip, a Travel and Meeting Expense form, with appropriate approvals, must be filed with the Department of Finance. If billings for expenses incurred have not been received in ten (10) days, the form with all expenses for which bills have been received to date shall be filed noting that not all expenses are included and a supplemental report shall be filed immediately upon the receipt of bills beyond the ten (10) day period. Original receipts for lodging and transportation (airline ticket), shall be attached as well as necessary receipts to support additional expenditures to be reimbursed and/or to support expenditures for which an advance payment was received. If a receipt or other documented evidence of the expense incurred is not available, and the expense is \$25.00 or less, an explanation of why documentation can't be provided together with the amount, date, place and essential character of the expense must be provided. If the expense is more than \$25.00, documented evidence, e.g., a receipt, is required.

**J. Exhibit A: Chart of Conferences and Meetings**

1. League of California Cities Annual Conference
2. Annual Meeting of the City Manager's Division of the League of California Cities
3. Annual League of California Cities Planning Commission Institute
4. Annual Legislative Conference of the League of California Cities
5. San Mateo County City Manager's Association Meetings
6. San Mateo Council of Cities Meetings and Task Forces, Committees, Boards

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7. San Mateo City/County Association of Governments Meetings and Task Forces, Committees, Boards
8. Peninsula Division of the League of California Cities Meetings
9. Association of Bay Area Governments Meetings
10. Chamber of Commerce Progress Seminar
11. San Mateo County Convention & Visitors Bureau Meetings
12. Annual League of California Cities, Community Services Conference, Policy Committee of the League of California Cities
13. Meetings of Committees/Boards, such as the Criminal Justice Council, when representing the Council of Cities
14. League of California Cities Leadership Team Workshop
15. Annual California Redevelopment Association Conference
16. League of California Cities Financial Management Seminar
17. San Mateo County Transportation Authority
18. Affiliate Organizations of the League of California Cities
19. League of California Cities Board of Directors Meetings
20. Financial Management & Treasurer Seminars, Meetings & Conferences
21. Conferences sponsored, or co-sponsored by Healthy Cities, Sustainable Communities, Criminal Justice Council, Association of School Districts, & Association of County Government
22. Local Government Commission Conferences
23. City Attorney Seminars, Meetings & Conferences
24. North County Fire Authority

#### **RULE 22. SEVERABILITY**

If any provision of these Rules, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of these Rules, or the application of such provision to persons or circumstances other than those which it is held invalid, shall not be affected thereby.

FORMS AND CERTIFICATIONS

Commented [GN70]: Need to add various forms for policies.