



# FINANCE/PERSONNEL SUBCOMMITTEE AGENDA

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## SUBCOMMITTEE MEMBERS

LARRY McCALLON, MEMBER  
JOHN TIMMER, MEMBER

March 23, 2021  
10:00 a.m.  
Upright Conference Room  
Highland City Hall  
27215 Base Line  
Highland, California

## SPECIAL NOTICE REGARDING COVID-19

In accordance with Governor Newsom's Executive Order N-25-20 and N-29-20, this meeting is being conducted via teleconference. Anyone can join the meeting.

Please follow the instructions below to listen to the meeting.

- Dial (844) 855-4444 (no charge/toll free)
- Press 360803# - When prompted for the Access Code

Submission of Public Comments: For those wishing to make public comments at the March 23, 2021 Finance/Personnel Subcommittee meeting, please submit your comments by email to be read aloud at the meeting by the Administrative Assistant. Email comments must be submitted by 9:00 a.m. on March 23, 2021, to [publiccomment@cityofhighland.org](mailto:publiccomment@cityofhighland.org). If you are making a comment regarding an item on the agenda, please identify the agenda item in the subject line.

All email comments shall be subject to the same rules as would otherwise govern speaker comments at a City Council Meeting.

## ***CITY OF HIGHLAND MISSION STATEMENT***

*Highland is dedicated to the betterment of the individual, the family, the neighborhood and the community. The City Council and the staff of Highland are dedicated to providing the quality of public facilities and services that its citizens are willing to fund and will do so as efficiently as possible.*

Visit the City's Website at: [www.cityofhighland.org](http://www.cityofhighland.org)

City of Highland, 27215 Base Line, Highland, CA 92346 (909) 864-6861 FAX (909) 862-3180

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THE CITY OF HIGHLAND COMPLIES WITH THE AMERICANS WITH DISABILITIES ACT OF 1990. IF YOU REQUIRE SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CALL THE CITY CLERK'S OFFICE AT (909) 864-8732, EXT. 226 AT LEAST 48 HOURS PRIOR TO THE MEETING.

*Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the City of Highland to all or a majority of the Subcommittee less than 72 hours prior to that meeting are available for public inspection at Highland City Hall, 27215 Base Line, Highland, during normal business hours.*

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Larry McCallon, Member

John Timmer, Member

## **FINANCE/PERSONNEL SUBCOMMITTEE**

March 23, 2021 – 10:00 a.m.

### **CALL TO ORDER**

### **PUBLIC COMMENT**

### **ITEMS**

1. Review Minutes of March 9, 2021 Meeting  
RECOMMENDATION: Approve the Minutes as submitted.
2. Lighting Maintenance District (LMD) Maintenance Contract Change Order for LMD #70 within Tract 18935  
RECOMMENDATION: That the Finance/Personnel Subcommittee review and approve the addition of LMD#70 onto Aplin Street, Henslee Drive and Santa Ana Canyon Drive Basin at the northeast corner of Aplin and Santa Ana Canyon Road.
3. Base Line Interlocking Paver Maintenance/Repairs  
RECOMMENDATION: That the Finance/Personnel Subcommittee review and approve the proposal by Edsons Pavers, Inc. for the removal of asphalt in between pavers, haul away and the installation of new pavers on Base Line/Palm Avenue/Church Avenue.
4. Personnel Rules and Regulations  
RECOMMENDATION: That the Finance/Personnel Subcommittee review the Personnel Rules and Regulations.

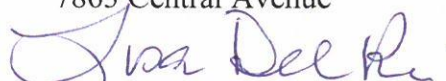
### **ADJOURN**

I, Lisa Del Rio, Administrative Assistant II, of the City of Highland, California, certify that I caused to be posted this Agenda on the 23rd day of March 2021, by 5:30 p.m. on our website at [www.cityofhighland.org](http://www.cityofhighland.org) and in the following designated areas:

City Hall  
27215 Base Line

Highland Branch Library  
7863 Central Avenue

Highland Fire Station No. 1  
26974 Base Line



Lisa Del Rio, Administrative Assistant II



# **Agenda Item #1**

**MINUTES**  
**FINANCE/PERSONNEL SUBCOMMITTEE**  
March 9, 2021

This meeting was conducted as a teleconference meeting in the Upright Conference Room, 27215 Base Line, Highland, California.

**CALL TO ORDER**

The regular meeting of the Finance/Personnel Subcommittee of the City of Highland was called to order at 10:00 a.m. at the Upright Conference Room, 27215 Base Line, Highland, California.

**ROLL CALL**

Present: McCallon, Timmer  
Absent: None

**PUBLIC COMMENT**

Received no public comment.

**ITEMS**

1. Review Minutes of January 12, 2021 Meeting
  - Minutes were approved as submitted.
  
2. Proposed Refunding of City of Highland Community Facilities District No. 2001-1 – Special Tax Refunding Bonds Series 2011
  - Finance/Personnel Subcommittee authorized Staff and the City's Finance Team (Urban Futures, Inc. as Municipal Advisor; Richards, Watson & Gershon as Bond Counsel; and Piper Sandler & Co. as Placement Agent) to commence preparation of legal and financial documents necessary for the refunding of the 2011 Bonds and Authorized the City Manager to enter a Preliminary Term Sheet with selected Lender.

**ADJOURN**

There being no further business the meeting was adjourned at 10:07 a.m.

*Submitted by:*

*Approved by:*

  
\_\_\_\_\_  
Elena Rodriguez, Administrative Assistant III

\_\_\_\_\_  
Subcommittee Member



# **Agenda Item #2**



A COMPLETE LANDSCAPE SERVICE  
STATE LIC. #702393 • Q.A.L. 11133

March 11, 2021

City of Highland  
27215 Baseline  
Highland, CA 92346

Here's the price to add on LMD #70 on Aplin St., Henslee Dr., and Santa Ana Canyon Dr. Basin at the NE corner of Aplin and Santa Ana Canyon.

Trail restoration will be additional charge:

Tractor work at \$185 hour minimum 2 hour charge.

Labor \$48.00 hr.

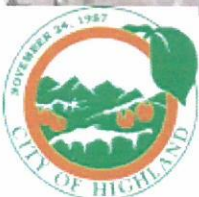
Supervisor \$65.00 hr.

DG per yard \$168.00

Total Monthly Cost \$950.00

If you have any questions please feel free to call me.

Thank you,  
Roy Perez



LMD 70

# **Agenda Item #3**



# EDSONS PAVERS, INC.

## PROPOSAL

P.O BOX 580, PERRIS, CA 92572  
P.(951) 443.0281 F. (951) 443.0288  
LIC. # 816339 | D.I.R. # 1000018776 | SBE #2012639



CUSTOMER # 217  
CITY OF HIGHLAND

909.863.0284 X 101  
JIM RICHARDSON  
jrichardson@cityofhighland.org

HIGHLAND - BASE LINE X PALM AVE & CHURCH AVE.

PLANS DATED N/A

PREVAILING WAGE: YES

February 24, 2021

### SCOPE OF WORK AND SPECIFICATIONS:

#### ITEM

REMOVE ASPHALT IN BETWEEN PAVER AND HAUL AWAY. INSTALL NEW PAVERS OVER 1-2" BEDDING SAND. PAVERS SUPPLIED BY CITY.  
POLYMERIC JOINT SAND, COLOR TAN

|                          |           |             |
|--------------------------|-----------|-------------|
| 32 HRS LABOR HRS         | \$ 84.47  | \$ 2,703.04 |
| 32 HRS LABOR HRS         | \$ 84.47  | \$ 2,703.04 |
| 32 HRS LABOR HRS         | \$ 84.47  | \$ 2,703.04 |
| 4 EA TRUCK AND EQUIPMENT | \$ 500.00 | \$ 2,000.00 |
| 1 EA TRAFFIC CONTROL     | \$ 2,400  | \$ 2,400.00 |

PROFIT AND OVERHEAD 20% \$ 2,501.82

**INCLUSIONS** LABOR, BEDDING SAND, POLY SAND

**EXCLUSIONS** PAVERS

WE HERBY PROPOSE TO FURNISH LABOR & MATERIALS TO COMPLETE IN ACCORDANCE WITH THE ABOVE SPECIFICATIONS  
FOR THE SUM OF:

**TOTAL PRICE : \$ 15,010.94**

**ADD, NON SPECIFIED OR ON PLANS. INITIAL FOR APPROVAL.**

17,560 S.F CLEAN PAVERS WITH PRESSURE WASHER AND ATTACHMENT WITH NO CHEMICALS. \$ 0.75 \$ 13,170.00

- ALL SPRINKLER LINES, DRAINS, CONTINGENCY PASS UNDER AND OTHER SUBSURFACE INSTALLATION TO BE PROVIDED OR INSTALLED BY OTHERS. A MINIMUM OF 12" BELOW GRADE PRIOR TO START INSTALLATION OF PAVERS
- IN PROGRESS PAVING INSTALLATIONS AREAS TO BE SUBSTANTIALLY FREE FROM TRAFFIC BY OTHER TRADES UNTIL INSTALLATION AREA IS COMPLETE. DELAYS OR EXTRA TIME WILL BE CHARGED AT TIME AND MATERIAL BASIS PLUS MARKUP.
- PRICE BASED ON MINIMUM QUANTITIES QUOTED. ADDITIONAL TO BE MEASURED AND BILLED AT UNIT PRICING. DEDUCTION OF AREAS MAY CHANGE ORIGINAL UNIT PRICE.
- ANY AREAS NOT ACCESSIBLE TO OUR EQUIPMENT MUST BE PULLED BY CONTRACTOR. EDSONS WILL NOT BE RESPONSIBLE FOR DAMAGE TO UNMARKED UTILITIES OR CONSEQUENCES THEREOF WITHIN WORK AREA.
- MATERIAL NEEDS 3-4 WEEK LEAD TIME TO MANUFACTURE. OTHERWISE NOTED.

ALL MATERIAL IS GUARANTEED TO BE AS SPECIFIED. ALL WORK TO BE COMPLETED IN A WORKMANLIKE MANNER ACCORDING TO STANDARD PRACTICES. ANY ALTERATION OR DEVIATION FROM ABOVE SPECIFICATIONS INVOLVING EXTRA COSTS WILL BE EXECUTED ONLY UPON WRITTEN ORDER, AND WILL BECOME AN EXTRA CHARGE OVER & ABOVE THE ESTIMATE. ALL AGREEMENTS CONTINGENT UPON STRIKES, ACCIDENT OR DELAYS BEYOND OUR CONTROL. THIS PROPOSAL SUBJECT TO ACCEPTANCE WITHIN 60 DAYS AND IT IS VOID THEREAFTER AT THE OPTION OF THE UNDERSIGNED.

**PREPARED BY**  
ADRIAN DE LEON

adrian@edsonspavers.com



**ACCEPTED BY**

JIM RICHARDSON

DATE

#### ACCEPTANCE OF PROPOSAL

The above prices, specifications and condition are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

HIGHLAND - BASE LINE X PALM AVE & CHURCH AVE.

Page 1 of 1

# **Agenda Item #4**

**DRAFT AMENDMENTS TO PERSONNEL RULES DATED 3/17/21  
PROPOSED ADDITIONS MARKED BY HIGHLIGHTS;  
DELETIONS MARKED BY STRIKE-OUTS**

**LEGISLATIVE HISTORY**

**(additions shaded; deletions marked by ~~strikeouts~~)**

**EXHIBIT "A"<sup>1</sup>**

**CITY OF HIGHLAND**

**PERSONNEL RULES & REGULATIONS**

Adopted \_\_\_\_\_, 2021, Resolution No. 2021-\_\_\_\_\_,  
amending and superseding all prior resolutions

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<sup>1</sup> This document will be Exhibit "A" to the Resolution approving the amended Personnel Rules.

## PERSONNEL RULES AND REGULATIONS

### I. AUTHORITY AND PURPOSE

A. These Personnel Rules and Regulations (the “Personnel Rules” or “Rules”) are adopted pursuant to City of Highland Ordinance No. 39, as codified in Chapter 2.52 of the Highland Municipal Code (Sections 2.52.010 et seq.), (hereinafter the “Personnel Ordinance”) and establish specific procedures and regulations governing the personnel system of the City. These Competitive Services Rules apply to all City employees except as specifically set forth herein.

B. City Council Authority. In accordance with the Personnel Ordinance and state law, the City Council has the duty and authority to appoint, remove, promote, demote, control, order and give directions to the City Manager, City Attorney (including any Assistant City Attorney or Deputy City Attorney), City Treasurer and such other officers and employees as designated by City ordinance or law from time to time.

C. City Manager Authority. In accordance with the Personnel Ordinance, or as otherwise provided in state law, the City Manager has the duty and authority to control, order and give directions to all department heads and to subordinate officers and employees of the City under his/her jurisdiction through their department heads, and further has the duty to appoint, remove, promote and demote any and all officers and employees of the city, except the City Attorney and City Treasurer. The City Manager may delegate his/her authority in accordance with these Rules.

1. The City Manager shall appoint the Personnel ~~Officer~~ Director and the Appointing Authority, except where the City Manager serves as the Appointing Authority, or the Appointing Authority is the City Council or any individual, body, committee, subcommittee, or board appointed by the City Council, as those terms are used in these Rules. The City Council designates the Personnel Subcommittee of the City Council as the alternate authority to perform the functions of the City Manager pursuant to these Rules, when, in the opinion of the City Manager or at the direction of the City Council, good cause exists for an alternate authority to hear appeals or make final decisions as to a particular employee or employees. The affected employee shall be notified by the City Manager in writing of the City Manager’s or the City Council’s designation of the alternate authority to perform the functions of the City Manager pursuant to these Rules, and the reasons for the alternate designation. The notice of designation shall be placed in the employee’s personnel file. The employee may appeal the designation to the City Council.

D. Administrative Policies and Procedures. Pursuant to ~~the Personnel Ordinance No. 39,~~ the City Manager or other ~~the~~ Appointing Authority has the authority to issue administrative policies and procedures to implement or supplement these Rules. Department Heads, with the concurrence of the Appointing Authority, may issue department rules to implement or supplement these Rules within department(s) or other work groups under their control. In the event that such other administrative policies, procedures or department rules conflict or are inconsistent with these Rules, the provisions of these Rules shall control.

E. Conflict with Collective Bargaining Agreements. Whenever an applicable memorandum of understanding expressly preempts a section or identified portion of a section in these Rules, the memorandum of understanding will prevail once accepted by the bargaining group



and approved by the City Council. All provisions of these Rules that are not in conflict will remain in force.

F. Severability. Should any provision of these Rules be rendered illegal, unenforceable or invalid, in whole or in part, the remaining provisions or parts of these Rules will remain in full force and effect.

G. Emergency Situations. In cases of emergency, the City Manager may temporarily change, suspend or otherwise modify these Rules. Such emergency change shall be limited to the timer period and subjects necessitated by the emergency. Any emergency change to be adopted permanently may be implemented on a temporary basis under this paragraph until such time as it may be adopted as a formal amendment by the City Council.

H. Collective Bargaining. ~~It is intended that t~~These Rules ~~will be~~ are adopted, amended and administered in compliance with the Meyers-Milias-Brown Act, commencing at California Government Code §3500 (the "MMBA"). The City Council, the City Manager, the Personnel Director and the Appointing Authority shall endeavor to interpret and apply these Rules in a manner consistent with the MMBA and may delay or decline to take any action that would violate the MMBA. Nothing in these Rules is intended to establish any new labor relations requirement or to change or expand any labor relations requirement beyond that required by state or federal law.

I. At-Will Employment Status: All department heads and other management employees, and all City officers are employed in an at-will status and serve at the pleasure of the Appointing Authority, and do not have any property interest in his/her employment or office with the City. This means that either the employee (or officer) or the City may end the employment relationship or appointment at any time, with or without cause, with or without prior notice, and without any right of review, appeal or grievance.

1. At-Will Positions. As provided in the Personnel Ordinance, the following positions are at-will positions, and all persons retained or employed in any of these positions are at-will employees who serve at the pleasure of the Appointing Authority:

a. The City Manager (subject to the terms of employment contract, if any) and any assistants to the City Manager;

b. All department heads (also known as directors) and managers;

c. All persons not regularly employed in permanent positions in the competitive service, as defined in the Personnel Ordinance and these Rules, including but not limited to, all probationary employees;

d. All persons employed in positions designated as seasonal, emergency or temporary/part-time;

e. All persons employed under a contract to supply expert, professional, technical or any other services;

f. Emergency employees hired to meet the immediate requirements of an emergency condition, such as extraordinary fire, flood, or earthquake which threatens life or property;

g. Any employee employed in a position primarily funded under a state or federal program; and

h. Any other position not otherwise designated as a regular position in the City's competitive service, as defined in the Personnel Ordinance or these Rules.

In the event that there is any conflict between these Personnel Rules and the Personnel Ordinance with regard to designation of at-will status, the provisions of the Personnel Ordinance shall control.

2. No Right of Appeal, Pre-Discipline or Grievance. At-will employees may be terminated from the City at any time with or without cause and shall not have any rights to any pre- or post-disciplinary due process or evidentiary appeal, review, or grievance under these Rules, including but not limited to Rule XX (Disciplinary Action) and Rule XXIII (Grievance Procedure). The imposition of discipline, the issuance of a performance evaluation or rating, or the implementation of any employment action against or with regard to any at-will employee (including but expressly not limited to, the granting of a promotion or demotion to another at-will position, the assignment or granting of any compensation rate, a reduction in pay, or any merit advancement, and/or the imposition or completion of any probationary period or review period) shall not modify or remove the at-will status of any such employee.

3. Except as otherwise expressly provided in these Rules, or by separate resolution of the City Council, these Rules shall not apply to at-will employees.

J.. Independent contractors and volunteers are not employees of the City and are not included in the competitive service.

K. At-will employees are not included in the competitive service. Notwithstanding their exclusion from the competitive service, the following Rules shall apply to at-will employees as indicated:

1. Rule I (Authority and Purpose), Rule II Definitions), and Rule III (General Provisions- Sections (A) through (K), inclusive) shall apply to the City Manager, management employees and all other at-will employees.

2. Rule IV (Classification) shall apply to probationary employees.

3. Rule V (Recruitment, Selection and Appointment, Sections (A) through (K), inclusive), shall apply to probationary employees. These provisions shall apply to other categories of at-will employees when deemed appropriate by the City Council or City Manager.

4. Rule VI (Examinations) shall apply to probationary employees. These provisions shall apply to other categories of at-will employees when deemed appropriate by the City Council or City Manager.

6. Rule VIII (Method of Filling Vacancies) shall apply to probationary employees. These provisions shall apply to other categories of at-will employees when deemed appropriate by the City Council or City Manager.

7. Rule XI (Temporary Employment), shall apply to management employees, temporary/part-time employees, seasonal employees, other temporary employees, and emergency employees. when deemed appropriate by the City Council or City Manager.

8. Rule XIII (Compensation and Payroll Practices -- Sections (A) through (K), inclusive) shall apply to shall apply to probationary employees, temporary/part-time employees, seasonal employees, other temporary employees, emergency employees, the City Manager and other management employees in accordance with the terms. conditions and eligibility requirements as set forth in each provision.

9. Rule XIV (Work Week, Work Schedules, Overtime and Compensatory Time), shall apply to shall apply to at-will employees, subject to the terms, conditions and eligibility requirements as set forth in each provision.

10. Rule XV (Employee Benefits) (including but expressly not limited to, sick leave, family care and medical leave, pregnancy disability leave, and state workers' compensation) shall apply to at-will employees, , to the extent such employees meet the terms, conditions and eligibility requirements for an employee benefit.

11. Rule XVI (Attendance, Leaves, Reports and Records) (including but expressly not limited to, attendance, military leave, leave of absence without pay, jury duty/court leave, school leave, leave and reasonable accommodation for victims, ADA disability accommodation, and fitness for duty) shall apply to at-will employees, subject to the terms, conditions and eligibility requirements for such leave or other provisions.

12. Rule XVIII (Personnel Records) shall apply to at-will employees.

13. Rule XIX (Separation from City Employment) shall apply to at-will employees as specified according to the terms, provisions and conditions therein.

14. Rule XXI (Layoff Policy and Procedure -- Sections (A) through (H), inclusive), shall apply to at-will employees, as specified according to the terms, provisions and conditions therein.

15. Rule XXII (Separation from Service) shall apply to at-will employees, as specified according to the terms, provisions and conditions therein.

16. Rule XXIV: Anti-Harassment Policy -- Sections (A) through (C) inclusive, shall apply to all at-will employees.

17. Rule XXV: Policy Against Workplace Violence -- Sections (A) through (F), inclusive, shall apply to all at-will employees.

18. Rule XXVI: Policy Against Abusive Conduct -- Sections (A) through (D), inclusive, shall apply to all at-will employees.

19. Rule XXVII: Drug-Free Workplace Policy -- Sections (A) through (E), and (F), shall apply to all at-will employees.

20. Rule XXIX: Management Rights, shall apply to all at-will employees.

K. Prior Rules Superseded. In the event that the terms and provisions of these Rules are inconsistent or in conflict with the terms and provisions of any prior City personnel policy and procedures, resolutions or rules and regulations governing the same subject, the terms of these Personnel Rules and Regulations shall prevail and such inconsistent or conflicting provisions or personnel resolutions or rules and regulations are hereby repealed.

L. Precedence of Personnel Ordinance. In the event of any conflict or inconsistency between any provision of these Personnel Rules and the terms and provisions of the Personnel Ordinance, the provisions of the Personnel Ordinance shall prevail. ~~The policies, rules and regulations stated in this document that are inconsistent with at will employment, such as but not limited to disciplinary procedures and reduction in force rules, shall not apply to at will employees, and except as otherwise expressly provided in these Rules, these Personnel Rules shall not apply to at will employees.~~

M. Rules Not a Contract. City employment is governed by the Personnel Ordinance, and federal and state law. These Rules are not intended to and do not create any contract of employment, express or implied, or any rights in the nature of a contract. The City has the right to modify, amend or delete any provision of these Rules at any time, in the City's sole discretion.

N. No Vested Rights; Amendments. No provision, term or condition of these Personnel Rules provide any employee with any vested right of any kind. The City Council reserves the right to modify, amend and/or delete provisions of these Personnel Rules at any time.

## II. DEFINITIONS

The terms used in these Rules shall have the following meanings:

A.—“ADVANCEMENT”: A salary increase within the limits of a pay range established for a class.

B.—“ALLOCATION”: The assignment of a single position to its proper class in accordance with the duties performed, and the authority and responsibilities exercised.

C.—“APPOINTING AUTHORITY”: The City Manager or such other officers of the city who, in their individual capacities, or as a board, commission, or city council, have the final authority to make the appointment to the position to be filled.

1. City Council. The City Council serves as the appointing authority for the positions of City Manager, City Attorney (including any Assistant City Attorney or Deputy City



Attorney), City Treasurer, and any other position for which appointment power is vested in the City Council pursuant to City ordinance or state or federal law.

2. City Manager. Except as otherwise provided in the Personnel Ordinance or these Rules, the City Manager serves as the appointing authority for all heads of divisions, all departments other management positions (including but expressly not limited to, Director of Public Works/City Engineer, Director of Community Development, City Clerk, Director of Administrative Services, Finance Director, Building Official, Public Works Manager, Public Services Manager, Administrative Services Manager, and such additional management positions as may be created from time to time by resolution of the City Council), and all subordinate officers and employees of the City under his/her jurisdiction through their Department Heads. Appointment to full-time regular, part-time regular and temporary positions shall be made by the City Manager with the recommendation of the Department Directors as appropriate.

“AT-WILL EMPLOYEE” or “AT-WILL STATUS”: An employee who serves at the pleasure of the Appointing Authority, who may be rejected or terminated at any time by the Appointing Authority with or without cause, and who has no right to any pre- or post-disciplinary due process or right to an evidentiary appeal, review or grievance under these Rules, including but not limited to Rule XX (Disciplinary Action) and Rule XXII (Grievance Procedure). In accordance with the Personnel Ordinance, “at-will employee” includes all directors, managers and other management employees, including but expressly not limited to, all persons holding any position listed in Rule I.I.1 of these Rules.

“CITY OFFICIAL”: Elected officials, City Manager, City Attorney, Finance Director, and/or other City Council-appointed officials in the division or department in which the appointed official serves.

~~D~~“CLASS” or “CLASSIFICATION”: All positions sufficiently similar in duties, authority, and responsibility, to permit grouping under a common title in the application with equity of common standards of selection, transfer, demotion and salary.

“COMPENSATION” OR “PAY”: Rates of pay which have been established for the respective classes of work set forth in the compensation plan or other schedule approved by the City Council.

~~E~~“COMPETITIVE SERVICE”: All positions of employment in the service of the eCity except those excluded by the pPersonnel eOrdinance and listed below (Excluded Positions). The competitive service is sometimes referred to as the classified service.

~~F~~“DAYS”: Means eCalendar days unless otherwise specified. When any action to be taken or deadline falls on a Saturday, Sunday or any other day the City’s offices are not open to transact normal business, such action may be taken on and the deadline will be extended to the next weekday during which the City’s offices are open to transact normal business.

~~G~~—“DEMOTION”: The voluntary or involuntary reduction of an employee who has completed probation from a position in one classification to a position in another classification having a lower maximum base rate of pay.

\_\_\_\_—“DEPARTMENT”: An organizational unit in a Division of the City, which is under the immediate charge of a manager or other Department Head who reports directly to a Director or the City Manager.

\_\_\_\_—“DEPARTMENT HEAD”: An exempt management employee appointed by the City Manager to oversee, supervise, and manage a Department within a Division, and who reports directly to a Director or the City Manager; and includes the City Clerk, Building Official, Public Works Manager, Public Services Manager, Administrative Services Manager, and such other management positions that may be created from time to time.

\_\_\_\_—“DIRECTOR”: A management employee who is appointed by the City Manager to oversee, supervise and manage a Division and any departments in that Division; and which include the Director of Administrative Services; Director of public Works/City Engineer; Director of Community Development; and such other director positions that may be created from time to time.

L.\_\_\_\_—“DISCHARGE” or “DISMISSAL”: The involuntary termination of an employee by the City.

H.\_\_\_\_—“DISCIPLINARY ACTION”: Counseling, oral or written reprimand, discharge, demotion, reduction in pay, or suspension of a regular employee for punitive reasons and not for any non-punitive reasons.

N.\_\_\_\_—“DOMESTIC PARTNERSHIP”: A relationship as defined under California Family Code Section 297, as amended from time to time.

I.\_\_\_\_—“ELIGIBLE”: An individual satisfactorily completing the examination process for a classification and on an employment list, available for an appointment to a position in the competitive service.

J.\_\_\_\_—“EMPLOYEE”: An individual compensated through the City payroll and legally ~~occupying~~ employed in a position within a classification in the competitive service. This term excludes independent and outside contractors and volunteers, and members of appointive boards, commissions, and committees and other governmental agencies.

K.\_\_\_\_—“EMPLOYMENT LIST”:

1. Open Employment List: A list of names of persons who have taken an open-competitive examination for a class in the competitive service and have qualified.

2. Promotional Employment List: A list of names of persons who have taken a promotional examination for a class in the competitive service and have qualified.

L.\_\_\_\_—“EXAMINATION”:

1. Open-competitive Examination: An examination for a particular class which is open to all persons meeting the qualifications for the class.

2. Promotional Examination: An examination for a particular class which is open only to employees meeting the qualifications for the class.

3. Continuous Examination: An open examination which is administered periodically and as a result of which names are placed on an employment list, in order of final scores, for a period of not more than one (1) year.

S.—“EXCLUDED POSITION”: Pursuant to the Personnel Ordinance, the positions and the persons serving in those positions that are at-will and excluded from the competitive service, including but not limited to the following:

1. Elective Officers;
2. The City Manager and assistants to the City Manager;
3. Members of appointive boards, commissions, committees, and agencies ;
4. Directors, department heads and other managers;
5. Persons performing technical, expert, consulting, professional and/or other services under contract for such services ;
5. Volunteer personnel, such as disaster and other workers performing voluntary services ;
6. Emergency employees, part-time/temporary employees and seasonal employees ;
7. All Council-appointed City officers ;
8. Any other position not otherwise designated as a regular position in the City’s competitive service, as defined in the Personnel Ordinance or these Rules ;
9. Any position primarily funded under a state or federal employment program ; and
10. Persons appointed to excluded positions created in the future.

“FLSA EMPLOYEES”: Employees who are entitled to overtime pay and/or compensatory time off in accordance with the FLSA.

M.—“FLSA-EXEMPT EMPLOYEES”: ~~The City has determined that various executive, administrative and professional employees are exempt from the overtime requirements of the Fair Labor Standards Act (“FLSA”). Employees in the following job classifications are considered exempt: City Manager, Assistant City Manager, Administrative Analyst, City Clerk, Community Development Director, City Planner, Building Official, Finance Officer, Public Works Director/City Engineer, Engineering Manager, Public Works Manager, Director of Administrative Services.~~ An employee whose duties and salary exempt him/her from the overtime

pay provisions of the federal Fair Labor Standards Act (“FLSA”). Such employees are generally employees in executive, administrative, or professional positions.

U. —“IMMEDIATE FAMILY”: ~~An employee’s spouse, mother, father, brother, sister, half brother or sister, children, step children, grandparents, grandchildren, mother/father in law, son or daughter in law, brother or sister in law, foster children or legal wards and legal guardians, domestic partner and same relatives listed of a domestic partner.~~

“JOB DESCRIPTION”: A written description consisting of a title, a general statement of the level of work and the distinguishing features of work, examples of duties and the desirable qualifications.

N. —“LAYOFF”: The involuntary ~~non-disciplinary~~ separation of employees from the active work force due to lack of work or funds, or to the abolition of positions by the City Council for the above reasons or due to organization changes.

“LEAVE OF ABSENCE”: An approved type of absence from work as provided for by these Rules.

“MANAGEMENT EMPLOYEE”: An employee holding a position designated as a management position, such as directors and managers, and including but not limited to, the following positions: the City Manager, Building Official, City Clerk, Director of Administrative Services, Director of Community Development, Director of Public Works/City Engineer, Finance Director, Administrative Services Manager, Assistant Community Development Director, Assistant Public Works Director, Public Services Manager, Public Works Manager, and such other positions as may be created by the City Council from time to time and designated as management positions.

O. —“PERSONNEL DIRECTOR”: The employee appointed by the City Manager to carry out the designated duties of the Personnel Director or Personnel Officer set forth ~~herein~~ in the Personnel Ordinance and/or these Rules.

P. —“PERSONNEL ORDINANCE”: Ordinance No. 39, which creates a personnel system for the City, as codified in Chapter 2.52 of the Highland Municipal Code (Sections 2.52.010 et seq.), and as amended from time to time.

Q. —“POSITION”: A combination of duties and responsibilities in the competitive service requiring the full-time or part-time employment of one person.

“PROBATIONER” or “PROBATIONARY EMPLOYEE”: An employee in a position in the competitive service who serves a probationary period at either the outset of initial employment or at the outset of a promotion to a higher classification, as follows.

1. Initial-hire probationary employee: An employee in the competitive service who (a) has not previously been employed by the City, or (b) has previously been employed by the City but who is re-employed after a break in service. An initial-hire probationary employee is an at-will employee who serves at the pleasure of the Appointing Authority, has no property right in continued employment, and may be rejected at any time during the probationary period with or



without cause, and has no right to any pre- or post-disciplinary due process, evidentiary appeal, review or grievance pursuant to these Rules.

2. Promotional probationary employee: An employee in the competitive service who has been promoted to a higher job classification requiring different skills. A promotional probationary employee serves in an at-will status in his/her promotional position, and may be rejected from that promotional position at any time during the promotional probationary period with or without cause, and has no right to any pre- or post-disciplinary due process, evidentiary appeal, review or grievance pursuant to these Rules with respect to disciplinary action or rejection from his/her promotional probationary position. Any other disciplinary action of such employee shall be subject to Rule XX (Disciplinary Action).

R.—“PROBATIONARY PERIOD”: A ~~working test~~ period ~~to be of time considered~~ that is an integral part of the examination, recruiting, testing and selection process during which an employee is required to demonstrate fitness for the position to which the employee is appointed, including but not limited to a promotional appointment, by actual performance of the duties of the position. During ~~this~~ the probationary period, an employee is ~~considered~~ an “at-will” employee who may be ~~terminated~~ rejected by the Appointing Authority and separated from the City without prior notice or cause or right of evidentiary appeal, review or grievance pursuant to these Rules, including but not limited to Rule XX (Disciplinary Action) and Rule XXIII (Grievance Procedure). At its discretion, the City may extend the probationary period for a period or periods as the City deems appropriate in accordance with Rule IX.

S.—“PROMOTION”: The movement of an employee from one class to another class having a higher maximum base rate of pay.

T.—“PROVISIONAL APPOINTMENT”: The appointment of a person who possesses the minimum qualifications established for a particular class and who has been appointed to a position in that class in the absence of available eligibles. In no instance shall a provisional appointment exceed six (6) months.

“REDUCTION IN PAY” or “REDUCTION IN SALARY”: A compensation decrease within the limits of the pay range established for a class.

U.—“REGULAR EMPLOYEE”: An employee in the competitive service who has successfully completed the designated probationary period and is employed full-time or part-time ~~has been retained~~ in a regular position as hereafter provided in the Personnel Ordinance and these ~~rules~~ Rules.

V.—“REINSTATEMENT”: The restoration without examination of a former regular employee or probationary employee to a classification in which the employee formerly served as a regular employee.

“REJECTION”: The termination or separation of a probationary employee from City employment or the assignment of a promotional probationary employee to his/her former classification in the competitive service during the probationary period. Rejection during probation is not a disciplinary action, may be undertaken with or without cause, and is not subject to pre- or post-disciplinary due process or right to an evidentiary appeal, review, or grievance

under these Rules, including but not limited to Rule XX (Disciplinary Action) and Rule XXIII (Grievance Procedure).

W.—“RELIEF OF DUTY”: The temporary assignment for non-disciplinary reasons of an employee to a status of leave with pay.

“SEASONAL EMPLOYEE”: A temporary/part-time employee appointed in the same manner and subject to the same procedure as a regular employee except that a seasonal employee is an at-will employee who will be laid off prior to or at the close of the season for which he/she has been appointed, or who may otherwise terminated at any time with or without cause and have no right to any pre- or post-disciplinary due process or right to an evidentiary appeal, review or grievance under these Rules, including but not limited to Rule XX (Disciplinary Action) and Rule XXIII (Grievance Procedure), and are not eligible for any benefits or leave.

“SENIORITY”: Except as otherwise provided in these Rules, the status acquired by an employee based on his/her total cumulative time served in the City service upon the effective date of a layoff. Seniority includes all periods of attendance at work, approved leaves of absence, time spent on military leave and any other period required by law to be included in seniority. Seniority does not include unauthorized absences, time spent between employment with the City, suspensions, layoffs or any time when the employee was not actively engaged at work.

“SEPARATION” The voluntary or involuntary separation or termination of an employee from City service because of death, discharge, rejection while a probationary employee, layoff, job abandonment, resignation or retirement.

X.—“SUSPENSION”: The involuntary temporary separation from service of an employee without pay for disciplinary reasons.

Y.—“TEMPORARY/PART-TIME EMPLOYEE”: An employee employed to fill a position on a temporary, irregular, seasonal or contingent ~~on an as-needed basis~~, and who works less than twenty (20) hours per week, or less than one thousand (1,000) hours per year, and who may or may not have a regular schedule. Temporary/part-time employees do not qualify for benefits or leave ~~and~~ except as required by state or federal law. Temporary/part-time employees are not part of the competitive service, and are at-will employees who may be terminated at any time by the ~~department head~~ Appointing Authority ~~upon notification~~ with or without cause and have no right to pre- or post-disciplinary due process or right to an evidentiary appeal, review, or grievance under these Rules, including but not limited to Rule XX (Disciplinary Action) and Rule XXIII (Grievance Procedure). All part-time employees are temporary/part-time employees except regular part-time employees.

Z.—“TRANSFER”: The movement of an employee from one position to another position in the same class or from one class to another class that has the same maximum rate of base pay.

“VACANCY”: An authorized and budgeted position that is not occupied by an employee having either a probationary or regular appointment to the position.

“WORKING DAYS”: Any day that the City is open to the public.

### III. GENERAL PROVISIONS

#### A. FAIR EMPLOYMENT PRACTICES

Any technique or procedure used in recruitment and selection of employees shall be designed to measure only the job related qualifications of applicants. No recruitment or selection technique shall be used which, in the opinion of the Personnel Director, or as required by state or federal law, is not justifiably linked to successful job performance.

#### B.. EQUAL EMPLOYMENT OPPORTUNITY

The City ~~maintains a policy of non-discrimination with respect to~~ provides equal employment opportunities for all ~~current~~ qualified employees ~~as well as~~ and applicants for employment as to all terms of employment, including hiring, compensation, training, promotion, transfer, discipline, discharge and/or other separation. The City does not discriminate, and prohibits discrimination, on the basis of race, color, religion, sex (including pregnancy, childbirth, or related medical conditions) or gender, sexual orientation, gender identity or gender expression, age, national or ethnic origin, citizenship, ancestry, physical disability, mental disability, medical condition, family care status, veteran or military status, marital status, or any other basis protected by federal, state, or local law or ordinance or regulation (referred to as "protected status"). The City also makes reasonable accommodations that do not impose undue hardship on the conduct of City business for protected applicants and employees who seek such accommodations because of a qualified physical or mental disability. Harassment or retaliation based on any protected status is also prohibited. All ~~Aspects~~ aspects of employment will be governed on the basis of merit, competence and qualifications, ~~and will not be influenced in any manner by race, color, religion, sex, age, national origin, disability, veteran status, marital status, political opinion or political affiliation.~~

Employees, applicants and volunteers with questions or concerns about any type of discrimination, harassment or retaliation in the workplace are encouraged to bring these issues to the attention of their immediate supervisor, the Personnel Director, a human resources officer, or any other supervisor, manager or Director with whom the employee feels comfortable. Employees, applicants and volunteers can raise concerns and make reports without fear of reprisal. Complaints may be made and will be handled using the procedures outlined in the Anti-Harassment Policy (Rule XXIV), or by contacting the U.S. Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing. Anyone found to be engaging in any type of unlawful discrimination, harassment or retaliation is subject to disciplinary action, up to and including discharge from employment.

#### C. DISABILITY ACCOMMODATION

The City is committed to complying fully with the Americans with Disabilities Act ("ADA") and the California Fair Employment and Housing Act ("FEHA"), and to ensuring equal opportunity in employment for qualified persons with disabilities. All employment practices and activities are conducted on a non-discriminatory basis. Hiring procedures are designed to provide persons with disabilities meaningful employment opportunities. Pre-employment inquiries are made only regarding an applicant's ability to perform the essential functions of the position.

Reasonable accommodations for qualified individuals with known disabilities will be made unless doing so would be an undue hardship to the City or the employee or applicant poses a direct threat to himself or herself or others. All employment decisions are based on the merits of the situation in accordance with defined criteria, not the disability of the individual.

Qualified individuals with disabilities are entitled to equal pay and other forms of compensation (or changes in compensation) as well as in job assignments, classifications, organizational structures, position descriptions, lines of progression, and seniority lists. Leave of all types will be available to all employees on an equal basis.

The City is also committed to not discriminating against any qualified employees or applicants because they are related to or associated with a person with a disability. The City will follow the FEHA or any other state or local law that provides individuals with disabilities greater protection than the ADA.

This policy is neither exhaustive nor exclusive. The City is committed to taking all other actions necessary to ensure equal employment opportunity for persons with disabilities in accordance with the ADA, FEHA and all other applicable federal, state, and local laws.

#### ~~C.D.~~ OUTSIDE EMPLOYMENT

1. Employees may be allowed to work in off-duty jobs only if such secondary employment meets these requirements:

a. ~~Such~~ The outside employment does not conflict with the interest of the City, or carry over into the employee's regular duties; and

b. ~~Such~~ The outside employment does not adversely affect the employee's ability to perform City duties.

2. "Outside employment" shall include work pursued in a self-employed capacity.

3. Before accepting outside employment, the employee must first advise the City Manager in writing of his/her intent, and receive written permission from the City Manager. The written request shall include: the work hours and/or time required; job title or the nature of the activity; the work location; and the supervisor, manager and name of the employer or activity. The employee must promptly report in writing to the City Manager any changes to the aforementioned information. Any outside employment authorization is valid only up to one year. Should the employee continue the outside employment, activity, or enterprise for a longer duration, he/she must make another request following the process herein.

~~4. — Should any employee accept outside employment which violates any of the requirements set forth in Paragraph 1 above, said violation is cause for discipline up to and including termination.~~



~~5.4.~~ ~~Employment while on leave.~~ Employees are prohibited from engaging in outside employment while on any type of leave where such employment is or may be inconsistent with the leave or the terms of the leave approval.

~~6.5.~~ Employees are prohibited from engaging in outside employment which involves the use of City time, facilities, equipment, vehicles, supplies, City offices or buildings or other City personal or real property, or any other City resources. ~~for private gain or advantage.~~

6. Employees are prohibited from engaging in outside employment during their working hours for the City.

7. Employees are prohibited from engaging in outside employment which involves hours of work or the exertion of effort which would or could be reasonably expected to reduce the quality or quantity of the employee's services to the City.

8. Employees are prohibited from engaging in outside employment where a conflict of interest or the appearance of a conflict arises. Examples of this could include, but are not limited to, outside employment that:

a. Is either directly or indirectly connected with the employee's official duties, including but not limited to: doing business with persons contacted in the course of his/her official duties, engaging in activities where the employee or his/her associate may be benefitted by this official position, or doing business which may influence the employee or other employees in the performance of their official duties.

b. Involves advisory or consulting services which could be reasonably expected to conflict with the City's interests.

c. Involves financial interest in any contract, sale, or transaction to which the City is a party, or which significantly impacts the City.

d. Involves the employees' performance of an act in other than his/her capacity as a City employee which may later be subject directly or indirectly to the control, inspection, review, approval, audit or enforcement of the City or any of its employees.

e. Involves use of the City's prestige or influence, or a City badge or uniform, or an employee's title as a City employee.

f. Involves the employee's receipt or acceptance of any money or other consideration from anyone other than the City for the performance of an act which the employee, ~~of not performing such act,~~ would be required or expected to render in the regular course or hours of his/her City employment or as part of his/her duties as a City employee.

g. Involves the use of disclosure of confidential information produced, obtained or learned in the course of his/her employment with the City.

9. If the Personnel Director determines that an employee's outside employment creates a conflict of interest or potential conflict of interest with his/her City

employment or interferes in any other way with his/her ability to meet City requirements, the Personnel Director will provide written notification to the employee that he/she will be dismissed from employment with the City unless the employee terminates the outside employment. The notice and appeal provisions of ~~these Rules~~ Rule XX (Disciplinary Action) shall apply to employees subject to this Rule, as appropriate, regarding ~~apply to~~ this determination.

10. The acceptance or performance of outside employment in violation of any of the requirements set forth in this Section D is cause for discipline up to and including discharge from employment.

#### **D.E. NEPOTISM - EMPLOYMENT OF RELATIVES, SPOUSES OR DOMESTIC PARTNERS**

1. Policy. The City regulates the employment and placement of relatives, spouses, and domestic partners so as to avoid conflicts of interest and to promote safety, security, supervision, and morale. The following provisions of this Section shall govern the employment of the immediate family of any official or employee of the City.

2. Definitions. For purposes of this Section, the following terms have the following meanings.

a. "Relative" means child, step-child, parent, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, nephew, or in-laws of those enumerated by marriage or domestic partnership.

b. "Spouse" means one of two persons to a marriage, or two people who are registered domestic partners.

c. "Supervisory relationship" means a relationship in which one person exercises the right to control, direct, reward or punish another person by virtue of the duties and responsibilities assigned to his/her position.

3. Employment of Relatives ~~Family Members~~ of City Officials. Relatives of City officials shall not become employed by the City during the official's term. For this provision, "City officials" means the City Manager, elected officials, or Council-appointed officials in the area/department in which the appointed official is serving.

4. Employment of Relatives of City Employees. The City will not appoint, promote, or transfer a person ~~No person shall be appointed or promoted~~ to a position in ~~any~~ the same department, division or facility in which such person's relative already holds a position, ~~when~~ if such employment would result in any of the following:

- a. A direct or indirect supervisor-subordinate relationship;
- b. The two employees having job duties which require performance of shared duties on the same or related work assignment;
- c. Both employees having the same immediate supervisor; or

d. A potential for creating an adverse impact on supervision, safety, security, morale or efficiency.

5. Employment of Spouses/Domestic Partners. The City will not appoint, promote, or transfer a person to a position in the same department, division or facility in which the person's spouse or domestic partner already holds a position, if such employment would result in any of the following:

a. One spouse or domestic partner being under the direct supervision of the other spouse or domestic partner; or

b. Potential conflicts of interest or hazards for married persons or those in domestic partnership which are greater than for those who are not married or in domestic partnerships.

6. Marriage or Domestic Partnership After Employment.

a. Transfer. If a City employee marries another person employed by the City within the same department, division, or facility, both employees shall be allowed to retain their respective positions provided that a direct or indirect supervisory relationship does not exist at the time of marriage between the two positions. During the period of employment, no direct or indirect supervisory position shall exist between the two employees. ~~For the purpose of this Section, a supervisory relationship shall be defined as one in which one person exercises the right to control, direct, reward or punish another person by virtue of the duties and responsibilities assigned to his or her position.~~ The City Manager has discretion to transfer one of the employees to a similar position in another department, division or facility. Although the wishes of the two employees will be considered, the City Manager retains sole discretion to determine which employee will be transferred based upon City needs for supervision, safety, security or morale. Any such transfer that results in a reduction in pay is not disciplinary and is not subject to any grievance or appeal, or pre- or post-disciplinary due process, appeal hearing, review or grievance.

b. Separation. If continuing employment of both employees, who work in the same department, division or facility, and who later become spouses or domestic partners, cannot be accommodated in a manner the City Manager finds to be consistent with the City's interest in the promotion of supervision, safety, security, or morale, then the City Manager retains sole discretion to separate one employee from City employment. Absent the resignation of one employee, the less senior employee will be separated. Any such separation is not considered to be disciplinary and is not subject to any grievance or appeal, or pre- or post-disciplinary appeal due process, review, hearing, or grievance.

~~2. If two (2) employees marry or become related, and the potential problems scenarios noted above exist, only one (1) of the employees will be permitted to stay with the City unless reasonable accommodations can be made to eliminate the potential problems. The decision as to which relative will remain with the City must be made by the two (2) employees within sixty (60) calendar days. If no decision has been made during this time, and if continuing employment of two (2) spouses cannot be accommodated consistent with the City's interest in promotion of safety, security, morale and efficiency, then the City~~

~~retains sole discretion to separate one (1) spouse from City employment. Absent resignation by one (1) affected spouse, the less senior of the involved spouses will be subject to separation and the same shall not constitute discipline and shall not be subject to any administrative appeal.~~

~~3. — The City also retains the right to refuse to place or retain both spouses in the same department, division or facility where such has the potential for creating adverse impact on supervision, safety, security or morale or involves potential conflicts of interest.~~

~~4. — For purposes of this Section, “relative” means spouse, child, step child, parent, grandparent, grandchild, brother, sister, half brother, half sister, aunt, uncle, niece, nephew, parent in law, brother in law or sister in law.~~

7. Waiver of Restrictions. The City Manager may waive the restriction set forth in paragraphs 3, and 4, 5 and/or 6, above, if the affected Department Head and the Appointing Authority determine that, because of the nature of the department, division or facility and the work assignments in question, the members of the immediate family 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.

#### ~~E.F.~~ USE OF COMPUTER SYSTEMS AND OTHER TECHNOLOGY RESOURCES

1. Policy. Computer usage, including but not limited to, the Internet and E-mail are to ~~shall be used only for official business purposes. E-mail and files on the City’s computers are neither privileged nor subject to privacy. The City may monitor an employee’s e-mail messages, internet usage, or files as deemed appropriate to assure that computer usage relates to official business, and that the speech or files contained therein are appropriate. E-mail shall not be used to harass, torment or disparage another party. Offensive and harassing communications are unacceptable and prohibited. At no time shall an employee install any personal software on a City computer or software that is not licensed to or approved by the City. Employees who violate these provisions may be subject to the full range of disciplinary action.~~ The City’s computer systems and other technology resources shall be used only for City business and official purposes, and shall be governed by these Rules and the City of Highland Policy on Technology Use and Security contained in Appendix A to these Rules, as amended from time to time. The City’s Technology Resources shall not be used for personal use or use related to any employee’s outside employment. Violation of this Rule or the Policy (Appendix A) may result in the removal of or restriction on the employee’s access to or use of Technology Resources at any time without prior notice. Employees who violate this Rule and/or the Policy (Appendix A) may be subject to disciplinary and/or legal action up to and including discharge from employment and/or criminal or civil penalties or other legal action.

2. Definitions. As used in these Rules, “Technology Resources” includes all of the following: all electronic media and storage devices, software, and means of electronic communication including any of the following: personal computers and workstations; laptop computers; iPads; mini and mainframe computers; computer hardware such as disk drives, tape drives, external hard drives and flash/thumb drives; peripheral equipment such as printers, modems, fax machines, and copiers; computer software applications and associated files and data,



including software that grants access to external services, such as the Internet, applications, or cloud storage accounts; City servers and WiFi connection; electronic mail; mobile phones; tablets; personal organizers and other handheld devices; pagers; voicemail systems; and instant messaging systems. Technology resources is also intended to broadly include new or emerging devices, technology, software and means of communications that may be developed or implemented in the future.

3. No Expectation of Privacy. Employees have no expectation of privacy when using the City's Technology Resources, and the City has the right to inspect all records related to such Technology Resources. The City may monitor, inspect, review, make copies of, and remove an employee's e-mail communications, internet usage, applications, files and other Technological Resources as deemed appropriate at any time in the City's discretion, and without prior notice, to assure that the employee's use of City technology resources relates solely to official business, and that the communications and content contained therein are in compliance with this Rule and the Technology Use Policy (Appendix A).

4. Public Records. Users should also be aware that all records related to the conduct of the public's business are subject to disclosure under the Public Records Act and/or other applicable provisions of state or federal law except to the extent exempt thereby.

5. Discipline. Misuse of the City's technology resources may subject the employee to discipline up to and including discharge from employment.

6. Supplemental Rules and Policies. The City Manager may adopt additional rules and policies to implement or supplement this Rule and Appendix A.

#### F.G. USE OF CITY TELEPHONES AND MOBILE/CELLULAR PHONES

##### 1. City Telephones and Mobile/Cellular Phones.

a. Use of City telephones and City-issued mobile/cellular phones shall comply with the requirements of this Section in addition to the City's Policy on Technology Use and Security contained in Appendix A to these Rules. Except as otherwise provided in this Section and said Policy, use of City telephones and City-issued mobile/cellular phones shall be limited to City-related business and official purposes. ~~While it is understood that the use of City telephones is for City-related business, it is recognized~~

b. The City recognizes that on occasion use of City telephones and City-issued mobile/cellular phones for personal calls ~~are~~ is necessary. Employees may use City telephones or mobile/cellular phones for personal calls when necessary, understanding that such use is a privilege and should not be abused. Personal outgoing as well as incoming calls should be kept to a minimum. Employees are expected to make personal calls on non-work time when possible and to ensure that friends and family members are aware of the City's policies and rules.

c. Personal toll calls may not be charged to the City. Any personal toll calls are to be placed on the employee's personal calling card. Any unauthorized personal toll calls made by an employee are to be reimbursed to the City. Any unauthorized personal toll calls

made by an employee and not reported to the City and reimbursed may result in discipline, up to and including termination.

d. As provided in the City's Policy on Technology Use and Security (Appendix A), employees should understand that they have no expectation of privacy when using a City-issued telephone, or cellular or mobile phone, and the City has the right to review all records related to telephones, mobile phones and cellular phones, including but not limited to, phone logs, text message and internet usage logs. Users should also be aware that all telephone and mobile/cellular phone records related to the conduct of the public's business are subject to disclosure under the Public Records Act and/or other applicable provisions of state or federal law except to the extent exempt thereby.

## 2. Personal Mobile/Cellular Phones.

a. During paid work time, employees are expected to exercise the same discretion in using personal mobile/cellular phones or other wireless devices as is required for use of any City telephone or technology resource. Personal mobile/cellular phones or other cellular/wireless devices, including but not limited to tablets, shall not be used at any work site where the operation of the phone or device may interfere with the City's services, programs, activities or other equipment, or where such phone or device may be a distraction to the public or other employees.

b. Employees are expected to make personal calls on non-work time when possible and to ensure that friends and family members are aware of the City's policies and rules.

c. Employees accessing, using or transmitting data related to the conduct of the public's business on their personal devices at any time have no expectation of privacy. Work-related communication should not be conducted on personal devices. Any work-related communication or any other matters relating to the conduct of the public's business which are conducted on personal devices are subject to disclosure under the Public Records Act and other applicable provisions of federal or state law except to the extent exempt thereby.

d. In order to ensure a productive work day and to ensure compliance with these Rules, the following use of personal cellular/mobile phones and wireless devices are prohibited during working hours:

(1) Accessing the internet for personal business, personal activities or hobbies, outside business or other non-work related purposes;

(2) Playing games;

(3) Watching movies, television, sports, and similar activities;  
and

(4) Engaging in any activity that violates any City policy or federal and state law, including but expressly not limited to, accessing and/or distributing pornographic or harassing material, photos, images or videos.

## ~~G.H.~~ PERSONAL CONDUCT

1. In order to safeguard the best interests of employees, the City, and the public, all employees are expected to comply with standards of conduct on the job at least equivalent to those all citizens must meet in ~~private~~ ~~personal~~ life outside of work.

2. In performing their work, employees come into contact with the public, where the quality of City service is judged by the appearance and behavior of its employees and where good manners and service are expected. A friendly attitude is important even in the face of discourtesy or hostility, and will perpetuate and improve the good relationship that exists between the City and its customers. If any employee feels he or she is being harassed or threatened by a member of the public and is therefore unable to remain courteous, or otherwise feels that he or she is in danger, the employee should remove himself or herself immediately from the interaction and inform a supervisor, Department Head, Personnel Director, or human resources manager.

## ~~H.I.~~ EMPLOYEE DRESS CODE

Employees of the City are required to dress appropriately for the jobs they are performing. Therefore, the dress regulations contained in this Section shall be followed.

1. All clothing must be neat, clean and in good repair. Uniforms shall be neat, clean and in good condition at the start of the work shift. Uniforms shall not be altered inappropriately and shall be worn as they are designed to be worn.

2. Prescribed uniforms and safety equipment must be worn when at work. Uniforms shall not be worn when off duty, except for traveling to and from work. It is recognized that employees may have to make brief stops on the way to and from work to take care of personal business; however, while an employee is off work, uniforms shall not be worn in businesses or locations which would create a negative impression, such as bars or nightclubs.

3. Footwear must be appropriate for the work environment and functions being performed.

4. Hair must be neat, clean and well groomed.

5. Beards, mustaches and sideburns must be maintained in a neat and well-groomed fashion.

6. Jewelry is acceptable except in areas where it constitutes a health or safety hazard.

7. Good personal hygiene is required.

8. Dress must be appropriate to the work setting, particularly if the employee has contact with the public. Employees shall maintain a professional appearance at all times.

9. The City Manager may implement this Rule, and may supplement this Rule by administrative action.

10. Violation of the Dress Code Policy may be grounds for disciplinary action up to and including discharge from employment.

11. If an employee feels that any provisions of the Dress Code Policy or application thereof is inconsistent with his/her religious belief or any other status protected by law, he or she should immediately notify a supervisor or human resources manager. Exceptions will be made to the Dress Code Policy based on protected status and as required by state or federal law.

#### ~~I.~~J. RECORDS: RESTRICTION FOR OFFICIAL USE AND CONFIDENTIALITY

1. Records received, transmitted and/or prepared by any City employee in the course and scope of his/her official duties shall be used only for official City purposes and shall not be shared with any person outside the City except as authorized by the City Council, City Manager or designee, City Attorney, or Personnel Director, or as otherwise authorized by law.

a. In the course of conducting City business and activities, the City may create, receive or maintain confidential data, information and documents. All City employees ~~are expected to~~ shall maintain the confidentiality of data, information and documents considered by the City to be confidential, and in whatever form such data, information or documents may exist, including, but not limited to, personal information about other employees of the City such as personnel evaluations, home addresses and telephone numbers; customer information and billing records; information which is the subject of a City investigation; health or medical information, passwords, user ids, and security codes; and any data, information or documents which the City Council, City Manager, City Attorney, Finance Officer or Personnel Director has designated as confidential, or which are confidential pursuant to federal or state law. Confidential data, information and documents shall be disclosed only to, and accessed by, those persons authorized by the City Council, City Manager, City Attorney, Finance Director or Personnel Director or applicable law to receive, access or possess such confidential information or document.

b. ~~However, and not by way of limitation,~~ Notwithstanding the foregoing, any data, document, record or information maintained by the City and required by federal or state law to be made available to the public is subject to disclosure upon receipt of an appropriate request by a member of the public pursuant to the California Public Records Act (Cal. Gov. Code § 6250 et seq.) or court order.

#### ~~J.~~K. CITY PROPERTY

1. Any employee in possession of keys, user IDs, passwords and ~~or~~ security codes to access or enter into any kind of City property, including but expressly not limited to equipment, buildings, structures and other premises shall maintain their confidentiality and shall not permit them to be used by unauthorized persons or duplicated, and said keys, user IDs, passwords and security codes shall be turned in to the City upon request or upon separation from employment.

2. Every City position requires the use of City supplies, materials, tools and equipment. It is each employee's responsibility to maintain City property in the best possible condition, make the most economical use of supplies, and to see that all supplies, materials, tools, equipment, and unused materials are returned to the City after use. City supplies, materials tools



and equipment ~~may~~ shall be used only in the performance of an employee's duties, and shall not be used for personal purposes or personal gain, or other non-City business or activities.

3. No employee shall place a lock, password, or other security device or code on any City equipment, furniture, room, building, structure, or property of any kind without approval from the Administrative Services Manager; and only City-issued locks, codes or security devices shall be used.

4. The provisions of this Section shall also apply to all City Technology Resources, as defined in the City of Highland Policy on Technology Use and Security (Appendix A). (See also Section F of this Rule.)

~~K. RULES ARE NOT A CONTRACT~~

~~These Rules are not intended to and do not create any contract of employment, express or implied, or any rights in the nature of a contract.~~

#### IV. CLASSIFICATION

##### A. PREPARATION OF CLASSIFICATION PLAN

The Personnel Director, or a person or agency employed for that purpose, shall ascertain and record the duties and responsibilities of all positions in the competitive service, and shall recommend a classification plan for such positions. The classification plan shall consist of classes of positions in the competitive service defined by class specifications, including the title. The classification plan shall be so developed and maintained that all positions substantially similar with respect to duties, responsibilities, authority, and character of work are included within the same class, and that the same schedules of compensation may be made to apply with equity under similar working conditions to all positions in the same class. Management and other excluded positions may be included in the Classification Plan for information only, but are not and shall not become part of the competitive service.

##### B. ADOPTION, AMENDMENT AND REVISION OF PLAN

The classification plan shall be adopted by the City Council and may be amended from time to time. During the process of consideration, any recognized employee organization affected shall be advised. Amendments and revisions of the classification plan may be suggested by any interested party, including any recognized employee organization, and shall be submitted to the City Manager for consideration by the City Council.

##### C. ALLOCATION OF POSITIONS

Following the adoption of the classification plan and consultation with any recognized employee organization affected, the Personnel Director shall allocate every position in the competitive service to one of the classes established by the plan.

#### D. NEW POSITIONS

A new position shall not be created and filled until the classification plan has been amended to provide therefore and an appropriate employment list established for such position.

#### E. RECLASSIFICATION

1, Positions, the assigned duties of which have been materially changed by the City so as to necessitate reclassification, whether new or already created, may be allocated by the City Council to a more appropriate class. Reclassifications shall not be used for the purpose of avoiding restrictions concerning demotions and promotions, ~~nor~~ or to effect a change in salary in the absence of a significant change in assigned duties and responsibilities.

2, Status of Employee Whose Position is Reclassified. If an occupied position is reclassified, the incumbent shall be affected as follows, except that if a probationary employee occupies the position, the employee must serve a probationary period in the new classification to attain regular status:

a. To a Lower Classification. When a position is reallocated to a lower classification, the incumbent shall:

(1) Be eligible to transfer to a position in the same classification;

(2) Be granted regular status in the lower classification; and

(3) Not incur a salary reduction. If the salary is greater than the "G" step of the lower classification, the employee's salary will be Y-Rated.

b. To a Different Classification with the Same Salary Range. When a position is reclassified to a classification with the same salary range, the incumbent shall be paid the same salary but shall serve a probationary period.

c. To a Higher Classification. When a position has been reclassified to a higher classification, status should be granted in a higher classification, without examination, but with a probationary period.

d. Failure to Achieve the Higher Classification. If the employee fails the probationary period, the employee shall be returned to either his/her regular status of the position in the former classification or to a vacant position in a comparable classification. The employee is subject to layoff if no lower position is available.

#### F. USE OF CLASS SPECIFICATIONS.

Specifications are to be interpreted in their entirety and in relation to others in the classification plan. Particular phrases or examples are not to be isolated and treated as a full definition of the class. Specifications are deemed to be descriptive and explanatory of the kind of work performed and not necessarily inclusive of all duties performed.

## V. RECRUITMENT, SELECTION AND APPOINTMENT

### A. FAIR EMPLOYMENT PRACTICES

The City is committed to providing equal employment opportunities for all individuals for all City positions, regardless of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status or any other basis protected by law. Any technique or procedure used in recruitment and selection of employees shall be designed to measure only the job-related qualifications of applicants. No recruitment or selection technique shall be used which, in the opinion of the Personnel Director, is not justifiably linked to job qualifications and successful job performance.

### B. ANNOUNCEMENT

All examinations for classes in the competitive service shall be publicized by such methods as the City Manager deems appropriate. Special recruiting shall be conducted, if necessary, to ensure that all segments of the community are aware of the forthcoming examinations. The announcements shall specify the title and pay of the class for which the examination is announced; the nature of the work to be performed; preparation desirable for the performance of the work of the class; the manner of making application; and other pertinent information.

### ~~B.C.~~ APPLICATION FORMS

Applications shall be made as prescribed on the examination announcement. Application forms shall require information covering training, experience, and other pertinent information, and may include certificates of one or more examining physicians, references and fingerprints. All applications must be signed by the person applying.

### D. ACCEPTANCE OF APPLICATIONS.

Applications to take examinations must be filed on City application forms or as specified in the job announcement. Completed applications must be timely filed. Any qualified person may be admitted to an examination who, within the period prescribed in the public notice, has filed an application furnished by the Human Resources Department, and whose application has not been rejected for cause in accordance with these Rules, and who presents him/herself at the time and place designated for the examination.

### E. CANCELLATION/EXTENSIONS.

Examinations may be canceled or filing periods extended by the Personnel Director for good cause.

### F. APPLICANT QUALIFICATIONS.

Applicants for examinations must meet the qualification standards for the classification by the date set forth in the announcement, including all licenses or certification

requirements. Applicants may be required to provide proof of their education, training and experience.

#### G. PROOF OF RIGHT TO WORK.

In compliance with laws and regulations of the United States Department of Justice and the Immigration and Naturalization Service, the City requires that each person hired by the City complete Section I of the Employment Eligibility Verification Form I-9 to verify that the person is eligible for employment in the United States. Documentation must be produced within three (3) business days of hire or on the first day of any employment that is less than three (3) business days. Required documentation must be presented to the Personnel Director.

#### H. REFERENCE/BACKGROUND INVESTIGATION

The City verifies educational background and prior employment, and conducts reference checks on applicants for employment. Applicants may also be subject to a background check as permitted by law, which may include, but is not limited to, a credit review (if applicable to the position for which they applied), personal history, education, professional credential, military record, Department of Motor Vehicle record and criminal history. Criminal history background investigations will be subject to Rule V.K., below. An employee under consideration for promotion may also be subject to a background check. A written authorization will be obtained before a background check is conducted. Final offers of employment or promotion may be delayed until the City has completed the reference check and background investigation process.

#### ~~E~~.I. DISQUALIFICATION

1. The Personnel Director may reject an application, or after examination, may disqualify or remove an applicant's name from an eligible list for good cause. Good cause includes, but is not limited to, any employee who:

~~1~~.a. Has made false statements of any material fact, or practiced any deception or fraud on the application, declarations or in securing eligibility or appointment;

~~2~~.b. Is found to lack any of the requirements, certifications, or qualifications for the position involved;

~~3~~.c. Is physically or mentally unable to perform the essential functions of the job, with or without reasonable accommodation;

4.d. Is a current user of illegal drugs;

~~5~~.e. Is a relative of an employee, and is subject to the Nepotism Policy in Section III.D of these Rules.

~~6~~.f. Used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment;



~~7.g.~~ Directly or indirectly obtained confidential information regarding examinations;

~~8.h.~~ Failed to cooperate in the selection process, ~~;- failure~~ including, but not limited to, failed to attend any scheduled appointment, without cause;

~~9.i.~~ Failed to complete and /or submit the employment application correctly or within the prescribed time limits;

~~10.j.~~ Has had ~~his or~~ his/her privilege to operate a motor vehicle in the State of California suspended or revoked, if driving is job related; ~~or~~

~~11.k.~~ Indicates, on the face of ~~his or~~ his/her application, that the applicant does not possess the minimum qualifications required for the position; ~~or~~

1. Conviction of a felony or misdemeanor, except for misdemeanor marijuana convictions that are over two years old, or convictions that have been judicially sealed, eradicated or expunged, based on the City's determination carried out in accordance with Section K, below. ;l. Is not lawfully authorized to work in the United States; or

~~13. m.~~ For any material cause which in the judgment of the Personnel Director would render the applicant unsuitable for the position, including a prior resignation from the City, termination from the City, or a significant disciplinary action.

2. If the application is rejected for any of the above reasons, the applicant may appeal the rejection to the Personnel Director within ten (10) working days of notice. The City Manager shall review the appeal and affirm the rejection or reinstate the applicant. The City Manager's decision shall be made in writing and is final.

#### ~~D.J.~~ NOTICE OF DISQUALIFICATION/REJECTION

Whenever an application is rejected, notice of such rejection shall be mailed to the applicant by the Personnel Director. Defective applications may, in the discretion of the Personnel Director, be returned to the applicant with notice to amend and re-file, provided that the time limit for receiving applications has not expired. Whenever an application is rejected, notice of such rejection shall be mailed to the applicant by the Personnel Director.

#### ~~E.K.~~ CRIMINAL HISTORY - INELIGIBILITY FOR EMPLOYMENT

1. The City will conduct criminal history background investigations for job applicants for employment and applicants seeking promotion or transfer from their current City position in accordance with these provisions and applicable federal and state laws. Except as otherwise provided in Subsection (5), below, the City will not ask any such applicant to disclose, orally or in writing, information concerning his/her criminal history until after (a) the City has determined the applicant meets the minimum qualifications for the position, as stated in any notice issued for the position; and (b) the City has made a conditional offer of employment to the applicant, or has made a conditional offer of a promotion or transfer to the employee. If a criminal

history background investigation is required, the final decision will not be made until completion of the investigation in accordance with this Section.

2. As used in these Rules, "conviction" includes a plea, verdict, or finding of guilt, regardless of whether a sentence is imposed by the court. "Conviction" does not include, and shall not be construed to include, any adjudication by a juvenile court or any other court order or action taken with respect to a person who is under the process and jurisdiction of the juvenile court.

3. Job Applicants (New Employees). As a condition of being offered employment, all applicants must undergo and pass a criminal history background investigation in accordance with applicable law and the procedures set forth in this Section.. Following a conditional offer of employment, an applicant shall be disqualified from consideration for the position and the conditional offer of employment will be withdrawn if the applicant has been convicted of a felony or misdemeanor, except for misdemeanor marijuana convictions that are over two years old, or convictions that have been judicially sealed, eradicated or expunged, if the City finds that (a) state or federal law prohibits the City from employing the applicant in that position as a result of a conviction; or (b) the City determines that the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. This determination will be made in accordance with subsection (6) of this Section.

~~Conviction of, including pleas of guilty and nolo contendere to, a felony shall be prima facie disqualification of an applicant for employment; provided, however, that the Appointing Authority may disregard such conviction if it is found and determined by such Appointing Authority that mitigating circumstances exist. In making such determination, the Appointing Authority shall consider the following factors:~~

~~1. The classification, including sensitivity, to which the person is applying or being certified and whether the classification is unrelated to the conviction;~~

~~2. The nature and seriousness of the offense;~~

~~3. The circumstances surrounding the conviction;~~

~~4. The length of time elapsed since the conviction;~~

~~5. The age of the person at the time of conviction;~~

~~6. The presence or absence of rehabilitation or efforts at rehabilitation;~~

~~7. Contributing social or environmental conditions;~~

4 Applicants for Promotion or Transfer (Current Employees). Current employees seeking transfer or promotion to other City positions may also be required to undergo a criminal history background investigation as a condition of being offered a promotion or transfer. The determination whether to require a criminal history background investigation shall be made by the Personnel Director prior to commencement of the recruitment for or solicitation of any

current City employees for the promotion or transfer, and shall be based on the job duties and qualifications of the promotional or transfer position. Following a conditional offer of promotion or transfer, an applicant shall be disqualified from consideration for the promotional or transfer position and the conditional offer of promotion or transfer will be withdrawn if the applicant has been convicted of a felony or misdemeanor, except for misdemeanor marijuana convictions that are over two years old, or convictions that have been judicially sealed, eradicated or expunged, based on a consideration of the factors set forth in subsection (6) of this Section.

5. Exceptions. The prohibition against the City inquiring about or using any criminal history before a conditional offer of employment, promotion or transfer has been made does not apply in the following circumstances:

a. If the position is one for which the City is otherwise required by law to conduct a conviction history background check; or

b. If the position is with a criminal justice agency, as defined in Penal Code Section 13101;; or

c. If the position is one that the City or a City agent is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history. Federal law, for purposes of this provision, includes rules or regulations promulgated by a self-regulatory organization as defined in Section 3(a)(26) of the Security Exchange Act of 1934, 15 U.S.C. § 78c(a)(26).

6. Denial of Employment Position or Promotion/Transfer.

a. Individualized Assessment. Upon completion of the criminal history background investigation, if the City intends to deny an applicant for employment or deny a current employee a promotion/transfer that he/she was conditionally offered based solely or in part on the applicant's conviction history, the City will first make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position or promotion/transfer. In considering whether the conviction history has a direct and adverse relationship that justifies the decision of denial or disqualification, the City must determine whether the criminal conviction consideration policy or practice bears a demonstrable relationship to successful performance on the job and in the workplace and measures the applicant's fitness for the specific position(s). The individualized assessment shall include, at a minimum, consideration of the following factors:

(1) The nature and gravity of the offense or conduct;

(2) The time that has passed since the offense or conduct and/or completion of the sentence; and

(3) The nature of the job held or sought.; and

(4) Whether any applicable federal or state statute prohibits hiring the applicant in the position based on his/her prior conviction(s).

b. Preliminary Determination. If, after conducting an individualized assessment, the Personnel Director makes a preliminary decision that the applicant's conviction history disqualifies the applicant from the employment or position conditionally offered, the Personnel Director shall notify the applicant of the preliminary decision in writing. The written notice to the applicant may, but is not required to, justify or explain the Personnel Director's reasoning for making the preliminary decision. The notice to the applicant must include all of the following:

(1) Notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer;

(2) A copy of the conviction history report utilized or relied on by the City, if any (such reports include, but are not limited to: consumer reports, credit reports, public records, results of internet searches, news articles, or any other writing containing information related to the conviction history that was utilized or relied upon by the City); and

(3) An explanation of the applicant's right to respond to the notice before the preliminary decision rescinding the offer of employment becomes final and the deadline by which to respond (which can be no less than five business days from the date of receipt of the notice). If notice is transmitted through a format that does not provide a confirmation of receipt, such as a written notice mailed by the City without tracking delivery enabled, the notice shall be deemed received five calendar days after the mailing is deposited for delivery for California addresses, ten calendar days after the mailing for addresses outside of California, and twenty calendar days after mailing for addresses outside of the United States.

(a) The explanation shall inform the applicant that the response may include submission of evidence challenging the accuracy of the conviction history report that is the basis for rescinding the offer, evidence of rehabilitation or mitigating circumstances, or both. The types of evidence that may demonstrate rehabilitation or mitigating circumstances may include, but are not limited to: the length and consistency of employment history before and after the offense or conduct; the facts or circumstances surrounding the offense or conduct; whether the individual is bonded under a federal, state, or local bonding program; successful completion, or compliance with the terms and conditions, of probation or parole; and rehabilitation efforts such as education or training.

(b) If, within five business days of receipt of the notice (or any later deadline set by the City), the applicant notifies the Personnel Director in writing that the applicant disputes the accuracy of the conviction history being relied upon and that the applicant is taking specific steps to obtain evidence supporting the applicant's assertion, then the applicant shall be permitted no less than five additional business days to respond to the notice before the Personnel Director's decision to rescind the employment offer becomes final.

c. Personnel Director's Final Decision on Denial or Disqualification. The Personnel Director shall consider any information submitted by the applicant before making a final decision regarding whether to rescind the conditional offer of employment or promotion/transfer. If the Personnel Director makes a final decision to rescind the conditional



offer and deny an application based solely or in part on the applicant's conviction history, the Personnel Director shall notify the applicant in a writing that includes the following:

(1) The Personnel Director's final denial or disqualification decision reached. The Personnel Director may also include, but is not required to include, the justification or an explanation of the City's reasoning for his/her decision;

(2) The right of the applicant or employee to appeal the Personnel Director's decision under Subsection (7) of this Section; and

(3) The right of the applicant or employee to contest the decision by filing a complaint with the Department of Fair Employment and Housing.

7. Appeals. An applicant who is disqualified for employment or disqualified from a promotion or transfer under this Section may appeal the Personnel Director's determination of disqualification. Such appeal shall be in writing and filed with the City Manager within ten (10) days of the date of the notice of disqualification. The City Manager shall hear and determine the appeal within ten (10) working days after all information relevant to the appeal has been received. The City Manager's decision shall be issued in writing, and shall include the information required by Section K.6.c. The determination of the City Manager on the appeal is final.

## VI. EXAMINATIONS

### A. EXAMINATION PROCESS

The selection techniques used in the examination process shall be ~~impartial and relate to those subjects which, in the opinion of the Personnel Director, fairly measure the relative capacities of the persons examined to execute the duties and responsibilities of the class of which they seek to be appointed.~~ Examinations ~~job-related and may include shall consist of selection techniques which will test fairly the qualifications of candidates such as,~~ but are not necessarily limited to, achievement and aptitude tests, other written tests, personal interview, performance tests, physical agility tests, evaluation of daily work performance, work samples, medical tests, psychological tests, successful completion of prescribed training, or any combination of these or other tests. The probationary period shall be considered as a portion of the examination process. Examinations shall be designed to provide equal opportunity to all candidates by being based on an analysis of the essential requirements of the class and position, covering only factors related to such requirements.

### B. ANNOUNCEMENT OF EXAMINATION

1. Whenever an open competitive examination is to be given for a position, the Personnel Director shall, at least one hundred twenty (120) calendar days prior to the final filing date, publish an appropriate advertisement regarding the position in one or more newspapers of general circulation, at least one of which shall have substantial regional circulation. Announcements of all open and promotional openings shall also be posted on bulletin boards in City facilities for employees' review. The Personnel Director may also undertake whatever other recruiting activities he or she feels are necessary or desirable to fill a particular position in a way which meets the City's goal of obtaining the most qualified employees.

2. The Announcement shall include:
  - a. Title and pay for the position;
  - b. The nature of the work to be performed;
  - c. The minimum qualifications;
  - d. The time and place of examination, if known;
  - e. The method of applying;
  - f. The closing date for application, if one is established;
  - g. Whether a medical and/or psychological examination, including a drug screen, will be required as a condition of employment;
  - h. Such other information as desirable in the discretion of the Personnel Director.

#### C. PROMOTIONAL EXAMINATIONS

Promotional examinations may be conducted whenever, in the opinion of the Personnel Director, the needs of the service require. Promotional examinations may include any of the selection techniques mentioned in Section V.A of this Rule, or any combination of them. Only regular or probationary employees who meet the requirements set forth in the promotional examination announcements may compete in promotional examinations.

#### D. CONTINUOUS EXAMINATION

Open-competitive examinations may be administered periodically for a single class as the needs of the service require. Names shall be placed on employment lists, and shall remain on such lists, as prescribed in Rule VI.

#### E. CONDUCT OF EXAMINATION

The City Council may contract with any competent agency or individual for the preparing and/or administering of examinations. In the absence of such a contract, the Personnel Director shall see that such duties are performed. The Personnel Director shall arrange for the use of public buildings and equipment for the conduct of examinations and will provide reasonable accommodations in the examination process for individuals with disabilities upon request in accordance with the Americans With Disabilities Act pursuant to Section H.

#### F. QUALIFYING GRADE OR RATING.

In all examinations, the minimum grade or standing for which eligibility may be earned shall be based upon all competitive factors of the examination. Failure to earn a qualifying score in one (1) part of the examination may be grounds for declaring the applicant as failing in the entire examination or as not qualified to compete in subsequent parts of an examination.

## **F.G. NOTIFICATION OF EXAMINATION RESULTS AND REVIEW OF PAPERS**

Each candidate in an examination shall be given notice of the results thereof, and if successful, of the his/her final earned score and/or rank on the employment list.

## **G.H. INSPECTION OF TEST ANSWER SHEETS**

All candidates shall have the right to inspect their own test answer sheet during normal business hours within five (5) working days after the notification of examination results. Any error in computation, if called to the attention of the Personnel Director within this period, shall be corrected, and the final score shall be adjusted accordingly. Such corrections shall not, however, invalidate appointments previously made. Examination papers of applicants are not subject to inspection by the public or by other applicants.

## **I. REASONABLE ACCOMMODATION**

Applicants for employment in any position in the City who desire reasonable accommodation as a result of a physical or mental disability or medical condition in order to participate in the examination may submit a request for accommodation to the Personnel Director. The request must identify: (a) the date, time and location of the examination at issue; and (b) the desired accommodation(s). Following receipt of the request, the City may require additional information, such as reasonable documentation of the existence of a disability and/or need for accommodation. After receipt of reasonable documentation of disability, the City may arrange for a discussion, in person or via telephone conference call, with the employee, and his/her representative(s), if any. The purpose of the discussion is to work in good faith to fully discuss all feasible and potential reasonable accommodations. 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 accommodation(s) that would impose an undue hardship upon City 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 prior to the date or deadline of the examination.

## **VII. EMPLOYMENT LISTS**

### **A. EMPLOYMENT LISTS**

As soon as possible after the completion of an open or promotional examination, the Personnel Director shall prepare and maintain an employment list consisting of the names of candidates who qualified in the examination. Notwithstanding any other provision of these Rules, if there are less than three (3) names on an eligible list, the Personnel Director or designee may disregard the list and fill the position(s) by any method permitted by these Personnel Rules, including, but not limited to, undertaking new recruiting and testing procedures. Eligible lists shall become effective upon the certification by the Personnel Director.

### **B. DURATION OF LISTS**

Employment lists other than those resulting from a continuous examination shall remain in effect until exhausted or abolished by the Personnel Director. Open-competitive lists

created as a result of continuous examinations shall remain in effect for not more than one (1) year after the last administration of the examination, unless sooner exhausted or abolished. Names placed on such lists may be merged with any others already on the list.

### C. REMOVAL OF NAMES FROM ELIGIBLE LIST

1. Grounds for removal. The Personnel Director shall remove the name of any person appearing on an eligible employment, re-employment or promotional list for any of the following reasons:

a. Upon written notice from an eligible declining appointment or shall be removed by the Personnel Director if the eligible requests in writing that the his/her name be removed;

b. ~~or if~~ If the eligible fails to respond to a notice of certification mailed to the his/her last designated address;

c. If the Personnel Director determines that the results of the criminal history background investigation require the applicant's disqualification, or the results of the overall background investigation are otherwise unsatisfactory;

d. Failure to properly complete, sign or timely file the required application form and all supplemental forms and materials, if any;

e. Fraudulent conduct or false statements by the applicant or others with the applicant's knowledge on any application or any phase of the selection process, including affirmative misstatements, misrepresentations, and/or failure to disclose or withholding of material information relevant to the City's evaluation and determination of the application;

f. Failure to meet any of the minimum requirements or qualifications of the position;

g. Failure to cooperate in the selection process;

h. Failure to attend any appointment; or

i. If employment would not be in the best interests of the City.

#### 2. Procedures.

a. The person affected shall be notified of the removal of his/her name by a notice mailed to the his/her last known address. The names of persons on promotional employment lists who resign from the service shall automatically be dropped from such lists. It shall be the responsibility of the eligible to keep the Personnel Director informed of their current addresses and telephone numbers.

b. If less than three (3) eligible persons remain on the open competitive or promotional eligible list, the Personnel Director may cancel the list and establish a new one.



## VIII. METHOD OF FILLING VACANCIES

### A. TYPES OF APPOINTMENT

All vacancies in the competitive service shall be filled by transfer, demotion, re-employment, reinstatement, or from those eligible persons (or "eligibles") certified by the Personnel Director from an appropriate employment list, if available. In the absence of persons eligible for appointment as set forth herein, provisional appointments may be made in accordance with these Personnel Rules. The Personnel Director shall decide in what manner the vacancy is to be filled.

### B. NOTICE ~~OF~~ TO PERSONNEL DIRECTOR

If a vacancy in the competitive service is to be filled, the Appointing Authority shall notify the Personnel Director in the manner prescribed. If there is no re-employment list available for the class, the Appointing Authority shall have the right to decide whether to fill the vacancy by reinstatement, transfer, demotion, appointment from a promotional employment list, or appointment from an open employment list.

### C. CERTIFICATION OF ELIGIBLES

1. If the Appointing Authority does not consider it in the City's best interest to fill the vacancy by reinstatement, transfer, or demotion, or if it is not possible to fill the vacancy by re-employment, certification shall be made from an appropriate employment list, provided eligibles are available.

2. When the Appointing Authority requests a vacancy be filled by appointment from a promotional employment list or from an open employment list, the Personnel Director should certify from the specific list the names of all individuals willing to accept appointment. Whenever there are fewer than three (3) names of individuals willing to accept appointment on a promotional employment list or on an open employment list, the Appointing Authority may make an appointment from among such eligibles or may request the Personnel Director to establish a new list. When so requested, the Personnel Director shall hold a new examination and establish a new employment list.

### D. APPOINTMENT

After interview and investigation, the Appointing Authority shall make appointments from among those certified as eligible, and shall immediately notify the Personnel Director of the persons appointed. The person accepting appointment shall report to the Personnel Director, or the Personnel Director's designated representative, for processing on or before the date of appointment. If the applicant accepts the appointment and reports for duty within such period of time as the Appointing Authority shall prescribe, the applicant shall be deemed to be appointed; otherwise, the applicant shall be deemed to have declined the appointment.

### E. FITNESS-FOR-DUTY ~~PHYSICAL~~ EXAMINATIONS AND DRUG TESTING

~~Candidates for initial employment must successfully pass a physical examination to determine minimum qualifications for positions. Promoted employees may be required to pass a physical examination to determine minimum qualifications for positions. The physical examination of candidates for initial employment shall include a pre-employment drug and alcohol test prescribed by the City.~~

1. For certain positions, in order to be eligible for employment or re-employment with the City applicants who have been granted a conditional offer of employment shall be required to pass a fitness-for-duty examination and drug testing consistent with applicable state and federal laws. For certain positions, employees who have been extended a conditional offer of a promotion or transfer may be required to undergo and pass a pre-employment fitness-for-duty examination and drug testing for the promotional or transfer position consistent with applicable state and federal laws, prior to receiving a final offer of promotion or transfer. The fitness-for-duty examination required of certain applicants for initial employment in safety-sensitive positions shall include a pre-employment drug and alcohol test prescribed by the City.

2. All fitness-for-duty examinations for applicants for initial positions, and current employees for promotional or transfer positions, including the timing of such fitness-for-duty examinations, will be conducted in compliance with the Americans With Disabilities Act and the disability rights provisions of the California Fair Employment and Housing Act. Fitness-for-duty examinations or inquiries are limited to those that are job-related and consistent with business necessity and where all entering employees in the same job classification are subject to the same examination or inquiry. A physician or medical facility selected and paid for by the City shall perform the examination.

3. This section does not apply to routine return to work slips and medical releases provided by an employee's doctor or to medical certification an employee is required to provide in connection with a leave, accommodation or similar request.

4. All fitness-for-duty examinations shall be job-related and necessary for the efficient operations of the City. The fitness for duty examination of a job applicant or an existing employee seeking a promotion will occur only after a conditional offer of employment or promotion is made and when required of all applicants for the job classification. Pre-employment tests for illegal drugs and alcohol may be administered in conjunction with a medical examination for new hires and re-hires as part of the recruitment process set forth in Rule V, above.

#### F. PROVISIONAL APPOINTMENT

1. In the absence of individuals willing to accept appointment from appropriate employment lists, a provisional appointment may be made by the Appointing Authority of a person meeting the minimum training and experience qualifications for the positions. Such an appointment may be made during the period of suspension, demotion or discharge of an employee, and such vacancy may be filled by the Appointing Authority subject to the provisions of this ordinance and the personnel rules. A provisional employee may be removed at any time without the right of appeal or hearing. No provisional appointment shall exceed six (6) months. Employees appointed on a provisional basis shall not be entitled to a preference in hiring or a right to a regular position.

2. A provisional appointee shall accrue the same benefits as probationary employees. If a provisional appointee is selected for a full-time position with the city, the time served as a provisional appointment shall be counted as time toward the fulfillment of the required probationary period.

3. No special credit shall be allowed in meeting any qualifications or in the giving of any test or the establishment of any open-competitive promotional lists, for service rendered under a provisional appointment.

## IX. PROBATIONARY PERIOD

### A. REGULAR APPOINTMENT FOLLOWING PROBATIONARY PERIOD

1. **Term of Probationary Period; Extensions.** All original and promotional appointments in the competitive service shall be tentative and subject to a probationary period of not less than twelve (12) months actual service to be determined for each class by the Personnel Director. The Appointing Authority may extend such probationary period up to six (6) additional months. Periods of time on paid or unpaid leave exceeding five (5) days (consecutive or not) shall automatically extend the probationary period by that number of days the employee is on leave. If the probationary period is interrupted by military leave ~~for a period which extends beyond half of the probationary period~~, then the employee shall ~~serve a new~~ be required to complete his/her probationary period upon ~~return~~ reemployment in his/her position following return from his/her military leave. Time spent on military leave shall not count toward completion of an employee's probationary period, and an employee's probationary period shall be extended by the length of the military leave.

### 2. **At-Will Status of Probationary Employee; Rejection.**

a. In accordance with the Personnel Ordinance and these Rules, during the probationary period all new hires and re-hires in positions in the competitive service shall be at-will employees who serve at the pleasure of the Appointing Authority and may be rejected at any time with or without cause and with or without any pre- or post-disciplinary due process or right of evidentiary appeal, review or grievance.

b. During the promotional probationary period, all promotional employees in the competitive service shall be at-will employees as to the promotional appointment, who serve at the pleasure of the Appointing Authority and may be rejected from their probationary promotional appointment at any time with or without cause and without any pre- or post-disciplinary due process or right of evidentiary appeal, review, or grievance.

c. Rejection of probationary employees following military leave is governed by the City's military leave policy (Rule XVI and Appendix B to these Rules), and applicable provisions of federal and state law governing military leave.

3. **Procedures.** Subject to Section D of this Rule, whenever possible the ~~The~~ Personnel Director shall notify the Appointing Authority and the probationer concerned two (2) weeks prior to the termination of any probationary period. If the service of the probationary employee has been satisfactory to the Appointing Authority, then the Appointing Authority shall

file with the Personnel Director a statement in writing to such effect and stating that the retention of such employee in the service is desired. If such a statement is not filed, the employee will be deemed to be unsatisfactory and his his/her employment terminated at the expiration of the probationary period based on rejection during his/her probationary period pursuant to Section D. Where a statement of satisfactory service has not been filed, notice of the termination based on rejection during his or her probationary period shall be served on the terminated employee by the Personnel Director after the expiration of the ~~selection~~ probationary period. The failure of the City to provide notice of rejection during the probationary period or terminate him/her from employment at or prior to the end of the probationary period shall not extend the employee's probationary period or change the employee's at-will status.

4. Procedures and timing for termination of a probationary employees following his/her reemployment after military leave shall also be subject to any applicable provisions of USERRA and/or state law regarding military leave. (See Rule XVI and Appendix B to these Rules.)

#### B. OBJECTIVE OF PROBATIONARY PERIOD

The probationary period shall be regarded as a part of the selection process in the competitive service and shall be utilized for closely observing the employee's work and for securing the most effective adjustment of a new employee to his position.

#### C. COMPLETION OF PROBATION

All appointments in the competitive service shall be at-will and tentative pending successful completion of the probationary period. Probation will not be completed unless or until the employee receives written notice of retention or rejection in accordance with these Rules. The Appointing Authority may retain or reject a probationary employee and issue the appropriate notice. The Appointing Authority may retroactively confirm the retention of any employee and the successful completion of probation where the probation period was extended or was ended by rejection because the employee did not receive written notice of retention or rejection.

#### D. REJECTION OF PROBATIONER

Notwithstanding any other provision of these Rules, during ~~During~~ the probationary period, an employee in a position in the competitive service serves in an at-will status and may be rejected at any time by the Appointing Authority with or without cause and without any pre- or post-disciplinary due process or the right of evidentiary appeal, review or grievance under these Rules, including but not limited to Rule XX (Disciplinary Action) and Rule XXII (Grievance Procedure). Notification of rejection by the Appointing Authority shall be served on the probationer, and he/she shall be terminated from employment with the City. Failure of the Appointing Authority to provide notification of rejection before the end of the probationary promotional period shall not extend his/her probationary promotional period or change his/her status from a probationary promotional employee to a regular employee in the promotional position.

#### E. REJECTION FOLLOWING PROMOTION



Any employee rejected during the probationary period following a promotional appointment in the competitive service, or at the conclusion of the probationary period by reason of failure of the Appointing Authority to file a statement that the employee's services have been satisfactory, shall be reinstated to the position from which the employee was promoted if there is a vacancy in the prior position unless charges are filed and the employee is discharged for a reason that would have been sufficient cause for his/her termination from his/her former position, in the manner provided in these Rules for positions in the competitive services. If there is no vacancy in such position, the employee may be released without cause, and without any pre- or post-disciplinary due process or right of evidentiary appeal, review or grievance. Should the prior position no longer be available, the employee will be terminated from employment, but may request to be placed on a re-employment list. ~~The employee is not entitled to notice or a hearing if rejected during or at the conclusion of probation.~~

#### F. APPOINTMENT TO A DIFFERENT CLASSIFICATION DURING PROBATION

An employee is not disqualified from appointment to a different classification because he or she is presently serving a probationary period. Any such appointment must otherwise comply with these Rules. An employee who has not completed the probationary period at the time of appointment to a different classification will begin a new probationary period. If the employee was serving a new hire probationary period at the time of appointment, the new probationary period will also be a new hire probationary period. If the employee is serving a promotional probationary period at the time of appointment, the new probationary period will be a promotional probationary period. ~~If such employee is rejected during the promotional probationary period, the employee will be returned to the position that employee occupied immediately prior to the initial appointment, except that the Personnel Director may return the employee to any vacant intermediate position.~~

#### X. REGULAR EMPLOYMENT

##### A. REGULAR FULL-TIME EMPLOYMENT

Employees who have successfully completed their probationary periods and who regularly work a minimum of eighty (80) hours in a two (2) week period shall become full-time regular employees in the competitive service and shall be entitled to all the benefits provided herein.

##### B. REGULAR PART-TIME EMPLOYMENT

1. Employees employed in a position designated as a regular part-time position in the Classification Plan, who regularly work less than forty (40) hours a week but average twenty (20) hours or more a week, and who have successfully completed their probationary period shall become regular part-time regular employees and shall be entitled to regular status equal to the hours worked when compared to forty (40) hours per week. Such employees are not eligible for benefits or leave, except retirement benefits and sick leave as required by state law (see Rule XV.C and Appendix C of these Rules), and health benefits under the City of Highland Premium Only Plan. The probationary period for regular part-time employees shall be not less than twelve (12)

months of part-time service and shall be subject to all provisions of Rule IX.A through F, above. The City Manager shall designate in the Classification Plan those positions that shall constitute regular part-time positions to which this subsection B applies. An employee shall not be designated or classified as a regular part-time employee unless so designated in a personnel action form signed by the City Manager and Personnel Director.

#### C. TEMPORARY, PART-TIME, EMERGENCY AND SEASONAL EMPLOYMENT.

1. Temporary/Part-Time Employees working less than an average of twenty (20) hours per week or less than 1,000 hours per year, do not serve a probationary period, do not acquire regular status and are not entitled to benefits except to the extent such part-time employees qualify for paid sick leave as required by state law (see Rule XV.C and Appendix C of these Rules). Such employees are will employees who serve at the pleasure of the Appointing Authority and may be terminated at any time with or without cause, and without any pre- or post-disciplinary due process, or right of evidentiary hearing, review, appeal or grievance. Such employees are excluded from the competitive service.

2. Emergency and seasonal employees, regardless of the number of hours worked per week or in a fiscal year, are at-will employees, do not serve a probationary period, do not acquire regular status, and are not entitled to benefits (except to the extent that sick leave benefits may be required by applicable state law). Such employees are will employees who serve at the pleasure of the Appointing Authority, and may be terminated at any time with or without cause, without any pre- or post-disciplinary due process, or right of evidentiary appeal, review or grievance. Such employees are excluded from the competitive service.

3. No Temporary/Part-Time, Emergency, or Seasonal employee shall work more than 125 days in a fiscal year (if paid on a "per diem" basis), or more than 1,000 hours or more in any fiscal year (if paid on other than a per diem basis) except as expressly authorized by the City Manager and Personnel Director in writing.

#### XI. TEMPORARY EMPLOYMENT

Without following the Rules regarding recruitment and selection, the Appointing Authority may hire employees on a temporary basis, for a period not to exceed one hundred eighty (180) days, or for completion of a specific task or project. The period of temporary appointment may be extended by the Appointing Authority for up to an additional one hundred eighty (180) days, provided that under no circumstances shall the initial period of temporary employment, or any extended period of temporary employment, exceed a total of 124 days in a fiscal year (if paid on a per diem basis) or more than 1000 hours in any fiscal year (if paid on other than a per diem basis) except as expressly authorized by the City Manager and Personnel Director in writing. Temporary employees are at-will employees who serve at the pleasure of the Appointing Authority and may be removed at any time with or without cause, ~~notice or~~ and without any right to pre- or post-disciplinary due process, or evidentiary hearing, review or grievance ~~right of appeal~~. Temporary employees are not eligible for benefits except for paid sick leave to the extent required by state law as set forth in Rule XV.C. and Appendix C of these Rules. Such employees are excluded from the competitive service.

## XII. TRANSFER, PROMOTION, DEMOTION, SUSPENSION, RECLASSIFICATION AND REINSTATEMENT

### A. TRANSFER

1. A transfer may be voluntary, at the request of the employee, or involuntary, to promote efficiency, supervision, safety or morale of the service. A transfer is not disciplinary and does not trigger the right to disciplinary process associated therewith under Rule XX (Disciplinary Action) or the right to file a grievance under Rule XXIII for any employee. An involuntary transfer may be appealed in accordance with Section (C)(2) of this Rule.

2. No person shall be transferred to a position for which that person does not possess the minimum qualifications. Upon notice to the Personnel Director, an employee may be transferred by the Appointing Authority or designate at any time from one position to another position in a comparable class. For transfer purposes, a comparable class is one with the same maximum salary, involves the performance of similar duties and requires substantially the same basic qualifications.

3. If the transfer involves a change from one department to another, both Department Heads must consent thereto unless the City Manager orders the transfer. Transfer shall not be used to effectuate a promotion, demotion, advancement, or reduction, each of which may be accomplished only as provided in the Personnel Ordinance or these Rules.

### B. VOLUNTARY TRANSFER

A regular employee may initiate a request to transfer to another position in the same or lower classification for which the employee is qualified in the opinion of the Personnel Director, by submitting a "Request to Transfer" to the Personnel Director. The Request will be kept on file for one (1) year from the date of receipt. With the approval of the Department Head for whom the employee works and the Department Head for whom the employee wishes to work the employee will be transferred to the new position when the first vacancy becomes available. Selection for voluntary transfer is within the sole discretion of the Personnel Director following consultation with the affected Director or other Department Head, and shall not be subject to any disciplinary appeal or grievance. Employees with less than one year of service, less than satisfactory performance evaluations and a disciplinary suspension, reduction in pay or equivalent disciplinary action within the last year are not eligible for a voluntary transfer.

### C. INVOLUNTARY TRANSFER

1. Whenever possible, an a regular employee being transferred from one position to another position in the same class, or a comparable class at the same salary level, shall receive five (5) working days' notice.

2. If an a regular employee disputes the involuntary transfer, the employee may, within two (2) days of the Notice of Transfer, file a written appeal with the City Manager setting forth the reasons therefore. Any appeal filed must be based upon the alleged violation of the requirements for transfer and/or procedure followed. The City Manager's decision shall be final.

#### D. PROMOTION

1. Insofar as consistent with the best interest of the service vacancies in the competitive service shall be filled by promotion from within the competitive service, after a promotional examination has been given and a promotional list established.

2. If, in the opinion of the Personnel Director, it is in the best interest of the City service, a vacancy in the position may be filled by an open competitive examination instead of promotional examination, in which event the Personnel Director shall arrange for an open-competitive examination and for the preparation and certification of an open-competitive employment list.

#### E. DEMOTION

The Appointing Authority may demote an employee whose ability to perform the required duties falls below standard, ~~or~~ for disciplinary purposes, or in lieu of layoff. Upon request of the employee, and with the consent of the Appointing Authority, demotion may be made to a vacant position. No employee shall be demoted to a position ~~who~~ if he/she does not possess the minimum qualifications for that position. Disciplinary demotion action ~~or because the employee is no longer able to perform the required duties of his/her position~~ shall be in accordance with ~~Section XIX~~ Rule XX hereof. Demotion in lieu of layoff shall be in accordance with Rule XXI.C.

#### F. SUSPENSION

The Appointing Authority may suspend an employee from a position at any time for a disciplinary purpose. Suspension without pay shall not exceed thirty (30) calendar days, nor shall any employee be penalized by suspension for more than thirty (30) calendar days in any fiscal year. The Department Head may suspend a subordinate employee for not more than ~~three (3)~~ five (5) working days at any one time, and not more than once in a thirty (30) calendar day period. Intended suspension action shall be reported immediately to the Personnel Director and shall be taken in accordance with ~~Section XVII~~ Rule XX hereof.

#### G. REDUCTION IN PAY

Reduction in pay shall be a decrease in salary to a lower step within the employee's salary range, made by the Appointing Authority for a fixed period of time for disciplinary purposes or for budgetary reasons. Reductions in pay for disciplinary purposes ~~shall be reported to the Personnel Director and~~ shall be taken in accordance with Rule ~~XX~~ hereof for employees in the competitive service..

#### H. DISCIPLINE OF FLSA-EXEMPT EMPLOYEES

Except for a violation of a major safety rule, FLSA-exempt employees may not be subject to suspensions, temporary demotions (with a beginning and ending date), or temporary reductions in pay, other than in full work week increments. All other provisions of Rule XX shall apply to the discipline of FLSA-exempt employees who hold positions in the competitive service.

#### I. RECLASSIFICATION



Reclassification of a position generally occurs when the duties and responsibilities of the position have significantly increased over time. A reclassification generally occurs as a result of a job analysis which documents that the employee has been assigned new additional and/or higher level duties requiring higher level of knowledge, skill and ability, experience and/or education, etc.

#### ~~I.J.~~ REINSTATEMENT

With the approval of the Appointing Authority, a regular employee or probationary employee who has completed at least six (6) months of probationary service and who has resigned while in good standing may be considered for reinstatement, upon recommendation of the Department Head and approval of the Appointing Authority, to a position in the former employee's classification for a period of within two (2) years after resignation or separation. The employee shall be reinstated to the salary range and step held at the time of resignation or shall be reinstated to a vacant position in the same or comparable class, to the salary range and step held at the time of resignation or separation and shall receive a new anniversary date which shall be the first date of employment upon reinstatement. The employee will serve a new probationary period. No credit for former employment shall be granted in computing salary, vacation, sick leave, or other benefits except on the specific recommendation of the Appointing Authority at time of reinstatement.

#### ~~I.K.~~ CHANGE-OF-STATUS REPORT

Every appointment, transfer, promotion, demotion, change of salary rate, or any other temporary or permanent change in status of employees shall be reported to the Personnel Director in such manner as he may prescribe.

### XIII. COMPENSATION AND PAYROLL PRACTICES

#### A. PHILOSOPHY OF COMPENSATION

The City Council recognizes that the City competes in a market place to obtain qualified personnel to perform and provide municipal services. It further recognizes that compensation and conditions of employment must be sufficiently attractive to draw and retain qualified employees. Therefore, as part of the budgetary process, the City Council will consider the value of compensating its employees with wages and benefits competitive with the labor market and commensurate with the performance of each employee.

#### B. COMPENSATION ON APPOINTMENT

A newly hired employee shall be compensated at Step "A" of the salary range at which his class is allocated. If exceptional recruitment difficulties are encountered, or exceptional qualifications of a candidate for employment indicate that a higher hiring rate would be in the City's best interest, appointment at a higher step in the salary range may be authorized by the City Manager who will decide each case based in part on a consideration of the experience and education of affected employees and needs of the City.

#### C. MERIT SALARY ADJUSTMENTS

1. Advancement within the salary range shall not be automatic, but shall be based upon job performance and the increased service value of an employee. Salary adjustments shall be granted upon approval of the Department Head and the City Manager. Employees shall be evaluated for merit salary increases in accordance with the following:

2. New employees and employees who receive "A" step on promotion are eligible for a merit salary review for advancement to the next step in the salary range after six (6) months of service. An employee who is promoted and/or receives other than the first step of the new salary range shall be eligible for a merit salary review after twelve (12) months dating from the effective date of the promotion/appointment. Subsequent merit salary review dates shall fall upon the completion of twelve (12) month service periods dating from the effective date of the preceding merit increase.

3. The granting of an official leave of absence without pay, other than ordered military leave, shall cause the employee's merit salary review date to be extended the number of calendar days he was on leave.

4. If in the opinion of the City Manager, the application of rules governing within-range salary progression or placement of an employee within a salary range results in the employee receiving an inequitably low rate as compared to other employees or the employee deserves consideration because of continued outstanding performance, the City Manager may raise the affected employee's salary to the step within the existing range the City Manager deems most equitable. Such action shall not be contrary to the general intent and spirit of these Rules.

#### D. COMPENSATION ON PROMOTION

An employee who is promoted to a position in a class with a higher salary range than the class in which he/she formerly occupied a position shall receive the nearest higher monthly salary in the higher salary range that would constitute a minimum one-step salary increase, unless the fifth (5<sup>th</sup>) step in such range provides less than a one-step increase, in which case the employee shall receive the fifth (5<sup>th</sup>) step. The employee shall be given a new merit salary review date based upon the effective date of the promotion.

#### E. COMPENSATION ON TRANSFER

An employee who is transferred from one position to another in a class having the same salary range shall receive the same step in the salary range as ~~he~~ he/she previously received. The employee's merit salary review date shall not change.

#### F. COMPENSATION ON DEMOTION

A demotion may be effected for disciplinary reasons or as a result of positional changes effected to accommodate employee work activity levels. If the employee has not attained permanent status at the time of his/her demotion, he shall serve a probationary period as if he/she were a new employee. The employee shall be placed at such salary step in the new range deemed appropriate by the Appointing Authority and assigned a new merit salary review date based upon the effective date of the demotion.

## G. COMPENSATION ON POSITION RECLASSIFICATION

1. When a permanent or probationary employee's position is re-classified and the employee is appointed to a new position, his/her salary shall be determined as follows:

a. If the position is reclassified to a class with a higher salary range than his previous class, his/her salary and merit salary review date shall be set in the same manner as if he had been promoted.

b. If the salary of the employee is the same or less than the maximum of the new class, his/her salary and merit salary review date shall not change.

c. If the salary of the employee is greater than the maximum of the range of the new class, his/her salary shall be designated a "Y" rate and shall not change during continuous regular service until the maximum of the salary range to which the class is assigned exceeds his/her salary.

## H. EMERGENCY APPOINTMENT - OUT OF CLASS PAY

1. Employees who are given an emergency appointment (as defined below) to a higher classification which involves duties requiring a greater level of skills may be compensated as follows:

~~1~~-a. To qualify for out-of-class pay, an employee must be temporarily assuming substantially the full range of duties and responsibilities of the higher-level position. Out-of-class pay is not authorized, for example, if the organization of a work unit is such that each unit employee carries on his normal duties during the temporary absence of a supervisor, without a need for the direction which the supervisor would provide on a longer-term basis.

~~2~~-b. The rate of pay shall remain unchanged during the first twenty (20) working days of such assignment. Emergency appointments must be made in writing and approved by the City Manager.

~~3~~-c. After twenty (20) continuous working days of such temporary assignment, the employee working out of class shall be paid at Step A of the higher classification, or a rate one step greater than his/her current rate, whichever is deemed appropriate compensation for the level of duties assigned and performed. The amount of additional pay awarded shall be determined by the City Manager. The higher rate of pay shall be used in computing overtime when authorized overtime is served in an FLSA position, out-of-class assignment; the overtime rate shall be at the rate established by the overtime regulations that apply to the higher class.

~~4~~-d. Time worked out of class shall not earn credits toward the completion of probationary requirements in the higher class.

2. As used in this Section H, "emergency appointment" means a position that is temporarily vacant due to another employee's leave of absence, and does not include a position that is vacant during recruitment for a permanent appointment.

## J. BILINGUAL PAY

Upon approval by the City Manager, an employee can earn an additional 5% in wages after passing a written and/or oral test, subject to compliance with all of the following provisions:

1. **Eligibility:** Employees eligible for bilingual pay include regular full-time and regular part-time employees who are employed in positions where there is significant contact with non-English speakers, and who qualify for bilingual pay, as determined by the City Manager. Employees shall not be eligible for bilingual pay during their probationary period or during any period of paid or unpaid leave. The City Manager will choose the languages qualifying for bilingual pay and designate the classifications eligible for bilingual pay. The City Manager may limit the number of positions or employees eligible for bilingual pay, and may terminate any or all bilingual pay at any time.

2. **Qualifications:** To qualify for bilingual pay an employee must be conversationally fluent in the second language; must be required to utilize said language skills consistently on a daily basis in the performance of their duties; and must possess secondary language skills of a language determined by the City Manager to be an asset to the City's operations. Determination of qualifications shall be contingent upon successful completion of a written or oral bilingual skill assessment examination, as determined by the City Manager, to be conducted by a qualified city contractor. The City Manager may require recertification of language proficiency every two years to ensure the employee's bilingual skills are at the level necessary to serve the needs of the Department, City and community.

3. **Amount of Bilingual Pay:** Bilingual pay shall be limited to five percent (5%) of the employee's hourly rate, regardless of the number of languages used.

4. **Termination:** The City Manager may terminate bilingual pay for any or all employees at any time in the City Manager's discretion; any such termination shall be effective at the commencement of the next pay period following service of written notice. No employee shall have any entitlement or right to continued payment of bilingual pay.

## H.J. SALARY DEDUCTIONS

1. In the event an employee is erroneously overpaid by the City, regardless of fault, the City may, with the employee's written consent, recoup overpayment by deducting from that employee's regular paycheck either the full amount of the overpayment or ten percent (10%) of the employee's gross salary, whichever is lesser, and continue said deductions for as many consecutive pay periods as is necessary until full overpayment is recouped. The City shall not commence recoupment by payroll deductions until written notification, which includes all the details of the overpayment, the amount of overpayment and the schedule of recoupment, has been given to the employee at least ten (10) working days in advance, and the employee agrees in writing to the schedule of recoupment. The City may bring a court action to obtain reimbursement if the employee refuses.

2. If the City is ordered by the court to garnish the wages of any employee, or if the court orders the City to make payroll deductions from the wages of the employee in favor of



the City or a third party, the City shall assess and collect against the employee's regular salary one dollar (\$1.00) per deduction per pay period to compensate the City for the costs of making such court-mandated payroll adjustments.

#### XIV. WORK WEEK, ~~AND~~ WORK SCHEDULES, OVERTIME, AND COMPENSATORY TIME

##### A. WORK WEEK

1. An employee's work week is a fixed and regularly recurring period of 168 hours, i.e., seven consecutive 24-hour periods. It need not coincide with the calendar week but may be on any day and at any hour of the day. The City may have different work weeks for different employees or groups of employees. The City may change the employee's workweek, but the changes must be permanent. The Personnel Director shall assign each employee a regular work week.

##### B. WORK SCHEDULE.

1. 9/80 Schedule. The normal ~~workweek~~ work schedule shall be forty (40) hours calculated on the basis of eighty (80) hours within every two (2) week pay period (a "9/80 schedule"), as follows:

a. Employees shall work nine (9) hours, ~~8:00~~7:30 a.m. to ~~6:00~~5:30 p.m., Monday through Thursday.

b. Employees shall work eight (8) hours, ~~8:00~~7:30 a.m. to ~~5:00~~4:30 p.m. on Fridays.

c. Employees shall work alternating Fridays, with the work schedules established as set forth below.

d. Modifications may be made to the above schedule when work requirements dictate such, or on a case-by-case basis when good cause is established by an individual employee based on a documented need. Any requests for modification must be received by the Personnel Director and approved by the City Manager. No modification may impose additional financial burden on the City.

##### ~~B.~~ WORK SCHEDULES

##### ~~1.~~2. Assignments:

- a. Each employee shall have an approved work schedule.
- b. Supervisors shall submit schedules to Department Heads for review.
- c. Department Heads shall submit proposed work schedules to the Personnel Director for review.

d. Proposed work schedules shall go to the City Manager for final review and approval.

e. Employees may request schedule changes not more than once every fiscal year.

2.3. Management reserves the right to set schedules to accomplish the work tasks; exceptions may be considered.

3.4. No work schedule shall be proposed or approved which imposes an additional financial burden on the City for overtime or otherwise.

4.5. FLSA Requirements:

a. Supervisors responsible for scheduling shall ensure that full time schedules meet FLSA requirements and provide for a forty (40) hour work week in accordance with Section A, above, of this Rule.

b. During holiday periods, supervisors shall ensure that vacation, holiday, floating holiday, compensatory time or administrative leave hours are used to make a full forty (40) hour work week for full time employees.

C. PAY PERIODS

1. ~~Pay periods shall be two weeks long, starting Friday mid-day and ending Friday mid-day.~~ Employees shall be paid every two (2) weeks. The pay period for an employee on the City's nine-eighty (9-80) schedule will be a period of fourteen (14) consecutive calendar days beginning at 12:01 p.m. on Friday and ending at 12:00 noon on the Friday which falls fourteen (14) days thereafter.

2. Mid-day is broadly defined as a midpoint in the work day.

3. In pay periods with no City paid holidays, time worked on Fridays shall be for eight hours, divided with four (4) hours worked before mid-day, and four (4) hours worked after mid-day.

4. All City employees shall be on the same pay period. Therefore, time sheets shall be due to supervisors at the end of the pay period, regardless of which 9/80 schedule employees are assigned to. Time sheets are due by 2:00 p.m. on Thursdays to the City Manager.

5. Step increases of promotions shall be effective at the beginning of the pay period in which they fall.

D. OVERTIME POLICIES - AUTHORIZATION OF OVERTIME

1. POLICY: As a matter of general policy, the City ~~is opposed to the working of overtime by employees and~~ will make reasonable efforts to provide adequate staff to handle

normal operations. However, FLSA employees may be required to work overtime at the discretion of the supervisor/Department Head, with the prior approval of the City Manager.

2. DEFINITION: Overtime for ~~non-exempt~~ FLSA employees is defined as all hours assigned to be worked and actually worked (~~except for authorized rest periods~~) in excess of forty (40) hours in a ~~normal~~ the employee's designated work week.

3. PRIOR AUTHORIZATION REQUIRED:

a. Prior authorization ~~for~~ before working any overtime is required. FLSA employees may not work outside of scheduled working hours or during unpaid meal periods, without the prior written authorization of his/her supervisor and department head or director. ~~Except in emergency situations, non-exempt employees working overtime when not expressly assigned to do so by a Department Head, his or her designate designee or the City Manager shall, to the extent authorized by law, not be compensated therefore, and shall be subject to discipline. Failure to follow these overtime authorization provisions will result in FLSA employees being paid for legitimate overtime worked, while being subject to disciplinary action for failing to follow required procedures.~~

b. In certain limited situations, overtime may be authorized retroactively. In such situations, the FLSA employee must notify a supervisor as soon as possible of the overtime worked, and in no event later than the end of the following work day. Overtime may be authorized under the following circumstances:

(1) In emergency situations (generally caused by inclement weather or disaster).

(2) To complete projects which are begun one day and would be difficult, awkward or impossible to complete during regular working hours the next day.

(3) In situations where a job completion is deemed essential by the Department Head or City Manager.

4. MANNER AND FORM OF COMPENSATION:

a. Overtime assigned and worked by ~~non-exempt~~ FLSA employees shall be compensated at time and one-half (1-1/2) their regular rate of pay.

b. The employee may request, and the supervisor shall have the unrestricted discretion to approve or not approve, compensation in the form of accrued compensatory time at time and one-half (1-1/2), except an employee may not accrue more than eighty (80) hours compensatory time at any time with the approval of the Director or Department Head. With City Manager approval the maximum amount of accrued compensatory time may be extended to one hundred twenty (120) hours. Selection of pay or compensatory time shall be made during the pay period in which the overtime hours are worked. Credited compensatory time spent shall be taken as time off except upon termination of the employee or as otherwise approved by the City Manager. A Director, Department Head and/or the City Manager may decide when an employee may take all or part of his/her accumulated compensatory time. Requests by an

employee for the use of accrued compensatory time shall be subject to the convenience of the City and to the extent authorized by law.

d. Overtime shall be credited in fifteen (15) minute increments. If an employee works between 1 and 7 minutes overtime, no credit is given for the time worked. If an employee works between 8 and 14 minutes overtime, the employee shall be given 15 minutes' credit. ~~with no credit given for time worked which is less than fifteen (15) minutes.~~

e. Time worked as overtime shall not be used to earn supplemental benefits or to serve out probation or merit salary increase periods.

5. ALLOCATION: Insofar as is feasible, allocation of overtime shall be equally distributed among employees of affected classifications.

6. REQUIRED ATTENDANCE AT TRAINING ON OFF-DAY: The City shall compensate ~~non-exempt~~ FLSA employees who are required to attend training on an off-day in accordance with ~~according to~~ the FLSA rules. ~~FLSA-exempt~~ ~~Exempt~~ employees who attend training or conferences on their off day shall not receive in lieu off-days.

7. FLSA-EXEMPT EMPLOYEES INELIGIBILITY: FLSA-Exempt employees are not eligible for and shall not receive payment of overtime compensation or compensatory time.

8. CHANGE IN STATUS: An employee's status as an FLSA employee or FLSA-exempt employee classification may be changed only upon written notification signed by the City Manager and Personnel Director.

#### E. CITY PAID HOLIDAYS

1. CITY PAID HOLIDAYS: City paid holidays for full-time regular employees and full-time probationary employees and management employees that work a 9/80 schedule are eight (8) hours if the holiday falls on Monday through Thursday, and nine (9) hours if the holiday falls on the 9-hour Friday. If an employee works a forty-hour work week, he/she will receive eight hours of City paid holidays for a holiday that falls on his/her work day. ~~If a City paid holiday falls on Monday through Thursday, employees must make up the lost hour by:~~

a. ~~Using an hour of vacation, holiday, compensatory time, or administrative leave; OR~~

b. ~~With the approval of their supervisors, working ten (10) hours on a day either immediately prior to or following the holiday, ensuring that they do not arbitrarily exceed forty (40) work hours, that the action does not result in overtime costs, and that the time on time sheets is recorded as specified:~~

(1) ~~Employees who work nine (9) hours the Friday immediately prior to a holiday shall enter four (4) hours in the morning and five (5) hours in the afternoon.~~



~~(2) — Employees who work nine (9) hours the Friday immediately following the holiday shall enter five (5) hours in the morning and four (4) hours in the afternoon.~~

2. HOLIDAYS FALLING ON 9/80 DAY OFF:

a. The City provides full-time probationary and regular employees and management employees with eight (8) hours of paid time for approved holidays for a 9/80 day off.

b. Eight (8) flexible holiday hours will accrue automatically to full-time employees on the City designated closed Friday.

~~e. — The City will allow up to twenty four (24) hours of flexible holiday leave to be carried to the next calendar year, but those carry over hours must be used during that year.~~

~~d.c.~~ Overtime shall be paid to regular, non-exempt FLSA full-time employees for working on a designated closed day, pursuant to existing rules if the hours worked by that employee in the work week exceed forty hours.

d. Regular part-time employees, temporary/part-time, seasonal and emergency employees are not eligible for City-paid holidays or holiday pay.

F. USE OF PERSONAL VEHICLES AND CITY VEHICLES

Employees who use their own vehicles on City business, as approved by the City Manager, shall be compensated at a rate equal to the Internal Revenue Service limit for mileage reimbursement except those employees who receive a car allowance. Those employees who receive a car allowance shall not be reimbursed for mileage. ~~\$0.18 per mile for official city business.~~ In the event of a vehicle mishap, when a personal vehicle is in use, the employee will be solely responsible for the liability via his or his/her automobile insurance coverage. Unless otherwise authorized by the City Council, City vehicles shall be used for city City related business only, in accordance with City policy. If an employee must use the vehicle overnight or for successive days at a conference, prior approval of the City Manager must be received. All eligible employees shall be reimbursed other expenses in accordance with the City's reimbursement policy.

XV. EMPLOYEE BENEFITS

A. VACATION

1. ACCRUAL: All full-time regular and probationary employees and management employees with continuous service shall accrue working vacation hours monthly according to the following schedule:

|                      |     |     |     |     |     |     |     |     |     |      |
|----------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|
| Years of Service     | 0-1 | 1-2 | 2-3 | 3-4 | 4-5 | 5-6 | 6-7 | 7-8 | 8-9 | 9-10 |
| Annual Hours Accrued | 80  | 88  | 96  | 104 | 112 | 120 | 128 | 136 | 144 | 152  |

2. For more than ten (10) years of service, employees shall accrue 160 hours of vacation per year.

3. Accrual at the next highest incremental rate shall begin on the anniversary date of the first (1<sup>st</sup>) year and each year thereafter through the tenth (10<sup>th</sup>) year, respectively. The total vacation allowance shall be computed to the nearest whole day, based upon the number of full months of City service.

4. Vacation shall not accrue on overtime hours or for attendance at City Council and/or Commission meetings.

a. HOLIDAYS ON VACATION DAYS: In the event one or more municipal holidays fall within a vacation leave, such days shall not be charged as vacation leave and the vacation leave shall be extended accordingly for those employees eligible for such holidays.

b. SCHEDULING: The time during the calendar year at which an employee may take vacation shall be determined by the Department Head, with due regard for the wishes of the employee and particular regard for the needs of the City. Vacation periods for Department Heads shall be as determined and approved by the City Manager or his/her designee.

c. USE OF VACATION: A full-time employee shall accrue vacation but may not utilize such during the first six (6) months of employment.

d. CARRY-OVER OF VACATION: The maximum number of vacation days that may be carried over from one (1) calendar year to the next is the equivalent of four hundred (400) hours.

e. VACATION BUY-BACK: Full-time employees may at their option buy-back up to 40 60 hours of vacation time per calendar year. Employees shall request the buy-back in writing to the Finance Department. No negative leave balances shall accrue due to a buy-back allowed under this Section. This program shall only be available when funding is provided for these purposes in the budget.

f. PAYMENT ON TERMINATION: In the event that an employee is discharged or the employee otherwise terminates his/her ~~terminated from~~ employment with the City, such employee shall be paid for any accrued vacation leave and compensatory time off which has accrued within the limits specified above.

g. PART-TIME AND TEMPORARY EMPLOYEES: Regular part-time employees, all other part-time/~~or~~ temporary employees, seasonal employees and emergency employees shall not be eligible to receive vacation.

## B. HOLIDAYS

1. Each full-time regular and probationary employee and management employee shall be entitled to the following holidays with pay:

- a. New Years' Day - January 1
- b. President's Day - Third Monday in February
- c. Memorial Day - Last Monday in May
- d. Fourth of July
- e. Labor Day - First Monday in September
- f. Veterans' Day - November 11
- g. Thanksgiving Day - Fourth Thursday in November
- h. The day following Thanksgiving
- i. Christmas Day - December 25

All other at-will employees are not eligible for holidays with pay.

j. Three (3) ~~discretionary personal~~ holidays annually may be taken by an employee who has successfully completed probation, at ~~his or his/her~~ convenience, subject to approval of the Department Head. The maximum ~~number of discretionary personal~~ holidays that may be accrued is 48 hours. At the discretion of the City Manager, on a case-by-case basis, accruals over the maximum may be extended for the period of six (6) months before lost. In the event employment is terminated with the City, a regular/non-probationary employee shall be paid for ~~accrued discretionary personal~~ holidays which have accrued within the limits specified above.

2. WEEKEND HOLIDAYS: Whenever a holiday falls on a Sunday, the following Monday shall be observed as the holiday. Whenever a holiday falls on a Saturday, the preceding Friday shall be observed as the holiday.

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

#### C. SICK LEAVE

1. ~~PURPOSE FOR SICK LEAVE.~~ Sick leave may be granted by the City to permit the employee to be absent from duty without the loss of pay ~~because of illness, injury, quarantine due to exposure to contagious disease, illness or injury of~~ for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member; or for an employee who is a victim of domestic violence, sexual assault, stalking or other crime, for the purposes described in subdivision (c) of Labor Code Section 230 and subdivision (a) of Labor Code Section 230.1. (For provisions on leave and reasonable accommodation for victims of crimes, see also Rule XVI, Section E.) ~~a member of the employee's~~

immediate family requiring the employee's attendance, or when otherwise required by Federal or State law, and for attendance at medical, dental and optical appointments to the extent that such appointments cannot be scheduled outside the work day. Sick leave is a protection provided by the City to be granted in circumstances of adversity, and is intended to promote the health and welfare of the individual employee and his/her family member. Sick leave is not an earned right to time off from work.

2. **DEFINITIONS.** For purposes of this Section an employee's "immediate family" shall consist of the employee's spouse, children, step children, the employee's or spouse's mother, father, brother, sister, grandchildren or grandparents or other members of the employee's family residing in the employee's home, or other members of the employee's family primarily dependent upon the employee, the following terms shall have the following meanings unless the context clearly indicates otherwise:

a. "Employee's family member" means any of the following: an employee's child, spouse, registered domestic partner sibling, parent, grandchild or grandparent; a child, sibling, parent, grandchild, or grandparent of the employee's spouse or registered domestic partner; or other members of the employee's family residing in the employee's home to whom the employee stands in loco parentis.

b. "Child" or "Children" means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis; and regardless of age or dependency status.

c. "Parent" means a biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee or his/her spouse or registered domestic partner was a minor child.

3. **APPLICABILITY.** All conditions and restrictions set forth herein upon the use by an employee of sick leave also shall apply to the use by an employee of sick leave to attend to an illness of a member of the employee's family.

#### 4. **SICK LEAVE ACCRUAL**

##### a. **Full-Time Employees.**

(1) Beginning with the date of hire or July 1, 2015, whichever occurs later, all management employees, full-time regular employees and all full-time employees on probationary status in a regular position shall accrue paid sick leave at the rate of eight (8) hours per month. Each full time regular employee and each full-time employee on probationary status in a regular position, shall accrue sick leave but may not utilize such during the first six (6) months until the 90<sup>th</sup> day of employment, after which day such employee may use paid sick days as they are accrued.

(2) Unused sick leave may be accumulated and carried over to subsequent years, up to one thousand two hundred and fifty (1,250) hours maximum.



(3) Paid sick leave does not continue to accrue once an employee has exhausted all paid leaves, such as during any period of time that an employee is on unpaid status including any unpaid leave of absence, or upon separation from employment.

b. Seasonal, Part-Time, and Temporary and other at-will employees shall ~~not be eligible to accrue sick leave~~ be eligible for sick leave only in accordance with the City of Highland Part-Time and Temporary Employees Sick Leave Policy set forth in Appendix C, attached hereto.

c. Employees shall be eligible to take sick leave ~~after six (6) months beginning on the 90<sup>th</sup> day of employment~~, except that sick leave qualifying for benefits under the federal Family Medical Leave Act or the California Family Rights Act ~~or other State or Federal Act~~ may be taken only after the employee has completed one (1) year of service and at least one thousand two hundred fifty (1,250) hours of work within the preceding twelve (12) months.

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

e. Employees granted a leave of absence with pay or other approved leave with pay shall accrue sick leave as provided herein.

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

#### ~~2.5.~~ SICK LEAVE USE - PROCEDURE (NON-FMLA LEAVE)

a. If the need for paid sick leave is foreseeable, such as for medical appointments, the employee shall provide reasonable advance notification to his/her supervisor. When an employee is incapacitated from the performance of his/her duties for reasons that entitle him/her to the use of sick leave not otherwise authorized by the federal Family Medical Leave Act or California Family Rights Act, or other provision of State or Federal Law, or when the employee is needed to assist an ill or injured family member, he/she must notify his/her supervisor within thirty (30) minutes of the beginning of the work day that the employee is absent. If the need for paid sick leave is unforeseeable, the employee shall provide notice of the need for the leave as soon as practicable.

b. An employee shall be responsible for informing his/her supervisor of his/her health status until he/she returns to work.

c. Upon returning to work, each employee must submit a completed Personnel Action form approved by the supervisor and forwarded to payroll.

d. Sick leave benefits may be taken in one-quarter (1/4) hour increments.

e. An employee may be granted sick leave only in case of actual sickness as defined above. In the event that an employee or ~~a member of the~~ employee's family

member recovers from any such sickness after being granted sick leave, and during the regularly scheduled hours of work, then such employee shall notify the appropriate immediate supervisor and be available to return to duty.

f. In order to apply for sick leave use, an employee shall notify the appropriate immediate supervisor within ~~one (1) hour~~ thirty (30) minutes after the time established as of the beginning of the employee's work day, unless the City determines that the employee's duties require more restrictive reporting. Failure to do so without good reason, such as emergency circumstances, shall result in that day of absence being treated as leave of absence without pay.

g. If the employee is absent on sick leave for more than one (1) day, the employee shall keep his/her immediate supervisor informed as to the date the employee expects to return to work.

~~h. Sick leave shall not be granted to any employee absent from duty as a result of any sickness, injury or disability purposely self inflicted or caused by willful misconduct.~~

~~i.h.~~ Sick leave shall not be granted to any employee absent from duty after separation from City service, or during a City authorized leave of absence without pay, or any other absence from duty not authorized by the City.

~~j.i.~~ Sick leave shall not be granted to any employee to permit an extension of the employee's vacation.

~~k.j.~~ Sick leave shall not be granted to any employee during the first six (6) full calendar months until the 90<sup>th</sup> day of the employee's employment. However, on the successful completion of six (6) months 90<sup>th</sup> day of employment, the employee shall be credited with sick leave that would otherwise have been accrued during the probationary period as provided herein. Employees shall not be granted, and accordingly are not entitled to take, paid sick leave in advance of its accrual.

~~l.k.~~ The City Manager or the Department Director-Head may require the employee to submit a written verification that his/her absence is for sick leave purposes and may require submittal of a physician's medical certification from a licensed health care provider at any time as to the employee's need for sick leavesickness or injury of the employee or his/her immediate family member and the date of the employee's intended return to work. An absence on sick leave exceeding three (3) consecutive working days or combination of two (2) working days which incorporate a weekend (e.g., Thursday and Friday plus weekend, or Friday and Monday including weekend) must be supported by a medical certificate establishing the employee's need for sick leave.

l. Employees using sick leave for 3 or more consecutive days may be required to report on their status and intent to return to work.

~~m.m.~~ In addition to the above, if, after reviewing an employee's record of sick-leave usage, the City believes sufficient cause exists to suspect abuse of sick leave, a medical

certificate may be required for any subsequent use of sick leave. Confirmed abuse or improper use of sick leave may be cause for disciplinary action.

~~n. Employees will not be permitted to use vacation in lieu of sick leave unless approved by the Personnel Director.~~

~~o.n.~~ When approved in advance, paid sick leave may be used to attend medical, dental or optical examinations or treatments, to the extent such appointments cannot be scheduled outside the work day.

~~p.o.~~ Except as otherwise required by state or federal law, ~~a~~An employee on sick leave must exhaust all other paid leaves, including, but not limited to, vacation leave and administrative leave, before sick leave may be taken without pay. This provision shall not apply to accrued compensatory time off.

~~q.p.~~ Sick leave shall run concurrently with all other health-related but non-sick leave benefits, including, but not limited to, leave for worker's compensation injuries.

~~r.q.~~ If an employee is on sick leave on the day the City observes a holiday, that day shall not be counted as a day of sick leave.

~~s.r.~~ Sick leave shall be limited to one of the following:

(1) Sick leave which does not qualify for benefits under the ~~federal~~ Family Medical Leave Act or ~~California~~ Family Rights Act, or other applicable State or Federal ~~Act~~law, shall be limited to the paid time accrued or authorized to be used pursuant to these Rules, or

(2) Sick leave which qualifies for benefits under the ~~federal~~ Family Medical Leave Act or ~~other State or Federal Act~~California Family Rights Act, or other applicable State or Federal law, as provided under Section C of these Rules, below. ~~shall be limited to a period of twelve (12) weeks during the twelve (12) month period starting from the date the employee's qualifying leave began, except that a longer period may be authorized for employees who establish a medical disability related to pregnancy, as provided in Section E below. The "date qualifying leave began" shall begin on the date notice is given by the City that the leave is qualifying, or may be made retroactive to the date of the onset of the qualifying condition if the qualifying leave is later confirmed within fifteen (15) days after a request is made by the City that certification of qualifying leave be provided by a health care provider.~~

~~t.r.~~ Leave qualifying under the ~~federal~~ Family Medical Leave Act or ~~other State or Federal Act~~California Family Rights Act for the employee's own serious health condition shall be exhausted concurrently with accrued paid sick leave or other sick leave qualifying under this sick leave policy. ~~Such leave shall be confirmed by the employee in advance, where possible, by the employee on a form provided by the City, or within fifteen (15) days after a request is made by the City that certification of qualifying leave be provided by a health care provider.~~

s. The City shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Labor Code Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

### **3.6. SICK LEAVE BUY-BACK INCENTIVE; SEPARATION FROM EMPLOYMENT AND REHIRE**

a. Any regular full-time employee may buy-back up to forty-eight (48) hours of sick leave per year. The forty-eight (48) hours eligible to be bought back by an employee shall be reduced by each hour of sick leave taken per calendar year based on the previous year's usage. In no case shall such buy-back reduce an employee's accumulated sick leave balance below one hundred ninety-two (192) hours.

b. Any regular full-time employee who separates (for other than cause) or retires from the City, after a minimum of ten (10) years of service shall be compensated for forty percent (40%) of all unused sick leave at his/her current rate of pay.

c. Except as otherwise provided by this section, the City shall not compensate any employee for accrued, unused paid sick days upon termination, resignation, retirement, or other separation from employment. To the extent required by State law, if an employee separates from the City and is rehired by the City within one year from the date of separation, previously accrued and unused paid sick days shall be reinstated; and the employee shall be entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring.

### **4.7. EXCESSIVE SICK LEAVE USAGE OR ABUSE OF SICK LEAVE:**

a. An employee who is excessively absent may be subject to disciplinary action to the extent permitted by state and federal law, including the ADA, FEHA and CFRA. Excessive absenteeism shall be defined as absence in excess of the average annual Departmental sick leave usage. Excessive absenteeism may occur regardless of the employee's accrual.

b. An employee who claims entitlement to sick leave but who does not meet the requirements of sick leave as defined above, may be subject to disciplinary action for abuse of sick leave.

### **5.8. EVALUATION OF SICK LEAVE USAGE:**

Each employee's annual or special evaluation shall contain a statement of the employee's use of sick leave during the evaluation period and state that the usage is excessive if it exceeds the Departmental average as set forth above. Excessive use or abuse of sick leave will be considered in establishing the performance rating.

### **6.9. RETURN TO WORK: FITNESS FOR DUTY CERTIFICATION**



As a condition of reinstatement of an employee returning to work following an illness, injury or disability, the employee must obtain and present a fitness-for-duty certification from the health care provider stating that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.

~~b. Regular employees unable to perform the essential functions of their position, with or without reasonable accommodation, as a result of a physical or psychological illness or injury for a period of six (6) months from the first date of the absence shall:~~

~~(1) Be terminated from employment. Employees who are separated pursuant to this Section shall be accorded procedural due process (i.e., notice and an opportunity to respond to the separation) in accordance with the appeal procedures for disciplinary actions outlined in these Rules and procedures; or~~

~~(2) Be offered the opportunity to resign from the position and be placed on a rehire list for a period not to exceed one (1) year. Any employee returning to work pursuant to this Section shall provide to the Personnel Director verification from a medical practitioner of his/her ability to return to work and perform the essential functions of his/her position, with or without accommodation.~~

~~If during the period in which the employee is on the rehire list, the employee is physically and/or psychologically able to resume the duties of his/her previous position and there is a vacant position in the employee's classification, the employee will be entitled to return to that position with all the rights, benefits, and responsibilities of a regular employee. However, an employee on a rehire list shall not accrue seniority. Thus, the employee will return to work with the same amount of seniority held prior to being placed on the rehire list. Placement on the rehire list does not preclude an employee from applying for a disability retirement.~~

#### 10. NON-RETALIATION.

Employees shall not be denied the use of accrued Paid Sick Leave, shall be free from threats of discharge, demotion, or suspension, and shall not be retaliated against for exercising their right to use accrued Paid Sick Leave.

#### D. FAMILY CARE AND MEDICAL LEAVE

1. POLICY: To the extent not already provided for under current leave policies and provisions, the City will provide family and medical care leave leaves of absence for eligible employees as required by State and Federal law: the federal Family and Medical Leave Act of 1993 ("FMLA") and the California Moore-Brown-Roberti Family Rights Act ("CFRA") without pay to eligible employees who wish to take time off from work duties to fulfill family obligations relating directly to childbirth, adoption, or placement of a foster child; or to care for a child, spouse, parent or other specified family member with a serious health condition; or due to the employee's own serious health condition; for FMLA/CFRA qualifying exigency leave; or for FMLA caregiver leave. The following provisions set forth certain of the rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are

set forth in the FMLA and CFRA, the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (“FMLA”) and the California regulations of the California Family Rights Act (“CFRA”). Unless otherwise provided by this Section, “leave” or “FMLA/CFRA leave” under this Section shall mean leave pursuant to the FMLA and CFRA.

2. DEFINITIONS. The following terms shall have the following meanings in this Section, except as otherwise specifically provided.

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

b. “Caregiver leave”, for purposes of the FMLA only, means leave to care for a spouse, son, daughter, parent, or “next of kin” who is a covered servicemember of the United States Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces (this leave can run up to 26 weeks of unpaid leave during a single 12-month period) (under the FMLA only, not the CFRA).

(1) For caregiver leave under the FMLA only, see definition of “serious injury or illness” under Subsection (h)(3) of this Section.

~~b.c.~~ “Child” for purposes of the FMLA only, means a child under the age of eighteen (18) years of age, or eighteen (18) years of age or older who is incapable of self-care because of a mental or physical disability. An employee’s child is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster or step-child, legal ward, or a child of a person standing in loco parentis (in place of a parent).

~~e.~~(1) A child is “incapable of self-care”, for purposes of the FMLA only, if he/she requires active assistance or supervision to provide daily self-care in three (3) or more of the activities of daily living such as caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.

d. “Child” means, for purposes of the CFRA only, a biological, adopted, or foster child, a stepchild, a legal ward, a child of a domestic partner, or a person to whom the employee stands in loco parentis.

~~d.e.~~ “Covered family member” means, for the purpose of CFRA qualifying exigency leave only, an employee’s spouse, domestic partner, child or parent in the United States Armed Forces.

f. “Domestic partner,” for the purpose of the CFRA only, shall have the same meaning as defined in Family Code Section 297.

g. “Grandchild” means, for the purpose of the CFRA only, a child of the employee’s child.

h. “Grandparent” means, for the purpose of the CFRA only, a parent of the employee’s parent.

h. “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 state law;

(4) Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;

(5) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and

(6) Any health care provider from whom an employer or group health plan’s benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

j. “Parent” means the biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child; and in addition to the foregoing, for purposes of CFRA leave only, a “parent” also includes parents-in-law. ~~This term does not include parents-in-law.~~

fk. “Qualifying exigency leave” means as follows:

(1) For purposes of the FMLA, leave taken for any of the following reasons:

(a) Short-notice deployment. This includes leave taken to address any issue that arises because a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven or less calendar days prior to the date of deployment. The leave may be used for a period of seven (7) calendar days beginning on the date a covered military member is notified of an impending call or order to active duty in support of a contingency operation.

(b) Military events and related activities. This includes leave to attend an official ceremony program or event sponsored by the military that is related to the active duty or call to active duty; and family support or assistance programs and informational

briefings sponsored or promoted by the military, military service organizations or the American Red Cross, that are related to the active duty or call to active duty.

(c) Childcare and school activities. This includes leave to arrange alternative childcare when the active duty or call to active duty necessitates a change in childcare arrangements for a child; to arrange childcare on an urgent, immediate need basis when the need for care arises from the active duty or call to active duty status; to enroll or transfer a child to a new school or daycare facility; to attend meetings with staff at a school or a daycare facility regarding disciplinary measures, counseling, or parent-teacher conferences. For purposes of qualifying exigency leave, “child” means a child under 18, or a child age 18 or older and incapable of self-care because of mental or physical disability at the time the qualifying exigency leave commences.

(d) Financial and legal arrangements. This includes leave to make or update financial or legal arrangements to address the covered military member’s absence while on active duty or call to active duty, to act as the covered military member’s representative before governmental agencies to obtain, arrange, or appeal military service benefits while the covered military member is on active duty status, and for a period of 90 days following the covered military member’s active duty status.

(e) Counseling. This includes leave to attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for a child. The need for counseling must arise from the active duty or call to active duty status of a covered military member.

(f) Rest and recuperation. This includes leave to spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment.

(g) Post-deployment activities. This leave includes leave to attend arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for 90 days following termination of the covered military member’s active duty status; and leave taken to address issues arising from the covered military member’s death while on active duty such as meeting and recovering the body, making funeral arrangements.

(h) Additional activities agreed to by the City and the employee. Additional activities includes leave to address other events arising out of the covered military member’s active duty or call to active duty status. An employee shall not take leave for any additional activities not encompassed in subparagraphs (1) through (7) of this Section D.2.k, unless the City and the employee agree that the leave qualifies as an exigency and agree to the timing and duration of the leave.

(2) For purposes of the CFRA, a “qualifying exigency related to the covered active duty or call to active duty of the employee’s spouse, domestic partner, child or parent (covered family members) in the Armed Forces of the United States”, as specified in Section



3302.2 of the Unemployment Insurance Code, including leave taken for any of the following reasons:

(a) Activities undertaken within seven calendar days from the date that a covered family member is notified of an impending call or order to covered active duty to address any issue arising from that call or order;

(b) Attendance at either or both of (a) an official ceremony, program, or military sponsored event related to the active duty or call to covered active duty of the covered family member; or (b) a family support or assistance program sponsored or promoted by the military, military service organization, or the American Red Cross related to the covered active duty or call to active duty of the covered family member;

(c) Childcare activities related to the active duty or call to active duty of a child for whom the spouse, domestic partner, child or parent in the Armed Forces of the United States stands in loco parentis, who is either not more than 18 years of age, or, if equal to or more than 18 years of age, is incapable of self-care because of a disability at the time that the paid leave is to commence, including arranging for alternative childcare or providing childcare on an urgent basis when such is necessitated by the covered active duty or call of the covered family member, enrolling or transferring the child to a new school or day care facility, or attending meetings with staff at the child's school or day care facility. when any of the foregoing are necessitated by or arise from the covered family member's active duty or call to covered active duty;

(d) Making financial or legal arrangements to address the absence of the covered family member on covered active duty;

(e) Acting as the representative of the covered family member related to military service benefits while the covered family member is on covered active duty or call to cover active duty;

(f) Attending counseling provided by someone other than a health care provider, for oneself, for a covered family member in the Armed Forces, or for a child for whom this person stands in loco parentis, who is either not more than 18 years of age, or equal to or more than 18 years of age and incapable of self-care because of a disability at the time that the paid leave is to commence, if the need for counseling arises from the covered active duty or call to covered active duty of the covered family member;

(g) Accompanying a covered family member while that individual is on short-term, temporary, rest and recuperation leave during a period of deployment in a foreign country;

(h) Attending official ceremonies or reintegration briefings and events, and any other official program sponsored by the military for a period of 90 days following termination of covered active duty of a covered family member;

(i) Addressing issues arising from the death of a covered family member while on covered active duty status;

(j) Arranging for the care of a parent of a covered family member when that parent is incapable of self-care during the covered family member's active duty, including (a) arranging for alternative care for the parent because the covered active duty or call to covered active duty of the covered family member necessitates a change in the parent's existing care arrangement; or (b) providing care for such parent on an urgent, immediate need basis when the need arises from the covered active duty of the covered family member; or (c) admitting or transferring the parent to a care facility when admission or transfer is necessitated by the covered active duty or call to covered active duty of the covered family member; or (d) attending meetings with staff at the parent's care facility when such meetings are necessitated by the covered activity duty or call to covered active duty of the covered family member;

(k) Any other activities to address other events arising out of the active duty or call to active duty of a covered family member, provided that the employer and employee agree that this leave shall qualify as an exigency, and agree to both the timing and duration of the leave.

~~g.l.~~ "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves:

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

(2) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(a) A period of incapacity (i.e., inability to work, or perform other regular daily activities due to serious health condition of more than three (3) consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(i) Treatment two (2) or more times by a health care provider, by a nurse or physician's assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider; or

(ii) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.

(b) Any period of incapacity due to pregnancy or for prenatal care. (This entitles the employee to FMLA leave, but not CFRA leave. Under California

law an employee disabled by pregnancy is entitled to pregnancy disability leave. See Rule XV.E for the City of Highland Pregnancy Disability Leave Policy.)

(c) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(i) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one (1) day.

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

(e) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive calendar days in the absence of medical intervention or treatment.

(3) For caregiver leave under the FMLA only, "serious injury or illness" means an injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his/her office, grade or ranking including:

(a) in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; or

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

m. “Sibling”, for purposes of the CFRA only, means a person related to another person by blood, adoption, or affinity through a common legal or biological parent.

n. “Spouse”

(1) “Spouse”, for purposes of the FMLA only, means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either: (i) was entered into in a State that recognizes such marriages; or (ii) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

(2) “Spouse”, for purposes of the CFRA only, means a partner in marriage as defined in Family Code Section 300 or a domestic partner within the meaning of Family Code Sections 297 through 297.5; and includes same-sex partners in marriage.

3. REASONS FOR LEAVE: Leave is only permitted for the following reasons:

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

3. EMPLOYEES ELIGIBLE FOR LEAVE: An employee is eligible for leave if the employee:

- a. Has been employed for at least twelve (12) months; and
- b. Has been employed for at least one thousand two hundred fifty (1,250) hours during the twelve (12) month period immediately preceding the commencement of the leave.

4. AMOUNT OF LEAVE: For FMLA/CFRA leave, eligible Eligible employees are entitled to a total of twelve (12) work weeks of leave during any twelve (12) month



period. For caregiver leave, eligible employees may request up to a maximum of 26 weeks to care for a covered servicemember within a single 12-month period.

a. The City uses twelve (12) months rolling backwards from the date leave is requested to commence to calculate the twelve (12) month period. Any combination of family leave and medical leave may not exceed this maximum limit. Where FMLA leave qualifies as both caregiver leave and care for a family member with a serious health condition, the leave will be designated as caregiver leave first.

b. For caregiver leave, if an eligible employee does not take all of his/her 26 workweeks of leave entitlement to care for a covered servicemember during the “single 12-month period,” the remaining part of his/her 26 workweeks of leave entitlement to care for the covered servicemember is forfeited.

c. Minimum Duration of Leave

(1) If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one (1) year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two (2) weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one (1) day, but less than two (2) weeks duration on any two occasions.

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

d. Spouses Both Employed By the City - FMLA Bonding Leave

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

e. Relationship to CFRA Leave to Pregnancy Disability Leave. If an employee is eligible for CFRA leave, the employee has certain rights to take both a Pregnancy Disability leave and CFRA leave for reason of the birth of the employee’s child. Normally, leave taken under CFRA and FMLA run concurrently, except in the case of Pregnancy Disability leave, which runs concurrently with FMLA only. If an employee qualifies for both CFRA leave and Pregnancy Disability leave for reason of the birth of the employee’s child and/or the employee’s own serious health condition, the maximum leave entitlement for both CFRA leave and Pregnancy Disability leave is the working days in 29½ workweeks. This assumes that the employee is disabled by pregnancy for four months (the working days in 17½ weeks) and then requests, and is eligible for, a 12-week CFRA leave for reason of the birth of the employee’s child. (For more information on Pregnancy Disability Leave Policy, see Rule XV.E.)

5. EMPLOYEE BENEFITS WHILE ON LEAVE: Leave under this policy is unpaid.

a. HEALTH INSURANCE BENEFITS: Subject to the terms, conditions, and limitations of the applicable plans, while on leave, an employee will continue to be covered by the City's group health insurance to the same extent that coverage is provided while the employee is on the job, for a period not to exceed twelve (12) weeks from the initiation of the leave, or until such time as accrued paid sick leave and other paid leaves provided for under these Rules are exhausted, whichever is later. However, employees will not continue to be covered under the City's non-health benefit plans which are not provided pursuant to the City's group health plans. "Group health benefits" shall include medical, vision, dental, long term disability and life insurance coverage at the levels determined, maintained and paid for by the City prior to the sick leave, but shall not include excess contributions otherwise provided through deferred compensation.

b. EMPLOYEE CONTRIBUTION: Employees may make the appropriate contributions for continued coverage under the preceding non-health benefit plans by payroll deductions or direct payments made to these plans. Depending on the particular plan, the City will inform the employee whether the premiums should be paid to the carrier or to the City. Coverage on a particular plan may be dropped if the employee is more than thirty (30) days late in making a premium payment. However, the employee shall be given at least fifteen (15) days' notice before coverage is to cease, advising him/her that he/she will be dropped if the premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

c. CITY RIGHT TO RECOVER: In addition, the City may recover its share of health plan premiums for the entire unpaid leave period if both of the following conditions occur:

(1) The employee fails to return from leave after the period of leave to which the employee is entitled has expired. An employee is deemed to have "failed to returned from leave" if he/she works less than thirty (30) days after returning from leave.

(2) The employee's failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member that entitled the employee to leave, or other circumstances beyond the control of the employee.

(3) The City shall have the right to recover premiums through deduction from any sums due the City (e.g., unpaid wages, vacation pay, etc.).

d. ACCRUAL OF BENEFITS DURING FMLA/CFRA LEAVE. Any seniority and other benefits normally accrued during any period of paid leave, shall also accrue during any part of a paid FMLA/CFRA leave. Seniority and other benefit accruals, such as vacation, sick leave, or holiday benefits, will be suspended during any period of unpaid FMLA/CFRA leave. Upon the employee's return to work from FMLA/CFRA leave, the employee will have the same level of accrued leave balances that he/she had when the FMLA/CFRA leave

commenced, except as those accrued leave balances were reduced to provide the employee with paid FMLA/CFRA leave in accordance with this Section. Benefit accruals will resume upon return to active employment

6. SUBSTITUTION OF PAID ACCRUED LEAVES: While on leave under this policy, as set forth herein, an employee may elect to concurrently use paid accrued leaves. Similarly, the City may require an employee to concurrently use paid accrued leaves after requesting FMLA and/or CFRA leave, and may also require an employee to use Family and Medical Care Leave concurrently with a non-FMLA/CFRA leave which is FMLA/CFRA-qualifying.

a. Employee's Right to Use Paid Accrued Leaves Concurrently with Family Leave: Where an employee has earned or accrued paid vacation, administrative leave, compensatory time, or personal or family leave, that leave may be substituted for all or part of any (otherwise) unpaid leave under this policy.

(1) With respect to sick leave, an employee is entitled to use sick leave concurrently with leave under this policy if:

(a) The leave is for the employee's own serious health condition; or

(b) The leave is needed to care for a parent, spouse or child with a serious health condition, and would be permitted as sick leave under the City's sick leave policy.

b. City's Right to Require an Employee to Use Paid Leave When Using FMLA/CFRA Leave: Employees must exhaust their accrued leaves concurrently with FMLA/CFRA leave to the same extent that employees have the right to use their accrued leaves concurrently with FMLA/CFRA leave, with two exceptions:

(1) Employees are not required to use accrued compensatory time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act; and

(2) Employees will only be required to use sick leave concurrently with FMLA/CFRA leave if the leave is for the employee's own serious health condition.

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

(1) If an employee takes a leave of absence for any reason which is FMLA/CFRA qualifying, the City may designate that non-FMLA/CFRA leave as running concurrently with the employee's twelve (12) week FMLA/CFRA leave entitlement.

(2) When the circumstances of an employee's long-term disability leave also constitute a serious health condition under the FMLA and/or CFRA leave, the City may designate such disability leave as a "serious health condition" and FMLA/CFRA-

qualifying. Long-term disability leave is a form of paid leave, and as a result, the provisions for substitution of the employee's earned or accrued paid leave are not applicable, and neither the employee nor the City may require the substitution of paid leaves for the duration of any such long-term disability leave. However, the City and the employee may agree to have accrued paid leaves supplement the employee's long-term disability insurance plan benefits, up to (but not to exceed) the employee's full time salary or wages. Temporary part-time employees, seasonal employees, emergency employees, or any other hourly employees are not eligible for benefits under the City's Long-Term Disability Insurance Plan.

(3) The City may designate a workers' compensation injury that also constitutes a "serious health condition" as FMLA/CFRA-qualifying. As with paid short term disability leave and long-term disability leave, workers' compensation absence is not unpaid, and the provisions regarding substitution of paid leave do not apply. However, if permitted by California law, the City and the employee may agree to have paid leaves (vacation, floating, sick, etc.) supplement the employee's workers' compensation benefits up to (but not to exceed) the employee's normal full-time salary or wages (or for hourly employees, not to exceed their regular hourly wage rate capped at their maximum hours). Time spent on leave while receiving Workers' Compensation benefits or disability benefits under the City's short term disability policy, may be counted toward the employee's 12 weeks of FMLA/CFRA leave if the employee is otherwise an eligible employee under the FMLA/CFRA.

(4) An employee on FMLA/CFRA leave may also be eligible for payment of Paid Family Leave under California law. Interested employees should contact the California Employment Development Department for information at <http://www.edd.ca.gov/> or 1-877-238-4373 (telephone) or 1-800-445-1312 (TTY).

d. City's and Employee's Rights if an Employee Requests Accrued Leave Without Mentioning Either the FMLA or CFRA: If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to a FMLA/CFRA qualifying purpose, the City may not ask the employee if the leave is for a FMLA/CFRA qualifying purpose. However, if the City denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA qualifying purpose, the City may inquire further into the reason for the absence. If the reason is FMLA/CFRA qualifying, the City may require the employee to exhaust accrued leave as described above.

7. MEDICAL CERTIFICATION: Employees who request FMLA/CFRA leave for their own serious health condition, or to care for a child, parent or a spouse who has a serious health condition, for caregiver leave, or for qualifying exigency leave, must provide written certification from the health care provider of the individual requiring care if requested by the City in accordance with this Section.

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

a. Contents.



(1) **Diagnosis.** The Certification should not disclose the underlying diagnosis of any serious health condition involved without the consent of the patient in accordance with California and federal law. For information that may be requested in connection with a second opinion, see sub-section (d) below.

(2) **Information Required for Employee's Own Serious Health Condition.** Employees who request leave for their own serious health condition (or for substance abuse leave), must provide Certification from the employee's health care provider, containing the following information: the date on which the serious health condition began; the probable duration of the serious health condition; and a statement by the health care provider that, due to the serious health condition, that the employee is unable to work at all or is unable to perform the essential functions of his/her position. The Certification shall be either a Form WH-380-E, issued by the U.S. Department of Labor; a form issued by the California Fair Employment and Housing Council; or the City form seeking the same information.

(3) **Information Required for Family Member's Serious Health Condition.** Employees who request leave to care for a child, parent, spouse or registered domestic partner who has a serious health condition (or for substance abuse leave), must provide a Certification from the family member's health care provider, containing the following information: the date on which the serious health condition began; the probable duration of the serious health condition; an estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care; and a statement that the serious health condition warrants the participation of a family member to provide care during the period of the treatment or supervision of the individual requiring care. The Certification shall be either a Form WH-380-F, issued by the U.S. Department of Labor; a form issued by the California Fair Employment and Housing Council; or the City form seeking the same information.

(4) **Information Required for Caregiver Leave.** Employees who request a Caregiver Leave must submit a Certification completed by an authorized health care provider of the covered servicemember as specified in the implementing regulations. The Certification shall be either a Form WH-385, issued by the U.S. Department of Labor; a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family; or the City form seeking the same information. A complete and sufficient Certification to support a request for Caregiver Leave must include written documentation confirming that the covered servicemember's injury or illness was incurred in the line of duty on active duty and that the covered servicemember is undergoing treatment for such injury or illness by a health care provider. The Certification should be limited to the condition for which the employee is seeking leave. Authentication and/or clarification of the Certification may be required by the City. Second or third medical opinions and recertifications may not be requested. The City may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember.

(5) **Information Required for Qualifying Exigency Leave.** The first time an employee requests leave because of a qualifying exigency, the employee shall provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on covered active duty, and the dates of the covered military member's covered active duty. A copy of new active duty orders or similar

documentation shall be provided to the City if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different covered military member. The Certification shall be either a completed certification Form WH-384, issued by the U.S. Department of Labor, or the City form seeking the same information. If the qualifying exigency involves meeting with a third party, the City may contact the individual or entity with whom the employee is meeting to verify the meeting or appointment schedule and the nature of the meeting. The City may contact the Department of Defense to request verification that a covered military member is on active duty or call to active duty status.

a.b. Time to Provide a Certification. When the need for leave is foreseeable, the employee should submit the Certification at the time the employee gives notice of the need for FMLA/CFRA Leave or within five (5) business days after submitting his/her request for FMLA/CFRA Leave. In the case of unforeseen leave, the employee should submit the certification within five (5) business days of his/her determination of the need for FMLA/CFRA Leave or within five (5) business days after unforeseen FMLA/CFRA Leave commences, whichever occurs first. When an employee's leave is foreseeable and at least thirty (30) days' notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins, unless it is not practicable for the employee to do so despite the employee's good faith efforts. When this is not possible/practicable, the employee must provide the requested certification to the City within the time frame requested by the City (which must allow at least fifteen (15) calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

b.c. Consequences for Failure to Provide an Adequate or Timely Certification. If an employee provides an incomplete or insufficient medical eCertification, the employee will be given a reasonable opportunity to cure any such deficiency the City will advise him/her in writing as to what additional information is required, and the employee will have seven (7) calendar days (or longer, if unable to comply in that time frame despite the employee's diligent good faith efforts) to complete and return the form.

(1) However, if an employee fails to provide a medical certification within the time frame established by this policy and the law, the City may delay or deny the taking of FMLA/CFRA leave until the required certification is provided.

(2) With regard to CFRA leave, if an employee never produces the required certification or recertification for CFRA Leave, the leave is not CFRA Leave.

(3) The City may directly contact an employee's health care provider only to authenticate or clarify information provided on a Certification form without first obtaining the employee's permission. In compliance with the FMLA and its regulations, and to protect the medical privacy of the employee, or his/her family member, if the City determines that it is necessary to contact the health care provider, only a person employed in one of the following employment categories may contact the health care provider: the City's health care provider; the City's Personnel Manager, or an employee(s) of the Personnel Department charged with administering the City's leave policies. The employee's direct supervisor shall not contact the health care provider of the employee or family member. If the employee fails to provide the City with an authorization allowing the City to clarify the certification with the health care provider,

and does not otherwise clarify the certification and the certification is unclear, the City may delay or deny the taking of FMLA/CFRA Leave.

(d) Second and Third Medical Opinions.

(1) Employee's Own Serious Health Condition (excluding Pregnancy Disability; see Rule XV.E). If the City has a good faith, objective reason to doubt the validity of a medical certification provided by the employee for his/her own serious health condition (except those involving pregnancy disability), the City may require a medical opinion by a second health care provider chosen and paid for by the City. The health care provider designated or approved by the City will not be employed on a regular basis by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee, but paid for by the City. The opinion of the third provider will be binding. An employee may request a copy of the second and/or third health care opinions, or a recertification. An employee or probationary employee must authorize the release of relevant medical information pertaining to the condition for which leave is being sought to the second opinion or third opinion health care provider. If the employee fails to do so, approval of his/her request for FMLA/CFRA Leave may be delayed or denied.

(2) Caregiver Leave. Second or third medical opinions and recertifications may not be requested.

~~e.e.~~ Recertification. ~~If the City has reason to doubt the validity of a certification, the City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee, but paid for by the City. The opinion of the third provider will be binding.~~ Upon expiration of the time period which the health care provider originally estimated that the employee needed for his/her own serious health condition, the employee must obtain recertification if additional leave is requested. The City may request recertifications as otherwise authorized by the FMLA and/or CFRA. Failure to provide recertification may result in delay or denial of continuation of FMLA/CFRA Leave. An employee may request a copy of the health care provider's opinions when there is a recertification.

~~d.f.~~ Intermittent Leave or Leave on a Reduced Leave Schedule. Leave may be taken in several blocks of time, or intermittently or on a reduced work schedule when medically advisable. If an employee requests intermittent leave ~~intermittently~~ (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule. If intermittent leave is requested, the City may limit leave increments to the shortest period of time that the City's payroll system uses to account for absences or use of leave. The City may require an employee who certifies the need for a reduced schedule or intermittent leave to temporarily transfer to an alternative position of equivalent pay and benefits that better accommodates the leave schedule.

8. EMPLOYEE NOTICE OF LEAVE: Although the City recognizes that emergencies arise which may require employees to request immediate leave, employees are



required to give as much notice as possible of their need for leave. Such notice may be orally given. Verbal notice should be sufficient to make the City aware that the employee needs FMLA/CFRA-qualifying leave, and the anticipated timing and duration of the leave.

a. **Foreseeable Leave -- 30 Days Advance Notice.** If leave is foreseeable, at least thirty (30) days' notice is required based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member, or the planned medical treatment for a serious injury or illness of a covered servicemember. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. ~~Such notice may be orally given.~~ If the City determines that an employee's notice is inadequate or the employee knew about the need for the request leave in advance of the request, the City may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute. The employee shall consult with the City and make a reasonable effort to schedule any planned medical treatment or supervision so as to minimize disruption to the operations of the City. Any such scheduling, however, shall be subject to the approval of the health care provider of the employee or the employee's child, parent or spouse.

(1) For foreseeable leave due to a qualifying exigency notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable.

(2) In those cases where the employee is required to provide at least 30 days' notice of foreseeable leave and does not do so, the employee shall explain the reasons why such notice was not practicable upon a request from the employer for such information.

a. **Unforeseeable Leave or 30 Days Not Practicable.** If the need for leave is unforeseeable, or 30 days' notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. When the need for leave is not foreseeable, an employee must still comply with the City's usual and customary notice and procedural requirements for requesting leave, absent an emergency or unusual or unforeseen circumstances.

(1) Notice may be given by the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to do so personally.

b. **Leave Due to Emergency or Unforeseen Circumstances.** The City shall not deny a CFRA leave, the need for which is an emergency or is otherwise unforeseeable, on the basis that the employee did not provide advance notice of the need for the leave, so long as the employee provided notice to the City as soon as practicable.

8. **CITY REVIEW AND DETERMINATION.** Upon receipt of an employee's request for FMLA/CFRA leave, the Personnel Office shall review the request, and, when applicable, the medical certification and determine (a) if the employee is eligible, (b) if the notification/certification is sufficient, (c) if the employee is eligible for or required to take any paid



leave, and (d) if the leave is limited (alternate schedule, duration, etc.). The City shall respond to the leave request as soon as practicable and in any event no later than five (5) business days after receiving the employee's request, as provided in Subsection (a) and (b). The City shall attempt to respond to the leave request before the date the leave is due to begin. Once given, approval shall be deemed retroactive to the date of the first day of the leave. Upon determination, the Personnel Office shall notify the employee in accordance with the following procedures.

a. Notice of Eligibility and Notice of Rights and Responsibilities: The Personnel Office will notify the employee of the employee's eligibility to take FMLA/CFRA Leave. Notice shall be given to the employee within five (5) business days of receiving the request, or within five (5) business days of when the City acquires knowledge that an employee's leave may be for an FMLA/CFRA-qualifying reason, absent extenuating circumstances. The eligibility notice may be given orally or in writing. The City shall also give written notice to the employee of his/her rights and responsibilities under the FMLA/CFRA, including the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations.

b. Designation Notice: The City will notify the employee in writing of the designation of leave as FMLA Leave, CFRA Leave, and/or both FMLA and CFRA Leave. Notice shall be given to the employee within five (5) business days of when the City has enough information to determine whether the leave is being taken for a FMLA/CFRA-qualifying reason, absent extenuating circumstances. If the City has enough information to provide a designation notice when the City gives the employee his/her notice of eligibility, the City will give the designation notice at that time.

c. At the time that the City notifies the employee of the designation of FMLA/CFRA Leave, the City will notify the employee whether the employee's request to use earned or accrued leave has been granted, and/or whether the City will require the employee to use any earned or accrued paid leave concurrently with the FMLA/CFRA Leave for which the leave is FMLA/CFRA-qualifying.

d. If the amount of leave needed is known at the time the City designates the leave as FMLA/CFRA-qualifying, the City will notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA/CFRA leave entitlement in the designation notice. If it is not possible to provide the hours, days, or weeks that will be counted against the employee's FMLA/CFRA leave entitlement (such as in the case of unforeseeable intermittent leave), then the City will provide notice of the amount of leave counted against the employee's FMLA/CFRA leave entitlement upon the request by the employee, but no more often than once in a 30-day period and only if leave was taken in that period.

#### 9. RETROACTIVE DESIGNATION OF FMLA/CFRA LEAVE.

a. The City may not retroactively designate leave as FMLA/CFRA Leave unless:

(1) The City learns for the first time that leave is for a FMLA/CFRA purpose after such leave has begun, such as when an employee gives notice of the

need for an extension of paid leave (e.g. vacation) with an unpaid FMLA/CFRA leave. In such a situation, the entire period of paid leave may be retroactively counted as FMLA/CFRA leave for the period of the leave that was FMLA/CFRA-qualifying; or,

(2) The City ultimately confirms leave as FMLA/CFRA-qualifying and knew the reason for the leave, but was unable to determine if the leave qualified under FMLA and/or CFRA.

b. The City may also retroactively designate leave as FMLA and/or CFRA Leave to the extent otherwise authorized by federal and state law.

#### 10. REINSTATEMENT UPON RETURN FROM LEAVE

a. Right to Reinstatement. Upon expiration of leave, an employee is entitled to be reinstated to the same position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment, unless: (1) there is no equivalent job available; (2) filling the equivalent (substantially similar) job would substantially undermine the City's ability to operate safely and efficiently; or (3) other grounds set out in the FMLA and/or CFRA. If an employee is no longer qualified for his/her prior position because of the employee's inability to attend a necessary course, renew a license, etc., as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work. (For discussion of reinstatement of key employees, see subsection (d) below.)

An employee's use of FMLA/CFRA leave will not result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA/CFRA leave. However, employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

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

Upon request, the City will provide the employee a guarantee of employment in the same or an equivalent job with equivalent pay, benefits, and other employment terms and conditions upon returning from leave.

b. Employee's Obligation to Periodically Report on Status/His/Her Condition. Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

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

to provide such certification will result in denial of reinstatement. If an employee is on an intermittent or reduced leave schedule, the City may request a certification of fitness to return to duty for such absences up to once every thirty (30) days if reasonable safety concerns exist regarding the employee's ability to perform his/her duties, based on the serious health condition for which the employee took such leave. ~~The City will not terminate the employment of the employee while awaiting such a certification of fitness to return to duty for an intermittent or reduced schedule leave absence.~~ "Reasonable safety concerns" means a reasonable belief of significant risk of harm to the individual employee or others. In determining whether reasonable safety concerns exist, the City will consider the nature and severity of the potential harm and the likelihood that potential harm will occur.

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

11. FAILURE TO RETURN FROM FMLA/CFRA LEAVE. If an employee fails to report to work promptly at the end of the approved leave period, the City will assume that the employee has resigned. In such event, the City will notify the employee of its intention to treat the employee's failure to return as a resignation from employment. If the employee does not respond within five (5) business days of written notification sent by the City to the employee's last known address on file with the City, and provide justifiable reason(s) for his/her failure to return to work, the employee will be separated from employment based on resignation.

12. EXTENSION OF FMLA/CFRA LEAVE. If an employee wishes to request an extension of leave due to the continuation, recurrence, or onset of his/her own serious health condition, or of the serious health condition of the employee's spouse, registered domestic partner, child, or parent, the employee must submit a request for an extension in writing and may be required to provide subsequent re-certifications. This written request and re-certification (if applicable) should be made as soon as the employee realizes that he/she will not be able to return at the expiration of the leave period in accordance with the City's general leave of absence policy (Rule XVI).

#### ~~11.~~ 13. REQUIRED FORMS AND PROCEDURES

Employees must fill out the following applicable forms in connection with leave under this policy:

a. ~~"Request for Family Leave Form" prepared by the City, to be eligible for leave.~~ Eligible employees should submit a request for FMLA/CFRA leave to their supervisors at least thirty (30) days in advance of foreseeable events and as soon as possible for unforeseeable events. A request does not have to be in writing, but a written request will assist the City in evaluating the employee's request. (Employees may obtain a Request for Family Leave Form from the Personnel Department.) Failure to comply with the notice requirement is grounds for, and may result in, deferral of the requested leave until the employee complies with the policy.



(NOTE: Employees will receive a City response to their request, which will set forth certain conditions of the leave.);

b. ~~Certification Form~~ ~~Medical certification~~ either for the employee's own serious health condition or for the serious health condition of a child, parent or spouse; or for caregiver leave; or for qualifying exigency leave. Employees requesting FMLA/CFRA Leave for any eligible reason are required to submit a completed "Certification of Physician or Practitioner" form, ("Certification"). Forms may be obtained from the Personnel Department. The employee should submit the Certification within five (5) business days after submitting his/her request for FMLA/CFRA Leave where the need for leave is foreseeable; and within five (5) business days of determination of an unforeseen need for FMLA/CFRA Leave or within five (5) business days after unforeseen FMLA/CFRA Leave commences, whichever occurs first. If an employee provides an incomplete or insufficient Certification, the City will advise him/her in writing as to what additional information is required, and the employee will have seven (7) calendar days (or longer, if unable to comply in that time frame despite the employee's diligent good faith efforts) to complete and return the form. If an employee fails to provide a Certification within the time frame established by this policy and the law, the City may delay or deny the taking of FMLA/CFRA Leave until the required certification is provided..

(1) The Certification should not disclose the underlying diagnosis of any serious health condition involved without the consent of the patient in accordance with California and federal law.

(2) Information Required for Employee's Own Serious Health Condition. Employees who request leave for their own serious health condition (or for substance abuse leave), must provide Certification from the employee's health care provider, containing the following information: the date on which the serious health condition began; the probable duration of the serious health condition; and a statement by the health care provider that, due to the serious health condition, that the employee is unable to work at all or is unable to perform the essential functions of his/her position. The Certification shall be either a Form WH-380-E, issued by the U.S. Department of Labor; a form issued by the California Fair Employment and Housing Council; or the City form seeking the same information.

(3) Information Required for Family Member's Serious Health Condition. Employees who request leave to care for a child, parent, spouse or registered domestic partner who has a serious health condition (or for substance abuse leave), must provide a Certification from the family member's health care provider, containing the following information: the date on which the serious health condition began; the probable duration of the serious health condition; an estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care; and a statement that the serious health condition warrants the participation of a family member to provide care during the period of the treatment or supervision of the individual requiring care. The Certification shall be either a Form WH-380-F, issued by the U.S. Department of Labor; a form issued by the California Fair Employment and Housing Council; or the City form seeking the same information.

(4) Information Required for Caregiver Leave. Employees who request a Caregiver Leave must submit a Certification completed by an authorized health care



provider of the covered servicemember as specified in the implementing regulations. The Certification shall be either a Form WH-385, issued by the U.S. Department of Labor; a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family; or the City form seeking the same information. A complete and sufficient Certification to support a request for Caregiver Leave must include written documentation confirming that the covered servicemember's injury or illness was incurred in the line of duty on active duty and that the covered servicemember is undergoing treatment for such injury or illness by a health care provider. The Certification should be limited to the condition for which the employee is seeking leave. Authentication and/or clarification of the Certification may be required by the City. Second or third medical opinions and recertifications may not be requested. The City may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember, which may take the form of a simple statement from the employee, or a child's birth certificate, a court document, etc. The City is entitled to examine documentation such as a birth certificate, etc., but the employee is entitled to the return of the official document submitted for this purpose.

(5) Information Required for Qualifying Exigency Leave. The first time an employee requests leave because of a qualifying exigency, the employee shall provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on covered active duty, and the dates of the covered military member's covered active duty. A copy of new active duty orders or similar documentation shall be provided to the City if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different covered military member. The Certification shall be either a completed certification Form WH-384, issued by the U.S. Department of Labor; a form issued by the California Fair Employment and Housing Council; or the City form seeking the same information. If the qualifying exigency involves meeting with a third party, the City may contact the individual or entity with whom the employee is meeting to verify the meeting or appointment schedule and the nature of the meeting. The City may contact the Department of Defense to request verification that a covered military member is on active duty or call to active duty status.

(6) Time to Provide a Certification. When an employee's leave is foreseeable and at least thirty (30) days' notice has been provided, if a Certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested Certification to the City within fifteen (15) calendar days after the City's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts, or the City agrees in writing to allow the employee more than 15 calendar days to return the requested Certification.

(7) Consequences for Failure to Provide an Adequate or Timely Certification. If an employee provides an incomplete Certification the employee will be given a reasonable opportunity to cure any such deficiency. However, if an employee fails to provide a Certification within the time frame established by this policy, the City may delay the taking of FMLA/CFRA Leave until the required Certification is provided. The City may directly contact an employee's health care provider only to authenticate or clarify information provided on a Certification form without first obtaining the employee's permission. In compliance with the FMLA and its regulations, and to protect the medical privacy of the employee, or his/her family

member, if the City determines that it is necessary to contact the health care provider, only a person employed in one of the following employment categories may contact the health care provider: the City's health care provider; the City's Personnel Manager, or an employee(s) of the Personnel Department charged with administering the City's leave policies. The employee's direct supervisor shall not contact the health care provider of the employee or family member. If the employee fails to provide the City with an authorization allowing the City to clarify the certification with the health care provider, and does not otherwise clarify the certification and the certification is unclear, the City may deny the taking of FMLA/CFRA Leave.

c. Authorization for payroll deductions for benefit plan coverage continuation; and

d. Fitness for Duty to Return from Leave Form.

#### 14. POSTING OF FMLA AND CFRA RIGHTS AND RESPONSIBILITIES.

A general notice of the provisions of the FMLA and CFRA is posted by the City in each of the following locations:

a. Highland City Hall, 27215 Base Line Road, Highland, CA 92346;

and

b. Highland Corporation Yard, 7935 Central Avenue, Highland, CA

92346.

The City also posts a general notice about the provisions of the FMLA/CFRA on its website. A copy of the general notice is may also be obtained from the Administrative Services Department.

#### E. MATERNITY/PREGNANCY DISABILITY LEAVE

1. ~~A pregnant employee shall be entitled to a leave of absence without pay for up to four (4) months. To support a request for Maternity Disability Leave, the employee must submit a statement by her attending physician, certifying that she is physically unable to work due to pregnancy, childbirth or a related medical condition, and indicating the expected period during which she will be incapacitated for the performance of her official duties, and providing that the recommended leave is for medical disability related to the pregnancy. During said leave of absence, the employee has the option of using accumulated sick leave, other accrued leave, compensatory time and/or vacation credits, or leave without pay as appropriate. Maternity Disability Leave shall run concurrently with FMLA leave, such that group medical benefits will be provided for a total of twelve (12) weeks of Maternity Disability Leave.~~

2. ~~Upon expiration of the approved leave, the employee shall be reinstated to her former position or to a comparable one if the former position is abolished during the period of leave and the employee would otherwise not have been laid off. The comparable position is one having similar terms of pay, location, job content and promotional opportunities. Prior to the employee being reinstated, the department head may require a statement from the attending physician that the employee is physically capable of resuming the regular duties of her position.~~

~~3. Failure to return to work after the authorized four month leave period causes the employee to have no reinstatement rights. An employee who plans to take such a leave should give reasonable notice of the date the leave shall commence and the estimated duration of the leave.~~

~~4. Female employees shall be reasonably accommodated for conditions related to pregnancy, childbirth or related medical conditions if the employee requests an accommodation with the advice of her healthcare provider.~~

1. POLICY. The following policy is established in compliance with the requirements of the California Disability Leave Law ("PDL") set forth in California Government Code Section 12945 et seq., and applicable State regulations. The City will provide a pregnant employee with a leave of absence without pay for up to the number of hours the employee would normally work within four months (or one-third of year, or 17-1/3 weeks) when the employee is disabled by pregnancy, childbirth and related medical conditions. Eligible employees may also request temporary transfers and reasonable accommodations due to pregnancy, childbirth, or related medical conditions, if requested, supported by proper medical certification, and otherwise qualifying as reasonable accommodation. Retaliation against employees for taking Pregnancy Disability Leave is prohibited by law and City policy.

Rights and obligations which are not specifically set forth below shall be as specified in the Government Code and implementing regulations.

2. DEFINITIONS. The following terms shall have the following meanings in this Section, except as otherwise specifically provided.

a. "Comparable position" means a position that involves the same or similar duties and responsibilities and is virtually identical to the employee's original position in terms of pay, benefits, and working conditions.

b. "Disabled by pregnancy" means any employee who, in the opinion of the employee's health care provider, is unable because of pregnancy to perform any one or more of the essential functions of the employee's job or to perform any of these functions without undue risk to the employee, to the pregnancy's successful completion, or to other persons. Examples may include an employee who is suffering from severe morning sickness, or needs to take time off for prenatal or postnatal care, bed rest, gestational diabetes, pregnancy-induced hypertension, preeclampsia, post-partum depression, childbirth, loss or end of pregnancy, or recovery from childbirth, loss or end of pregnancy, as determined by the employee's health care provider.

c. "Essential functions" has the same meaning as set forth in Government Code Section 12926(f), as amended from time to time.

### 3. ELIGIBLE EMPLOYEES.

a. All employees who are or have been pregnant are eligible for Pregnancy Disability Leave ("PDL"), temporary transfer or temporary reasonable accommodation under this Section. There is no minimum length of service requirement before an employee disabled by pregnancy, childbirth or a related condition is entitled to Pregnancy Disability Leave.



#### 4. REASON FOR LEAVE.

a. To be eligible for Pregnancy Disability Leave, the employee must be disabled by pregnancy, childbirth, or related conditions, as defined by law.

b. The PDL allowance includes time taken (with or without pay) for any of the following reasons.

(1) The employee is unable to work at all, is unable to perform any one or more of the essential functions of the employee's job, or is unable to perform any one or more of the essential functions of her job without undue risk to the employee, the successful completion of pregnancy, or to other persons, because of pregnancy or childbirth or because of any medically recognized physical or mental condition that is related to pregnancy or childbirth (including severe morning sickness); or

(2) The employee needs to take time off for prenatal care.

#### 5. DURATION OF LEAVE AND CONDITIONS.

a. Full-time Employees. For full-time eligible employees, Pregnancy Disability Leave may be taken for up to the number of hours the employee would normally work within four (4) calendar months (one-third of a year, or 17-1/3 weeks) . For a full-time eligible employee who works forty (40) hours per week, "four months" means 691 hours of leave entitlement based on 40 hours per week time 17-1/3 weeks. If an employee's schedule varies from month to month, a monthly average of the hours worked over the four months prior to the beginning of the leave shall be used for calculating the employee's normal work month.

b. Part-Time Employees. An employee who works less than forty (40) hours per week will receive a pro rata or proportional amount of PDL.

c. Variable Schedule. For employees who work on a variable work schedule, the number of working days that constitutes "four months" is calculated on a pro rata or proportional basis.

c. Extension. If the initial period of Pregnancy Disability Leave proves insufficient, consideration will be given to a written request for a single extension of no more than ten (10) calendar days.

d. Intermittent Leave. Pregnancy Disability Leave may be taken intermittently or on a reduced leave schedule when medically advisable, as determined by the employee's health care provider. The City may limit intermittent or reduced leave increments to the lesser of (i) one hour, or (ii) any shorter increment used under the City's payroll system to account for absences or use of leaves. If an employee takes leave on an intermittent basis, or a reduced work schedule, only the amount of leave actually taken may be counted toward the four months of Pregnancy Disability Leave (or pro-rated portion) to which the employee is entitled.



6. PAY STATUS. Pregnancy Disability Leaves are unpaid. However, an employee on PDL will utilize any accumulated leave to remain in paid status, in the following situations:

a. An employee may elect to use accrued vacation leave or other accrued personal leave to remain in paid status during any Pregnancy Disability leave before taking unpaid PDL.

b. An employee on Pregnancy Disability Leave must use any accrued paid sick leave before taking unpaid PDL.

c. A full-time employee may be eligible for benefits under the City's Long-Term Disability (LTD) Insurance program. The terms of the LTD Program shall govern eligibility. If LTD is not selected, the employee will be required to use accrued unused paid sick leave hours.

d. The receipt of vacation pay, sick leave pay, or disability benefits (if any) will not extend the length of the Pregnancy Disability Leave.

7. BENEFITS DURING PREGNANCY DISABILITY LEAVE.

a. Group Health Insurance: Subject to the terms, conditions, and limitations of the applicable plans, the City will continue to provide health insurance benefits for the full period of the approved PDL leave up to four months in a 12-month period, at the same level and under the same conditions that coverage would have been provided if the employee had continued employment continuously for the duration of the PDL. The time that the City maintains and pays for group health coverage during PDL shall not be used to meet an employer's obligation to pay for 12 weeks of group health coverage during CFRA leave, even where the City designates PDL as leave under the FMLA. If an employee fails to return to work after her leave entitlement has been exhausted or expires, the City has the right to recover its share of health plan premiums for the entire leave period if:

(1) The employee fails to return at the end of her PDL; and

(2) The employee's failure to return from leave is for a reason other than one of the following:

(a) Taking CFRA leave, unless the employee chooses not to return to work following the CFRA leave;

(b) The continuation, recurrence or onset of a health condition that entitles the employee to PDL, unless the employee chooses not to return to work following the leave.

(c) Non-pregnancy related medical conditions requiring further leave, unless the employee chooses not to return to work following the leave.

(d) Any other circumstance beyond the control of the employee, including, but not limited to, circumstances where the employer is responsible for the employee's failure to return (e.g., the employer does not return the employee to the same position or reinstate the employee to a comparable position), or circumstances where the employee must care for oneself or a family member (e.g., the employee gives birth to a child with a serious health condition).

(3) In the event the employee fails to return under this section, the City has the right to recover premiums through deduction from any sums due (e.g. unpaid wages, vacation pay, etc.).

b. Other benefit plans. The City will continue to pay premiums under Group disability and life insurance plans (if applicable) for up to four months of the PDL.

c. Any seniority and other benefits normally accrued during any period of paid leave, shall also accrue during any part of a paid Pregnancy Disability Leave. Seniority, leave accruals and other benefits do not accrue during an unpaid Pregnancy Disability leave. However, the employee would return to work with the same seniority and unused leave balances as when the unpaid leave commenced, except as those accrued leave balances were reduced to provide the employee with paid Pregnancy Disability Leave in accordance with this Section. Benefit accruals will resume upon return to active employment.

8. TEMPORARY TRANSFERS AND OTHER TEMPORARY REASONABLE ACCOMMODATIONS. An employee may request a temporary transfer to another position, or request other temporary reasonable accommodations, when, based on the certification of the employee's health care provider, a temporary transfer or other temporary reasonable accommodation(s) is medically advisable due to pregnancy, childbirth or related medical conditions, in accordance with the following provisions.

a. Temporary Transfers. The City will grant a request for temporary transfer if the City may reasonably accommodate the temporary transfer. The City will not grant a temporary transfer if it would require the City to create a new position, result in the discharge or demotion of another employee, violate the terms of any collective bargaining agreement, transfer another employee with more seniority, or promote or transfer any employee who is not qualified to perform the new job. The City may accommodate a temporary transfer request by temporarily transferring another employee, but is under no obligation to do so. The City reserves the option of granting a temporary transfer to a position other than that requested by the employee, based upon the needs of the City and the employee's medical condition.

b. Temporary reasonable accommodations. The City will grant a request for temporary reasonable accommodations if such accommodations, or may grant other temporary reasonable accommodations consistent with the medical certification, bona fide occupational qualifications, and business necessity. The City reserves the right to refuse to make such reasonable accommodation where such accommodation(s) would cause an undue hardship to the City.

c. If an employee's health care provider provides medical certification that an employee has a medical need to take intermittent leave or leave on a reduced work schedule and it is foreseeable because of pregnancy, the City may require the employee to transfer temporarily to an available alternative position that meets the needs of the employee, subject to the following:

(1) The employee must meet the qualifications of the position;  
and

(2) The alternative position must have the equivalent rate of pay  
and benefits; and

(3) The alternative position better accommodates the  
employee's leave requirements than the employee's regular job; and

(4) The alternative position does not have to have equivalent  
duties.

d. Upon certification by the employee's health care provider that there is no further medical advisability for the transfer, intermittent leave, or leave on a reduced work schedule, the City will reinstate the employee to the same or comparable position in accordance with this Section as set forth below.

9. RELATIONSHIP BETWEEN PREGNANCY DISABILITY LEAVE AND FMLA/CFRA LEAVE. The City's Family and Medical Leave Policy under the FMLA and CFRA is set forth in Subsection D of this Section.

a. Normally, leave taken under CFRA and FMLA run concurrently, except in the case of PDL leave, which runs concurrently with FMLA. If an employee is eligible for PDL, and is also eligible for CFRA Leave at the time of request for PDL, the four weeks of PDL authorized by this Section shall be in addition to the twelve workweeks of CFRA Leave. In such situation, the maximum leave entitlement for an employee for both PDL and CFRA leave for reason of the birth of the child and/or the employee's own serious health condition, is the working days in 29½ workweeks. This assumes that the employee is disabled by pregnancy for four months (the working days in 17½ weeks) and then requests, and is eligible for, a 12-week CFRA leave for reason of the birth of the employee's child.

b. If an employee is eligible for PDL, and is also eligible for FMLA Leave (but is not eligible for CFRA Leave), any available FMLA Leave and any available Pregnancy Disability Leave shall run concurrently. The maximum amount of time that an eligible employee may take for FMLA Leave and Pregnancy Disability Leave, is 12 workweeks.

10. RELATIONSHIP BETWEEN PREGNANCY DISABILITY LEAVE AND DISABILITY ACCOMMODATION. The right to take PDL is separate and distinct from the right to take a leave of absence as a form of reasonable accommodation for a disability under Government Code section 12940. At the end or depletion of an employee's PDL, an employee who has a physical or mental disability (which may or may not be due to pregnancy, childbirth, or related medical conditions) may be entitled to reasonable accommodation under Government Code

section 12940. Entitlement to leave for a disability will be determined on a case-by case basis, and is not diminished by the employee's exercise of her right to pregnancy disability leave.

## 11. REINSTATEMENT.

a. Upon timely return at the expiration of the approved leave (including any intermittent leave or leave on a reduced work schedule), or temporary transfer, the employee shall be reinstated to the same position she held prior to her leave or transfer, unless:

(1) The employee would not otherwise have been employed in the same position at the time reinstatement is requested for legitimate business reasons unrelated to the employee's leave or transfer; or

(2) Each means of preserving the job for the employee (such as leaving it unfilled or filling it with a temporary employee) would substantially undermine the City's ability to operate the business safely and efficiently.

An employee has no greater right to reinstatement to the same position or to other benefits or conditions of employment than if the employee had been continuously employed in this position during the PDL or transfer period.

b. If the employee is not reinstated to the same position, the employee will be reinstated to a comparable position unless:

(1) There is no comparable position available; or,

(2) If the PDL does not qualify for FMLA (see Section 305), a comparable position is available, but filling that position with the returning employee would substantially undermine the City's ability to operate the business safely and efficiently.

An employee has no greater right to reinstatement to a comparable position or to other benefits and conditions of employment than an employee who has been continuously employed in another position that is being eliminated.

c. If an employee disabled by pregnancy has taken a Pregnancy Disability Leave for longer than four months, the City will treat the employee the same regarding reinstatement rights as it treats any other similarly situated employee who has taken a similar length disability leave.

d. If an employee takes CFRA Leave at the expiration of Pregnancy Disability Leave, the employee's right to reinstatement is governed by Section D, regarding CFRA leave, and not this Section.

e. Before an employee will be permitted to return from a PDL of three (3) days or more, the employee must obtain a certification from a health care provider that the employee is able to resume work.



f. If the employee can return to work with limitations, the City will evaluate those limitations and, if possible, will accommodate the employee as required by law.

g. The City will provide the employee with the guarantee of reinstatement in writing, upon the employee's request.

13. **FAILURE TO RETURN FROM PREGNANCY DISABILITY LEAVE.** If an employee fails to report to work promptly at the end of the approved Pregnancy Disability Leave period, the City will assume that the employee has resigned. In such event, the City will notify the employee of its intention to treat the employee's failure to return as a resignation from employment. If the employee does not respond within five business days of written notification sent by the City to the employee's last known address on file with the City, and provide justifiable reason(s) for his/her failure to return to work, the employee will be separated from employment based on resignation.

14. **EXTENSIONS.** An employee who requests an extension of PDL due to the continuation, recurrence, or onset of a medical condition, must submit a request for an extension in writing. This written request should be made as soon as the employee realizes that return at the expiration of the leave period is not possible. Requests will be considered in accordance with the City's usual procedures and practices for leaves of absence, or the Disability Accommodation Policy (Section XVI.H).

15. **PROCEDURES.** To insure employees receive the best benefit of leave provisions, requests for leave must comply with City procedures and policies. Notwithstanding the provisions of these laws, employees are required to observe all City policies regarding leave requests, absences, notification to supervisors and appointing authorities, payment of insurance premiums, and use of paid leave, whether or not addressed herein.

a. **Application for Leave:** An employee requesting Pregnancy Disability Leave must complete a "Request for Leave/Notice of Leave" form and return it to his/her Department Head for their signature. Forms may be obtained from the Personnel Office. The Department Head shall forward the application immediately to the Personnel Office.

b. **Notice of Leave:** When the need for Pregnancy Disability Leave is foreseeable, such as the because of a planned medical treatment, the employee must submit an application for leave at least thirty (30) days before the leave is to begin. If the need for leave is not foreseeable, notice must be given as soon as possible, but not later than five (5) working days after learning of the need. Failure to provide such notice is grounds for delay or denial of a leave request, except if the need for leave was an emergency or was otherwise unforeseeable. The City shall respond to the leave request as soon as possible and in any event no later than ten (10) days after receiving the request. When possible, employees must make a reasonable effort to schedule foreseeable planned medical treatments so as not to unduly disrupt the City's operations.

c. **Type of Notice.** For City purposes, written notice will be required, but may be submitted after an oral request. Oral notice must be provided according to department policies regarding emergency or unplanned absences.

d. Medical Certification: A request for Pregnancy Disability Leave must be supported by Medical Certification ("Certification") from the employee's physician or other health care provider. Certification forms may be obtained from Personnel. The completed Certification must be provided to the City within fifteen (15) days in advance of the leave request or as far in advance as practicable. Such certification is not required with regard to birth of a child.

(1) In the case of medical certification indicating disability necessitating a leave, the Certification must state the date that the employee became disabled due to pregnancy, the probable duration of the period or periods of disability, the employee is unable to perform one or more essential functions of her position without undue risk to the employee, the successful completion of pregnancy or to others.

(2) In the case of medical certification indicating disability necessitating a temporary transfer or temporary accommodation, the Certification must contain the date on which the need to transfer or temporary accommodation became medically advisable, the probable duration of the period or periods of the need to transfer or temporary accommodation, and an explanatory statement that due to the employee's pregnancy, the transfer or temporary accommodation is medically advisable.

(3) The City may also require that the employee obtain subsequent recertifications if the employee upon the expiration of the original leave period requests any additional leave periods.

(4) Consequences for Failure to Provide an Adequate or Timely Certification: If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to cure any deficiency. However, if an employee fails to provide a medical certification within the time frame established by this Policy, the City may delay the taking of Pregnancy Disability Leave until the required certification is provided, or may deny the leave.

e. Review and Determination: No later than ten (10) calendar days of receiving a request for PDL, reasonable accommodation and/or transfer, the Personnel Office shall respond to the employee's request. The Personnel Office shall attempt to respond to the leave request before the date the leave is due to begin. Once given, approval shall be deemed retroactive to the date of the first day of the leave.

## 16. POSTING OF NOTICE OF EMPLOYEE RIGHTS AND RESPONSIBILITIES.

a. A general notice of the provisions of the FEHA regarding pregnancy disability leave, temporary transfer and temporary accommodation is posted by the City in each of the following locations:

(1) Highland City Hall, 27215 Base Line Road, Highland, CA 92346;  
and

(2) Highland Corporation Yard, 7935 Central Avenue,  
Highland, CA 92346.

b. The City also posts a general notice about the provisions regarding pregnancy disability leave, temporary transfer and temporary accommodation under the FEHA on its website. A copy of the general notice may also be obtained from the Administrative Services Department.

#### CF. STATE WORKERS' COMPENSATION

1. Employees may be provided with up to a maximum of three (3) consecutive regular work days of unchargeable leave following an occupational injury under the Workers' Compensation Act of the State of California.

2. The City desires to allow employees to supplement their Workers' Compensation Insurance earning while the employee is unable to work due to on-the-job injuries. Workers' Compensation Insurance payments are for a maximum of two-thirds (2/3) of the employee's gross salary. The employee may supplement Workers' Compensation Insurance earning with accrued vacation, accrued compensatory time, administrative leave, floating holiday, and/or sick leave in an amount not to exceed his/her normal gross salary when combined with any Workers' Compensation Insurance payments for the same period of time.

3. The employee may expend all accrued sick leave, accrued floating holiday, accrued compensatory time, administrative leave, and vacation leave, until all such leave time has been expended. If the employee desires to expend accrued leave as allowed by these Rules, he/she will be considered by the City to be on regular status until all accrued leave time has been expended. When all accrued leave time has been expended, the employee will be on leave without pay for the full period of the temporary disability, unless otherwise authorized or required by law. The employee shall be eligible to receive the amount normally available under the City's group health/life insurance program and shall accrue vacation and sick leave at two-thirds (2/3) of the normal accrual.

#### 4. Application:

a. When an employee is out on an industrial injury, no charge will be made to leave benefits for the first three (3) days. Any payments from Workers' Compensation Insurance will be applied first to repurchase accrued leave time used, next to reimburse the City for the first three regular work days and any balance would go to the employee. It is the intent to provide full benefits where possible and is not construed to allow the employee windfall income.

b. The deduction by the City from the employee's accumulated sick leave shall be limited to the same percentage as the amount due from Workers' Compensation bears to the amount paid by the City. (For example, an employee of the City entitled to twelve dollars (\$12.00) per day from the City received \$9.00 per day from the Workers' Compensation and the difference of three dollars (\$3.00) per day being paid by the City. In deducting from such employee's accumulated sick leave, such deduction shall be made daily on the same basis, i.e. one-fourth (1/4) of a day.)

#### G. BEREAVEMENT LEAVE

Whenever an employee is compelled to be absent from work because of the death of the employee's immediate family member (as defined in Rule XV.E) ~~parent, grandparent, sibling, spouse, child or legal dependent, or a parent of a spouse,~~ the employee may upon approval of the Department Head, use up to three (3) days of any accumulated sick leave, vacation leave, floating holiday, or compensatory time off due to him/her for overtime worked, to attend the funeral of memorial services.

Additional time off for travel may be granted upon the recommendation of the Department Head and approved by the City Manager. For provisions on leave and reasonable accommodation for an employee whose immediate family member is deceased as the direct result of a crime, see also Rule XVI.E.

#### H. RETIREMENT PLAN

All full-time employees are eligible for membership in the Public Employees Retirement System ("PERS") in accordance with the California Public Employees' Retirement Law ("PERL"), as amended by the California Public Employees' Pension Reform Act of 2013 ("PEPRA"). The City shall pay all costs and make all contributions in accordance with resolutions of the City Council and as required by the System PERS. For classic members as defined in PEPRA, the City shall report the value of the Employer Paid Member Contributions (EPMC) to PERS as additional compensation. For new members, as defined in PEPRA, the City will pay costs and make contributions in accordance with PEPRA and the applicable PERS contract and City resolutions.

#### I. ADMINISTRATIVE LEAVE

~~FLSA-exempt e~~Employees ~~designated as exempt~~ are not eligible for overtime pay for working hours over and above the normal work schedule. Employees so designated shall be entitled to up to eighty (80) hours of Administrative leave per year. Administrative leave may be taken at any time on approval of the Department Head and at the discretion of the City Manager. The maximum amount of accrued Administrative leave shall be limited to one hundred and sixty (160) hours. At the discretion of the City Manager, on a case-by-case basis, accruals over the maximum may be extended for the period of six (6) months before lost. In the event employment is terminated with the City, the employee shall be paid for accrued administrative leave which has accrued within the limits specified above. ~~Forty (40) hours of Administrative leave shall be converted to salary annually divided equally among each pay period and shall be considered compensation with respect to PERS.~~

#### J. ADMINISTRATIVE LEAVE BUY-BACK

Employees eligible for administrative leave may at their option buy-back up to ~~forty (40)~~ sixty (60) hours of administrative leave per fiscal year. Employees shall request the buy-back in writing to the Finance Department. No negative leave balances shall accrue due to a buy-back allowed under this Section. This program shall only be available when funding is provided for these purposes in the budget.

#### K. DONATED LEAVE BANK



Employees at their option may choose to donate accrued leave into a leave bank maintained by the City, for use by other ~~to another~~ employees under the conditions of this Section and procedures established by the City. Only the following categories of accrued leave are available for donating purposes: vacation, floating holidays, compensatory time, and administrative leave. The only accrued leave that may be donated is that leave that is available to be taken by the donating employee. Donated hours shall be placed into the leave bank. Employees receiving a donation are limited to withdrawing hours from the bank and may not withdraw more than they would normally be paid in a work week. If an employee receiving a donation is receiving another means of pay such as disability insurance or workers compensation the employee shall be limited to their normal rate of pay after combining the other source. Employees receiving time from the leave bank must have used all available accrued leave before being eligible for donations. Employees must have a bonafide illness, injury or other reason as approved solely by the City Manager to be eligible for donations. The length of time that an employee may receive donations from the bank is variable and shall be determined solely by the City Manager. No negative leave balances shall occur as a result of this Section.

#### L. HEALTH/LIFE INSURANCE PROGRAM

The City shall provide a health/life insurance plan for all full-time continuous salaried employees. Life Insurance in the amount of the annual salary of each eligible employee shall be provided by the City based on a life insurance plan selected by the City, to a limit of one-hundred fifty thousand dollars (\$150,000). Eligibility shall be determined in accordance with the Plan provider's requirements. The City shall make available up to one thousand ~~one~~ three hundred dollars ~~(\$1,100)-(\$1,300)~~ per month for fiscal year ~~2015/2016~~2019/2020 and one thousand ~~one~~ three hundred fifty dollars ~~(\$1,150)-(\$1,350)~~ per month for fiscal year ~~2016/2017~~2020/2021 towards employee benefits to full-time and approved eligible part-time employees under the City of Highland Premium Only Plan. This amount shall be first applied to health and dental insurance coverage for the eligible employee. The City shall provide the City Council Members an amount equal to that provided to employees under the City of Highland Premium Only Plan (Section 125 Plan). These funds shall be available for the purchase of health, dental, and vision insurance or any other benefits available to employees. At no time shall the City Council Member benefits be converted to salary. For eligible retirees the City shall contribute two hundred dollars (\$200) per month toward health insurance.

#### M. CONTINUANCE OF MEDICAL COVERAGE (COBRA)

The City will provide employees who separate from the City with continued medical benefits coverage in accordance with applicable provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) and any other applicable provisions of federal law and state law.

~~1. The following events qualify employees and their eligible family members for eighteen (18) months of continued medical benefits coverage:~~

~~a. Termination of employment for reasons other than gross misconduct, as defined by law.~~

~~b. — Reduction of hours which results in the loss of health plan eligibility.~~

~~2. — The following events may qualify eligible family members for continued coverage for 36 months:~~

~~a. — Death of the employee.~~

~~b. — Divorce or legal separation.~~

~~c. — Termination of a child's dependent status.~~

~~3. — Termination of Coverage~~

~~a. — If the employee, spouse or eligible dependent elects the group continuation plan and one of the following events occurs before the expiration of the eighteen (18) or thirty-six (36) month period the coverage will cease:~~

~~b. — Termination of all employer provided group health plans.~~

~~c. — Failure to pay required premiums.~~

~~d. — Coverage is obtained as an employee under any other group health plan, regardless of the level of benefits or waiting periods in the new plan.~~

~~e. — Employee's former spouse remarries or obtains coverage under another group health plan.~~

~~f. — Becomes eligible for Medicare~~

~~4. — Premiums. If the employee, spouse or eligible dependant elect to participate in the group continuation plan, the employee, spouse or eligible dependant will be making the employee's monthly premium payments directly to the carrier. The City is not required to make a contribution towards the cost of the health insurance.~~

~~5. — Benefits. The group continuation plan will have the same coverage as the plan available at the time of the qualifying event.~~

#### ~~M.N.~~ DEFERRED COMPENSATION PLAN

The City will contract to provide a deferred compensation program for regular full and part-time employees, and will pay the costs of plan administration.

#### ~~N.O.~~ EDUCATIONAL REIMBURSEMENT

An employee may be reimbursed for tuition, textbooks and institutional fees incurred in successfully completing job-related course work and seminars from an accredited educational institution. Course work must be approved in advance by the Department Head to be eligible for reimbursement upon proof of successful completion of course work. The maximum

benefit per year per employee shall be as determined in advance by the City Manager, within the amount adopted for such purpose in the annual City budget. If the employee voluntarily leaves the employment of the City within one (1) year of completion of course work, employee shall reimburse the City funds received for educational reimbursement for said course work.

#### ~~M.P.~~ CALL-OUT CREDIT

A credit shall be applied when an ~~non-exempt~~ FLSA employee in the competitive service who has left the work site and is called to come back to work between the hours of 7:00 p.m. and 7:00 a.m., on a work day, or at any time during a normal day off. The minimum credit shall be for compensation in the amount of one and one half (1-1/2) hours. The compensation will be at the rate of time and one half (1-1/2). This policy shall also apply to those ~~non-exempt~~ FLSA employees working under an alternative work schedule, as long as they are called-out a minimum of two (2) hours after or two (2) hours before their normal work day, or at any time during a normal day off. Employees who are on standby duty under Rule XV.Q shall not be eligible for or receive call-out credit.

#### Q. STANDBY COMPENSATION

1. Standby duty. FLSA employees Employees in the competitive service who are released from active duty but are required by their departments to meet the following restrictions, shall be assigned to mandatory standby duty. Standby duty requires that employees so assigned shall: (a) be reachable by telephone or other communicating devices; (b) be able to report to active duty within 60 minutes time; and (c) refrain from activities which will impair their ability to perform assigned duties. Standby duty shall be rotated among qualified employees on a weekly basis beginning at the end of the normal work day on Monday and ending at the beginning of the workday on the following Monday. Employees on standby duty shall not be eligible for or receive call-out credit (see Rule XV.P).

2. Standby Compensation. Employees shall be compensated eight (8) hours of pay for each week of standby duty.

3. Emergency Operations. Standby duty pay may not apply when the City's Emergency Operations Center has been activated and an employee may-be assigned to a work shift other than his/her regular shift.

#### ~~N.R.~~ RETIREE HEALTH SAVINGS PROGRAM [Reserved.]

~~The City will contract to provide a retiree health savings program for regular full time employees and will pay for the costs of plan administration.~~

#### S. LACTATION ACCOMMODATION POLICY

The City will provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time, if possible, must run concurrently with rest and meal periods already provided to the employee. If the break time cannot run concurrently with rest and meal periods already provided to the employee, the break time will be unpaid.

The City will provide the employee the use of a room or location, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express milk in private. This location may be the employee's private office, if applicable. Employees with questions regarding this policy or requests should speak with the Personnel Director.

#### T. ANNUAL CREDIT MONITORING ALLOWANCE

The City will provide an annual credit monitoring allowance to any person who is a full-time employee or City Council member as of January 1st of each year to purchase credit monitoring insurance. The allowance will be provided in the employee's first payroll check for January of each year.

### XVI. ATTENDANCE, LEAVES, REPORTS AND RECORDS

#### A. ATTENDANCE

1. Employees shall be in attendance at their designated job location and work in accordance with the rules regarding hours of work, holidays, and leaves. In the event of an employee's unauthorized absence, or his/her failure to return to duty, the employee is subject to the City's policy on job abandonment (Rule XIX.B), and/or disciplinary action as appropriate (Rule XX). ~~Any unauthorized absence may be cause for disciplinary action, up to and including discharge from employment.~~ Authorized absence is defined as permission to be absent from duty for a specified purpose, with the right to return before or upon the expiration of the leave period.

2. All departments shall keep daily attendance records of employees which shall be reported to the Personnel Director in the form and on the dates he or she shall specify. Failure on the part of an employee, absent without leave, to return to duty within twenty-four (24) hours after notice to return shall be cause for invocation of the Job Abandonment Policy (Rule XIX.B) and/or discipline (Rule XX) as appropriate. ~~immediate discharge, and such employee automatically waives all rights under the Personnel ordinance Ordinance and these rules.~~ The depositing in the United States mail of a first class letter, postage paid, addressed to the employee's last known place of address, shall be reasonable notice.

#### B. MILITARY LEAVE

Employees of the City shall be entitled to military ~~Military leave shall be granted~~ in accordance with the provisions of ~~state and~~ federal law (Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 et seq.) (USERRA) and California law (Military & Veterans Code § 387 et seq.), as amended from time to time. . An employee requesting leave for this purpose shall provide the Department Head, whenever possible, 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. Appendix B sets out the basic parameters of applicable law, and is not intended to expand any rights beyond those provided by federal and state laws. In the event of any conflict between these Rules or Appendix B and applicable federal or state law, the applicable federal or state law will prevail. Answers to specific



questions regarding the application of USERRA and state law may be obtained by reviewing the applicable statutes directly.

#### C. LEAVE OF ABSENCE WITHOUT PAY

1. The City Manager, in his/her unrestricted discretion, may grant a regular or probationary employee leave of absence without pay or accrual of seniority, for an amount not to exceed three (3) months. After three (3) months, the leave of absence may be extended if so authorized by the City Manager. No such leave shall be granted except upon written request of the employee, setting forth the reason for the request, and the approval shall be in writing. Upon expiration of a regularly approved leave or within a reasonable period of time after notice to return to duty, the employee shall be reinstated in the position held at the time leave was granted. Failure on the part of an employee on leave to report back to work promptly at its expiration, or within a reasonable time after notice to return to duty, shall be deemed to be discharged result in the employee's discharge. The depositing in the United States mail of a first class letter, postage paid, addressed to the employee's last known place of address, shall be reasonable notice.

2. Increments of sick leave and vacation time shall not accrue during a leave of absence without pay. Except as otherwise required by law, during a leave of absence without pay, the employee shall be responsible for paying the entire cost of his/her own group health insurance, dental, vision, life insurance, and long term disability insurance, and shall not accrue excess benefit deferred compensation.

3. Seniority credit shall not accrue and shall not be lost as a result of an approved leave of absence without pay.

#### D. JURY DUTY /COURT LEAVE

1. Every employee who is called or required to serve as a juror shall be entitled to be absent from ~~his or her~~ his/her duties during the period of such service. Under such circumstances, the employee must give reasonable notice to ~~his or~~ his/her supervisor that he or she is required to serve in court (~~Labor Code Section 230~~), and is required to provide a certificate from the court which shows the dates of attendance and an itemized account of any compensation received for such service. (~~Labor Code Section 230(a)~~)

~~2.a.~~ The City may request a deferment of jury duty on behalf of the employee, where that employee's services are essential to the City's operations.

~~3.b.~~ Any fees or compensation received by reason of such court attendance in connection with jury duty as provided above must be delivered to the Finance Officer. The employee shall receive his/her regular rate of pay during such time as was required for his/her jury service ~~court attendance~~.

~~4.2.~~ An employee who is subpoenaed ordered to appear in court pursuant to a subpoena or other court order in a matter regarding an event or transaction which he or she perceived or investigated in the course of ~~his or~~ his/her duty, to which the City is not a party, shall be allowed to do so without loss of salary or other compensation to which he/she is normally entitled from the City during the time that the employee prepares for his/her response and

appearance, during the time that he/she travels to and from the place where the court or other tribunal is located and while he or she is required to remain at that place pursuant to the subpoena. The employee shall also receive the actual necessary and reasonable traveling expenses he/she incurred in complying with the subpoena. (Government Code Section 68096.1.)

5.3. An employee subpoenaed ordered to appear in court pursuant to a subpoena or other court order or appearing as a witness in a matter any judicial proceeding unrelated to his or his/her official capacity as an employee, including but not limited to, an employee who is a victim of a crime, shall be permitted time off without pay, or if the employee chooses, to use accrued vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of his/her employment for this purpose. (Government Code Section 68096.1) (Labor Code Sections 230(b) and (i).)

6.4. An employee shall, promptly upon receipt of summons, or subpoena or other court order, submit a Personnel Action Form for the time required for jury duty/court leave.

7.5. An employee on jury duty/court leave shall report for duty at the City for all time during regular working hours other than that time actually spent on court-leave assignment (jury duty or under court subpoena or other court order).

6. As used herein, the term "crime" shall have the meaning set forth in Rule XV.E.

#### E. LEAVE AND REASONABLE ACCOMMODATION FOR VICTIMS OF CRIMES

##### 1. Leave

a. An employee may take leave when time off is required for the employee who is a victim of a crime to obtain or attempt to obtain any relief from a court. Relief includes, but is not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or their child. (Labor Code Section 230(c).)

b. The employee shall give the City reasonable advance notice of his/her intention to take time off for any purpose listed in Rule XVI.E.1(a), unless the advance notice is not feasible. When an unscheduled absence occurs, the City will not take any adverse action against the employee if the employee, within a reasonable time after the absence, provides a certification to the City in one of the following forms:

- (1) A police report indicating that the employee was a victim.
- (2) A court order protecting or separating the employee from the perpetrator of the crime or abuse, or other evidence from the court or prosecuting attorney that the employee has appeared in court.
- (3) Documentation from a licensed medical professional, domestic violence counselor (as defined in Evidence Code Section 1037.1), a sexual assault

counselor (as defined in Evidence Code Section 1035.2), a victim advocate, licensed health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from the crime or abuse.

d. To the extent allowed or required by law, the City shall maintain the confidentiality of any employee requesting leave under this section. The City shall give the employee notice before any authorized disclosure as required by law.

e. Any employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a memorandum of understanding, for time taken off for this purpose.

2. Reasonable Accommodation. The City will provide reasonable accommodations for a victim of domestic violence, sexual assault, or stalking who requests an accommodation for the safety of the victim while at work.

a. For purposes of this subdivision, reasonable accommodations may include the implementation of safety measures, including a transfer, reassignment, modified schedule, changed work telephone, changed work station, installed lock, assistance in documenting domestic violence, sexual assault, stalking or other crime that occurs in the workplace, an implemented safety procedure, or another adjustment to a job structure, workplace facility, or work requirement in response to domestic violence, sexual assault, stalking, or other crime, or referral to a victim assistance organization.

b. The City is not required to provide a reasonable accommodation to an employee who has not disclosed his/her status as a victim of domestic violence, sexual assault, or stalking.

c. The City will engage in a timely, good faith, and interactive process with the employee to determine effective reasonable accommodations. In determining whether the accommodation is reasonable, the City shall consider an exigent circumstance or danger facing the employee.

d. The City is not required to undertake an action that constitutes an undue hardship on the employer's business operations, as defined by Government Code Section 12926. For the purposes of this subdivision, an undue hardship also includes an action that would violate an employer's duty to furnish and maintain a place of employment that is safe and healthful for all employees as required by Section 6400 of the Labor Code.

e. Documentation:

(1) Upon the request of an employer, an employee requesting a reasonable accommodation pursuant to this subdivision shall provide the employer a written statement signed by the employee or an individual acting on the employee's behalf, certifying that the accommodation is for a purpose authorized under this Rule XVI.E.1.

(2) The employer may also request certification from an employee requesting an accommodation pursuant to this subdivision demonstrating the employee's

status as a victim of domestic violence, sexual assault, or stalking. Certification shall be sufficient in the form of any of the categories described in Rule XVI.E.1(b).

(3) An employer who requests certification pursuant to subparagraph (B) may request recertification of an employee's status as a victim of domestic violence, sexual assault, or stalking, or ongoing circumstances related to the crime or abuse, every six months after the date of the previous certification.

d. Confidentiality. Any verbal or written statement, police or court record, or other documentation provided to the City identifying an employee as a victim shall be maintained as confidential by the City and shall not be disclosed by the employer except as required by federal or state law or as necessary to protect the employee's safety in the workplace. The employee shall be given notice before any authorized disclosure.

e. Changed Circumstances.

(1) If circumstances change and an employee needs a new accommodation, the employee shall request a new accommodation from the City. Upon receiving the request, the City shall engage in a timely, good faith, and interactive process with the employee to determine effective reasonable accommodations.

(2) If an employee no longer needs an accommodation, the employee shall notify the City that the accommodation is no longer needed.

f. Policy Against Discrimination or Retaliation. The City shall not discharge, or discriminate or retaliate against, an employee for taking time off for relief authorized by this Rule XVI.E.1(a) or (b), or for requesting a reasonable accommodation pursuant to this Rule XVI.E.2, regardless of whether the request was granted.

3. Definitions. The following terms shall have the following meanings in this rule XVI.E:1 and 2:

a. "Crime" means a crime or public offense set forth in Government Code Section 13951, and regardless of whether any person is arrested for, prosecuted for, or convicted of, committing the crime.

b. "Domestic violence" means any of the types of abuse set forth in Family Code Section 6211, as amended.

c. "Immediate family member" means a person who is any of the following:

(1) Regardless of age, a biological, adopted, or foster child, stepchild, or legal ward, a child of a domestic partner, a child to whom the employee stands in loco parentis, or a person to whom the employee stood in loco parentis when the person was a minor.



(2) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or an employee's spouse or domestic partner, or a person who stood in loco parentis when the employee or the employee's spouse or domestic partner was a minor child.

(3) A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee as registered under the laws of any state or political subdivision.

(4) A biological, foster, or adoptive sibling, a stepsibling, or a half-sibling.

(5) Any other individual whose close association with the employee is the equivalent of a family relationship described in subparagraph (1), (2), (3), or (4).

d. "Sexual assault" means any of the crimes set forth in Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 287, 288, 288.5, 289, or 311.4 of, or former Section 288a of, the Penal Code, as amended.

e. "Stalking" means a crime set forth in Section 646.9 of the Penal Code or Section 1708.7 of the Civil Code.

f. "Victim" includes any of the following:

(1) A victim of stalking, domestic violence, or sexual assault.

(2) A victim of a crime that caused physical injury or that caused mental injury and a threat of physical injury.

(3) A person whose immediate family member is deceased as the direct result of a crime.

(4) For the purposes of Rule XVI.D.3 only, any person against whom any crime has been committed.

g. "Victim advocate" means an individual, whether paid or serving as a volunteer, who provides services to victims under the auspices or supervision of an agency or organization that has a documented record of providing services to victims, or under the auspices or supervision of a court or a law enforcement or prosecution agency.

4. Additional Leave - When City Employees 25 or More Employees (Labor Code Section 230.1)

a. Applicability; Types of Leave. During any period of time that the City has 25 or more employees, an employee who is a victim of a crime may take time off from work for any of the following additional purposes:

(1) To seek medical attention for injuries caused by crime or abuse..

(2) To obtain services from a domestic violence shelter, program, rape crisis center or victim services organization or agency as a result of the crime or abuse.

(3) To obtain psychological counseling related to an experience of crime or abuse.

(4) To participate in safety planning and take other actions to increase safety from future crime or abuse, including temporary or permanent relocation.

b. Reasonable Notice. The employee shall give the City reasonable advance notice of his/her intention to take time off for any purpose listed in Rule XVI.E.4(a)(1), (2), (3) or (4), unless the advance notice is not feasible. When an unscheduled absence occurs, the City will not take any adverse action against the employee if the employee, within a reasonable time after the absence, provides a certification to the City in one of the forms listed in Rule XVI.E.1.c.

c. Confidentiality. The provisions of Rule XVI.E.1(d) apply

d. Use of Accrued Leave. The provisions of Rule XVI.E.1(e) apply.

e. Policy Against Discrimination or Retaliation. The City shall not discharge, or discriminate or retaliate against an employee who is a victim for taking time off for any purpose set forth in Rule XVI.E.4(a).

f. Definitions. The definitions set forth in Rule XVI.E.3 shall apply.

g. FMLA. This Rule XVI.E.4 does not create a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the FMLA. (See Rule XV.D for the City's FMLA/CFRA Leave Policy.)

#### ~~E~~.F. TIME OFF TO VOTE

If an employee does not have sufficient time outside of working hours to vote at a statewide election, the employee may take up to two (2) hours off without loss of pay at the beginning or end of the day. Prior approval for this time off by the employee's supervisor is required. (Elections Code Section 14000.)

#### ~~F~~.G. SCHOOL LEAVE

Any City employee who is a parent, guardian or grandparent having custody of one or more children in kindergarten or grades one (1) through twelve (12) or attending a licensed day care facility shall be allowed up to forty (40) hours each school year, not to exceed eight (8) hours in any calendar month of the school year, without pay, to participate in activities of the school of their child. Such employee must provide reasonable advance notice of the planned absence. The employee shall use vacation and/or compensating time off to cover the absence. The employee shall provide documentation from the school as verification that the employee participated in

school activities on a specific date and at a particular time. If both parents, guardians or grandparents having custody, work for the City at the same work site, only the first parent requesting shall be entitled to leave under this provision.

#### H. AMERICANS WITH DISABILITIES ACT DISABILITY ACCOMMODATION

In the event an employee becomes disabled within the meaning of the Americans with Disabilities Act or other applicable state or federal disability laws and the City is reasonably able to accommodate the limits or restrictions on that employee's ability to work, the City will do so provided that the employee is qualified to perform the duties of a job that may be made available to him or her. In effectuating the provisions of this Section and the duties of the law, the City's efforts to reasonably accommodate the employee shall take precedence over and preempt any other conflicting provisions or limitations of any memorandum of understanding or civil service regulations. Forms for use in requesting accommodation may be obtained from the Personnel Department.

#### I. SUPERVISORY DISCRETION TO RELIEVE EMPLOYEES FROM DUTY AND FITNESS FOR DUTY

~~Supervisors shall have the discretion to place employees on sick leave when, in the judgment of the supervisor, the presence of the employee at work would endanger the health and welfare of other employees or where the illness or injury of the employee interferes with the performance of such employee's duties.~~ If at any time the supervisor, Department Head or City Manager believes an employee is unable to perform assigned duties in a safe and efficient manner, the employee may be required to undergo a Fitness For Duty Examination. The purpose of the examination is to determine the employee's physical or psychological ability to meet the position requirements. The examination shall be performed by a medical doctor selected and paid for by the City. The doctor's report shall be the basis for determining whether any change of duties is warranted. It is City policy to comply with the Americans with Disabilities Act and the disability rights provisions of the California Fair Employment and Housing Act. When the City is aware that an employee has a covered disability and may need reasonable accommodation to perform the essential functions of the job, the City will engage in a good faith interactive process with the employee in an effort to identify possible reasonable accommodations. If an employee has questions about the interactive process or believes that he or she may need a reasonable accommodation to perform the essential functions of his/her job, the employee should contact his/her supervisor or the Personnel Department staff.

### XVI XVII. PERFORMANCE EVALUATIONS

#### A. PERFORMANCE EVALUATION PURPOSE

1. Performance evaluations provide recognition of effective performance and identify areas that need improvement, as appropriate. Performance evaluations may be used as a basis for completion of probation, salary adjustments, promotions, training and discipline. Performance evaluations may also include a period of performance probation associated with a performance improvement plan and heightened evaluation and counseling. ~~Performance Routine~~

performance probation evaluations are not considered discipline, and will not affect an employee's discipline and appeal rights, as provided in these Rules.

2. The Personnel Director shall provide a method of reporting of individual employee performance which relates to quantity and quality of work, ability, reliability, attendance and other job-related factors. The Personnel Director shall prescribe forms for such performance evaluations and shall be responsible for assuring that such evaluations are adequate to provide information to both the employee and the City for the purposes set forth in this Section. An employee must have a satisfactory performance evaluation rating of "meets job requirements" in order to be eligible for a merit salary increase or promotion. Deficiencies in performance by an employee may result in a decrease in salary, suspension, demotion or dismissal.

## B. PERFORMANCE REPORTS PROCEDURES

1. Department Heads shall periodically rate the performance of each employee; provided, however, that the Department Heads may delegate the responsibility for rating the performance of specified employees in their departments to that employee's supervisor. Interim reports may be completed as necessary when changes in work performance occur. Special evaluations may be required at the discretion of the Department Head with the prior approval of the City Manager, or directly by the City Manager. Each employee shall be informed in such reports of his or her strengths and weaknesses. The employee shall sign the report to acknowledge its receipt and contents. Such signature shall not necessarily mean he or she fully endorses the contents of said report.

2. The performance report will be presented to the employee prior to its entry in the employee's personnel file. Upon request, the performance evaluation will be discussed with the involved employee with a supervisor or Department Head designee. An employee may respond in writing to a performance evaluation within seven (7) calendar days of its receipt. Each completed evaluation, and the employee's written response, if any, will be maintained in the employee's personnel file together with any written response of the employee. Except as otherwise required by law, performance evaluations are not subject to appeal or grievance. An employee does not have the right to appeal or grieve any matter relating to the content of the performance evaluation.

3. Probationary Employees/New Appointments. Prior to the end of the initial probationary period, a new hire or re-hire will be evaluated. The outcome of such employee evaluation will determine whether the probationary employee is rejected or appointed as a "regular employee." This evaluation is also the means of determining the appropriateness of a merit increase at the end of the probation period. After successfully passing the probationary period, the employee's anniversary date is set; and the employee receives "regular employee" status, which includes being evaluated on a regular basis.

4. Probationary Employees/Promotional Appointments. An evaluation form will be completed prior to the end of the promotional probationary period to determine "release" to new position or return to the former position if available.



5. Management employees shall be regularly evaluated by the City Manager. Management employees shall remain at-will employees notwithstanding issuance of a performance evaluation or review by the City Manager.

## ~~XVII~~ XVIII. PERSONNEL RECORDS

### A. PERSONNEL FILES

1. Personnel Files. The City maintains a personnel file on each employee. Personnel files are located in the Personnel Department. An employee's personnel file shall contain only material that is necessary and relevant to the administration of the City's personnel program. Personnel files are the property of the City, and access to the information they contain is restricted.

2. Notifying City of Changes in Personal Information. Each employee is responsible to promptly notify the employee's supervisor and the Personnel Director of any changes in relevant personal information, including mailing address, telephone number, persons to contact in emergency, and number and names of dependents.

#### 3. Medical Information.

a. Separate Confidential Files. All medical information about an employee or applicant is kept separately and maintained as confidential, in accordance with the Americans with Disabilities Act ("ADA") (42 U.S.C. Section 12112(d)(3)(b) and the California Confidentiality of Medical Information Act ("CMIA") (Cal. Civil Code Sections 56 et seq.). Medical information will be kept confidential, on separate forms and in separate locked medical files, and shall be reviewed by authorized persons only to assess whether the applicant or employee has the ability to perform the functions of the job, with or without reasonable accommodation; or whether the employee may pose a direct threat to himself/herself and/or to others; to determine whether the employee is fit for duty; to assist in providing reasonable accommodation; to provide first aid as necessary; for insurance purposes; and to comply with other provisions of Federal and/or State law.

b. Information in Medical Files. The City will not obtain medical information about an employee or applicant except in compliance with the California Confidentiality of Medical Information Act. To enable the City to obtain certain medical information, the employee or applicant may need to sign an AUTHORIZATION FOR RELEASE OF EMPLOYEE MEDICAL INFORMATION.

c. Access to Medical Information. Access to employee or applicant medical information shall be strictly limited to only those with a legitimate need to have such information for City business reasons. In the case of an employee with a disability, managers and supervisors may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations. The City will not provide employee or applicant medical information to a third party (except as permitted under the CMIA ~~California Confidentiality of Medical Information Act~~ and the Federal Health Insurance Portability Accountability Act ("HIPAA"), or as otherwise required by law, for example pursuant to a court order) unless the employee signs an AUTHORIZATION FOR RELEASE OF EMPLOYEE

MEDICAL INFORMATION in the form provided by the City. The City will release only the medical information that is identified in the employee's authorization. If the employee's authorization indicates any limitations regarding the use of the medical information, the City will communicate those limitations to the person or entity to which it discloses the medical information.

4. References and Release of Information in Personnel Files.

a. Public Information. Upon request, the City will release to the public information about its employees as required by the Public Records Act. The City will not disclose personnel information that it considers would constitute an unwarranted invasion of personal privacy, except as required by law or court order.

b. Reference Checks. All requests from outside the City for reference checks or verification of employment concerning any current or former employee must be referred to the Personnel Director. Information will be released only if the employee signs an AUTHORIZATION FOR RELEASE OF EMPLOYMENT INFORMATION in the form provided by the City, except that without such authorization, the employee's following limited information will be provided: dates of employment will be released, and salary upon departure.

5. Employee Access to Personnel File.

a. Inspection of File. An employee may inspect his or his/her own personnel file, as defined in California Labor Code Section 1198.5, at reasonable times and at reasonable intervals. An employee who wishes to review his or his/her file should contact the Personnel Director to arrange an appointment. The review must be done in the presence of the Personnel Director or his or his/her designee.

b. Copies. On request, an employee is entitled to receive a copy of any employment-related document he or he/she has signed. An employee who wishes to receive such a copy should contact the Personnel Director. On request, the City will also provide an employee single copies of any other documents in his or his/her personnel file. The City may charge a reasonable fee for the copies.

c. Removal. Personnel files are the property and official records of the City, and may not be removed from the City's premises except as required by law or court order.

~~XVIII.~~ XIX. RESIGNATION AND JOB ABANDONMENTSEPARATION FROM CITY EMPLOYMENT

A. RESIGNATION.

1. An employee wishing to leave the competitive service in good standing shall file with the Appointing Authority a written resignation stating the effective date and reasons for leaving, at least two (2) weeks (14 calendar days) before leaving the service, unless such time limit is waived by the Appointing Authority. A statement as to the resigned employee's service performance and other pertinent information shall be forwarded to the Personnel Director. Failure to give notice as required by this Rule shall be cause for denying future employment by the City.

2. A resignation becomes final when accepted by the Appointing Authority. Once a resignation has been accepted by the Appointing Authority, it cannot be withdrawn.

## B. JOB ABANDONMENT

~~1. An employee is deemed to have resigned if the employee is absent for five (5) consecutive work days without prior authorization and without notification during the period of absence. On the third working day of unauthorized absence, the supervisor shall send an overnight letter to the employee's last known address, informing the employee that if the employee fails to report to work within two (2) work days, or receive authorization for such absence, the employee will be deemed to have resigned, and shall have waived all rights under the Personnel Ordinance and these Rules. This Rule notwithstanding, employees absent without leave may be subject to disciplinary action, including termination.~~

~~2. Employees separated from employment for job abandonment will be reinstated with such charge removed from the employee's record upon presentation of justification for absence such as severe accident, severe illness, false arrest, or mental or physical impairment~~

~~3. Employees have no right to appeal if deemed to have resigned as a result of job abandonment.~~

1. When in the opinion of the Department Head, it appears that an employee may have abandoned his/her position, the Department Head shall notify the Appointing Authority, or a designee. The Appointing Authority, or a designee, shall notify the employee that the City believes that he/she may have abandoned his/her position and that he/she has ten (10) days from the date of the notice to contact the City regarding his/her intent to return to work.

2. The Notice of Abandonment of Position shall be in writing and sent by certified mail or personal service, and by regular mail, to the last address listed in the employee's personnel records. The Notice shall include the details of the employee's absence. The Notice shall also indicate that the employee's failure to respond to the Notice within ten (10) days of the date of the Notice will constitute the employee's automatic resignation from City service.

3. An appearance of abandonment of position may include, but is not limited to, situations:

a. An employee fails to return to his/her employment upon conclusion of any authorized leave of absence;

b. An employee fails to properly notify his/her immediate supervisor of an absence due to sickness or injury;

c. An employee fails to appear for work without notification or express agreement between the immediate supervisor and the employee authorizing the use of any leave time set forth under the City's personnel policies, or

d. An employee fails to keep his/her immediate supervisor informed of the employee's disability status on a daily basis unless otherwise directed by his/her supervisor.

4. An employee's failure to respond to the Notice of Abandonment of Position within ten (10) days of the date of the Notice shall be deemed to be an abandonment of the employee's position and shall constitute the employee's automatic resignation from the City service.

5. Abandonment is considered voluntary, and employees have no right to appeal or file a grievance if deemed to have resigned as a result of job abandonment and shall have waived all rights under the Personnel Ordinance and these Rules.

6. This Rule notwithstanding, employees absent without leave may be subject to disciplinary action, including discharge from employment.

7. This Rule shall be implemented in accordance with federal and state law, including but not limited to, the ADA, FEHA, CFRA and FMLA.

#### C. DISABILITY.

An employee may be separated because of an inability by the City to provide a reasonable accommodation through the interactive process. The employee will be given a written pre-separation notice of the reasons for the separation and an opportunity to respond before the separation takes effect. Employees separated for disability may be eligible for disability retirement.

#### D. DEATH.

All compensation due an employee shall be payable as of the date of death and shall be paid to the surviving spouse or to the estate of the deceased employee.

#### E. RETIREMENT.

Whenever an employee meets the conditions set forth in the PERS Retirement plan regulations, or other applicable City retirement plan, he or she may elect to retire.

#### F. DISCHARGE

1. Discharge of Regular Employee. An employee in the competitive service may be discharged at any time by the Appointing Authority. Whenever it is the intention of the Appointing Authority to discharge an employee in the competitive service, the Personnel Director shall be notified. Disciplinary discharge action of regular employees shall be taken in accordance with Rule XX (Disciplinary Actions).

2. Discharge of Management Employees. Subject to the provisions of Rule IX (Probationary Period) hereof, those employees who are employed at the will of the Appointing Authority in management positions or other may be removed at any time without cause or right of appeal. Management positions are listed in Rule II (Definitions).

3. Discharge of Probationary Employees and Temporary Part-Time Employees, Seasonal Employees and All Other At-Will Employees. All other employees are at-



will employees who may be separated at any time from the City with or without cause, and without any right of pre- or post-disciplinary due process, or right to evidentiary appeal, review, or grievance. (See Rule IX (Probationary Period).)

G. Layoff of Employees. Whenever, in the judgment of the City Manager, it becomes necessary to abolish any position or employment, the employee holding such a position or employment may be laid off or demoted in accordance with Rule XXI (Layoff Policy and Procedures) hereof, without disciplinary action and without the right of appeal.

## ~~XIX~~.XX DISCIPLINARY ACTIONS

### A. APPLICATION

Employees shall be subject to discipline in accordance with the following provisions:

1. Regular Employees: Except as otherwise set forth in these Rules, a regular employee may be demoted, reduced in step, suspended or dismissed only for cause.

2. Management Employees: In accordance with the Personnel Ordinance and Rule I.I, management employees are at-will employees who serve at the pleasure of the Appointing Authority, and may be terminated with or without cause, and without any right to evidentiary appeal, review or grievance pursuant to these Rules. As such, the provisions of this Rule XX shall not apply to management employees.

~~2.3.~~ Probationary, Seasonal, Temporary and Part-time Employees: In accordance with the Personnel Ordinance and Rule I.I, ~~p~~Probationary, seasonal, temporary and part-time employees (excluding regular part-time employees) are at-will employees who serve at the pleasure of the City Manager and may be demoted, reduced in step, suspended or dismissed without cause, prior notice, right of review or appeal or grievance. Release during probationary period, or at the conclusion of the probationary period, does not constitute disciplinary action. As such, the provisions of Rule XX ~~Sections 1 through 5~~ shall not apply to such employees.

~~3.4.~~ Contract Employees: The City Manager and other employees who have individual employment agreements shall have only those rights that are specifically granted under the terms of their separate agreements, and those rights provided by State and Federal law. Unless otherwise specified in the employment agreement, a contract employee of the City is an at-will employee who ~~shall~~ serves at the pleasure of the Appointing Authority ~~and shall be considered at-will~~ who may be terminated with or without cause and without any pre- or post-disciplinary due process or right of evidentiary hearing, review or a grievance with respect to any disciplinary action or termination from employment. As such, provisions of Rule XX shall not apply to contract employees.

### B. CAUSE FOR DISCIPLINARY ACTION

Discipline is intended to be imposed primarily for corrective purposes and to address deficiencies in work performance. The following is a nonexclusive list of the more common causes for disciplinary action:

1. Fraud in securing employment or making a false or misleading statement on an application for employment.

2. Incompetency or negligence in the performance of duties, i.e., inability to comply with the minimum standard of an employee's position for a significant period of time.

3. Inefficiency or inexcusable neglect of duty, i.e., failure to perform duties required of or assigned to an employee within his or his/her position or failure to carry out duties in a prompt, competent and responsible manner.

4. Willful disobedience or insubordination, a willful failure to submit to duly appointed and acting supervision or to conform to duly established orders or directions of persons in a supervisory position or insulting or demeaning the authority of a supervisor or manager.

5. Dishonesty involving employment, including but not limited to in connection with an employee's job duties and responsibilities.

6. Being under the influence of alcohol or illegal drugs or narcotics while on duty and/or while using City equipment; or being impaired by alcohol or illegal drugs, while on duty, which could affect the employee's ability to perform his or his/her job.

7. Excessive absenteeism or tardiness.

8. Unauthorized or unexcused ~~Unexcused~~ absence from employment without leave.

9. Abuse of sick leave, i.e., taking sick leave without a doctor's certificate when one is required, or misuse of sick leave.

10. ~~The conviction of either a misdemeanor or a felony shall constitute grounds for dismissal of any employee.~~ Conviction of a felony or a misdemeanor of a nature that (a) disqualifies an employee from holding his/her position pursuant to federal or state law; or (b) has a direct and adverse relationship with the specific duties of the employee's job that justifies discipline up to and including discharge from employment. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The Personnel Director may inquire into the circumstances surrounding the commission of the crime or offense in order to assist the Department Director in making an individualized assessment whether discipline is warranted and, if so, fix the degree of discipline. In considering a conviction, the Department Director shall utilize the factors set forth in Rule V.K of these Rules and as otherwise required by federal or state law. ~~A plea or verdict of guilty, or a conviction showing a plea of nolo contendere is deemed a conviction within the meaning of this Section.~~ As used in this Section, "conviction" includes a plea, verdict, or finding of guilt, regardless of whether a sentence is imposed by the court. "Conviction" does not include, and shall not be construed to include, any adjudication by a juvenile court or any other court order or action taken with respect to a person who is under the process and jurisdiction of the juvenile court.

11. Discourteous treatment of the public or other employees.

12. Improper, ~~or~~ unauthorized or illegal use of ~~agency~~ City property.
13. Refusal to subscribe to any oath or affirmation which is required by law in connection with City employment.
14. Any willful act of conduct undertaken in bad faith, either during or outside of duty hours which is of such a nature that it causes discredit or damage to the City, the employee's department or division.
15. Inattention to duty, tardiness, indolence, carelessness or negligence in the care and handling of City property.
16. Sleeping or malingering while on duty.
17. Violation of the Personnel Rules and Regulations of the City or the rules and regulations of any department.
18. Mental or physical impairment which renders the employee unable to perform the essential functions of the job, with or without reasonable accommodation (if disabled), or without presenting a direct threat to the health and/or safety of self or others.
19. Outside employment not specifically authorized by the Appointing Authority.
20. Acceptance from any source of a reward, gift, or other form of remuneration in addition to regular compensation to an employee for the performance of ~~his or~~ his/her official duties, or any other use of an employee's official position or of the City's time, facilities, equipment or supplies for personal gain or advantage.
21. The refusal of any officer or employee of the City to testify under oath before any Grand Jury having jurisdiction over any then pending cause of inquiry in which the investigation of government bribery or misconduct in City office is involved shall constitute of itself sufficient ground for the immediate discharge of such officer or employee.
22. Willful violation of any of the provisions of the ordinances, resolutions or any rules, regulations or policies which may be prescribed by the City.
23. Improper political activity, such as campaigning for or espousing the election or non-election of any candidate in national, state, county or municipal elections while on duty and/or during working hours, or in a City uniform on or off duty; or the dissemination of political material of any kind while on duty and/or during working hours or in a City uniform.
24. Working overtime without authorization.
25. Actions incompatible with, or not in the best interests of, public service.
26. Violation of or failure to comply with safety standards; or refusal or failure ~~Failure~~ to immediately follow safe working practices or failure to report promptly an injury.

27. Theft or personal use of City funds, property or equipment.
28. Sexual or other illegal harassment, discrimination or retaliation of City employees, officials, consultants, or members of the public, or other discourteous or offensive treatment of City employees, officials or consultants, or members of the public.
29. Damage to or destruction of City property.
30. Tardiness.
31. Physical abuse or threats directed at supervisors, coworkers or members of the public; and any act or threat of workplace violence or fighting on the job
32. Engaging in bullying or other abusive conduct of members of the public, other employees or officials.
33. Failure to obtain or maintain a certificate or license required for current position.
34. Possessing a firearm or other dangerous weapon on the City's property or while conducting City business or official activities.
35. Willful concealment of pertinent information or documentation from supervisors.
36. Failure to maintain proscribed records (e.g., falsifying, concealing, misusing, mutilating, or removing City documents or other records).
37. Failure to comply with the dress code, or to maintain grooming, clothing or uniform standards.
38. Non-compliance with any applicable conflict of interest provisions or code.
39. Unauthorized release or disclosure of confidential information or documents from any City records.
40. Any other cause as determined by the City Manager from time to time. This list is not intended to be exhaustive, and other actions adversely affecting the City's ability to efficiently function may be grounds for disciplinary action.

### C. KINDS OF DISCIPLINARY ACTION

The following disciplinary actions may be taken against any ~~regular~~ employee either by the City Manager or ~~his or~~ his/her designee. Disciplinary action may include any one or any combination of actions, and the actions may not necessarily be applied in any defined order. Minor Disciplinary action need not be taken before Major Discipline.

#### 1. Minor Discipline



a. ~~Informal Counseling. For minor infractions, A supervisor may counsel an the employee will be counseled~~ for a minor performance problem. If the situation does not improve within a reasonable period, depending on the seriousness of the infraction, the supervisor may repeat the measure or may ~~use the next step in the discipline progression~~ initiate another type of disciplinary action appropriate under the circumstances. The supervisor ~~should~~ may keep a written record of the date and substance of the counseling session, but the record shall not become a part of the employee's personnel file unless the situation leading to the ~~warning~~ counseling is not corrected or other repeated infractions occur, and more serious disciplinary procedures are deemed necessary.

b. ~~Verbal Reprimand. A supervisor may issue an oral or written reprimand for a more serious infraction, or fFor repeated minor infractions, the employee will be issued a verbal reprimand.~~ If the situation does not improve within a reasonable period (usually thirty (30) days to one hundred eighty (180) days, depending on the seriousness of the issue), the supervisor may repeat the measure or may ~~use the next step in the disciplinary progression~~ initiate another type of disciplinary action appropriate under the circumstances. The supervisor should keep a copy of the written reprimand, or the written memorandum of the oral reprimand, which states the date and substance of the subject of the reprimand, describe the plan for improvement, and the employee's response, if any. ~~written record of the date and substance of the counseling session, but the record shall not become a part of the employee's personnel file unless the situation leading to the reprimand is not corrected or other repeated infractions occur, and more serious disciplinary procedures are deemed necessary.~~ The employee shall sign and receive a copy of the memorandum of oral reprimand, and the original shall be filed in the employee's personnel file. A record of informal counseling and verbal reprimands may also be included in the employee's personnel file in connection with a reprimand.

e. ~~Written Reprimand. For more substantial infractions, or repeated minor infractions, the employee will be issued a written reprimand. If the situation does not improve within a reasonable length of time, depending on the seriousness of the issue, the supervisor may issue repeat reprimands. A copy of any written reprimand shall be placed in the employee's personnel file, with a copy provided to the employee, confirming that it has been placed in the personnel file. A record of informal counseling and verbal reprimands may also be included.~~

2. Major Discipline. A Director, Department Head, or the City Manager, or his or her designee, may take any of the following disciplinary actions, in accordance with the procedure set forth in Sections E and F. A copy of the notice informing the employee of the proposed major discipline shall be placed in the employee's personnel file.

a. Suspension. For serious infractions of the City's Rules and Regulations or for persistent failure to correct deficiencies noted in verbal or written reprimands, the employee may be suspended without pay for up to five (5) days in a pay period. ~~This action may be taken by the Department Manager or the City Manager or his designee, by written notice to the employee. A copy of the notice informing the employee of the suspension shall be placed in the employee's personnel file.~~

b. Demotion. For serious infractions of the City's Rules and Regulations, an employee may be reduced from a position in one class to a position in another class having a lower salary range.

c. Reduction in Pay. For serious infractions of the City's Rules and Regulations, an employee's salary may be reduced to a lower salary within his or her existing salary range or in a lower salary range.

ed. Dismissal. An employee may be discharged from the City service. Dismissal may result from repeated infractions, or immediately upon serious infraction.

#### D. NO APPEAL OF MINOR DISCIPLINE

An employee may file a response to minor discipline, as defined in Section ~~C.1~~ C.1 above, to be placed in ~~his or~~ his/her personnel file, but has no right of review or appeal pursuant to Rule XX.C, by grievance pursuant to Rule XXIII, or otherwise. This action may be taken by the Department Head in accordance with Section E.

#### E. MAJOR DISCIPLINE -- DISCIPLINARY PROCEDURES

The City is not required to issue Minor Discipline before issuing Major Discipline. Disciplinary action may include any one or any combination of actions, and the actions may not necessarily be applied in any defined order. Major Discipline shall be taken in compliance with the following procedures:

##### 1. Pre-Discipline Process ("Skelly Procedure")

##### ~~1.a.~~ Notice of Proposed Disciplinary Action

Prior to issuance of a written order of major discipline, as defined above, the appropriate authority shall give the employee a written notice of discipline which sets forth the following:

~~a.~~(1) The disciplinary action intended;

~~b.~~(2) The specific charges upon which the action is based;

~~c.~~(3) A summary of the facts upon which the charges are based;

~~d.~~(4) A copy of all written materials, reports or documents upon which the discipline is based;

~~e.~~(5) Notice to the employee of his/her right to respond orally and/or in writing to the proposed disciplinary action before said discipline is imposed. The notice to the employee of the right to respond must specify at least a five (5) working day period except as provided below. A longer notice might be warranted in specific cases because of the volume of material or complexity of the issues involved but only upon written request and with the approval

of the City Manager shall such extended notice be granted. Notice shall also be given of the employee's right to respond to the charges either orally or in writing to the appropriate authority;

~~f.~~(6) The date, time and person before whom the employee may respond in no less than five (5) working days; and

~~g.~~(7) Notice that failure to respond at the time specified shall constitute a waiver of the right to respond prior to final discipline being imposed.

~~2.~~(b) The notice of proposed disciplinary action must be in writing and signed by the ~~City Manager or the City Manager's designee~~ Director, Department Head or his/her designee. A copy of the notice of proposed disciplinary action and supporting documents shall be placed in the employee's personnel file. The notice shall be deemed received by the employee on (1) the day of delivery if delivered by hand or overnight courier; or (2) when mailed 48 hours after deposit in the United States Mail, first-class postage prepaid and addressed to the employee at his/her address listed in his/her personnel file.

### ~~3.~~(c) Limitations and Exclusions

~~a.~~(1) Oral notice of major discipline is insufficient as full notice to an employee and may be given only as the initial notice in extraordinary circumstances that call for immediate action. Any such oral notice shall be followed by written notice, as required by these Rules.

~~b.~~(2) An employee may be suspended without prior written notice in extraordinary circumstances when it is essential to avert harm to the public, other employees, or to avert serious disruption of City business. Extraordinary circumstances include, but are not limited to, situations involving misappropriation of public funds or property, working while under the influence of alcohol or illegal drugs or controlled substances, insubordination, commission of a crime involving moral turpitude punishable by imprisonment of one (1) year, and disruption of the City's business through willful misconduct.

### (d) Pre-Discipline Employee Response:

The employee shall have the right to submit an oral or written response by the deadline set forth in the Notice of Proposed Disciplinary Action in accordance with Section E.1.a.7. The employee may submit any information or documents that are material and relevant to the proposed discipline in his/her oral or written response.

## 42. Order of Disciplinary Action:

Any response submitted by the employee in accordance with Section ~~E.1.e~~E.1.d will be considered and a determination made by the ~~City Manager or his~~ Director, Department Head (or the City Manager) or his/her designee of appropriate action. The imposition of disciplinary action to suspend, demote, reduce in step or dismiss an employee is constituted by written order. Said order is similar to the notice of proposed disciplinary action, and shall also advise the employee of his/her the right to appeal and specific charges upon which the disciplinary action is based. The effective date of the discipline may be prior to the order, provided the

circumstances warranted such immediate action. The order shall be signed by the ~~City Manager~~ Director or Department Head or his/her designee, and a copy shall be served on the City Manager. Notice of the time allowed for appeal and answer shall be stated in the order. A copy of the order shall be personally served on the employee or sent by certified mail to the employee's last known address, and a copy of the order shall be placed in the employee's personnel file.

### 53. Appeal Procedure

a. Notice of Appeal and Request for Hearing: Any regular employee may appeal from the order imposing major discipline and request a hearing as provided for in these Rules. The notice of appeal and request for a hearing must be in writing and must be filed with the City Manager within five (5) working days of receipt of the order. The order shall be deemed received by the employee on (1) the day of delivery if delivered by hand or overnight courier; or (2) when mailed 48 hours after deposit in the United States Mail, first-class postage prepaid and addressed to the employee at his/her address listed in his/her personnel file.

b. Appellant Answer to the Charges: If the employee appeals the order imposing major discipline, a written answer to the charges must also be filed with the City Manager within five (5) working days of receipt of the order. The answer to the charges must be attached to the notice of appeal and request for a hearing. The answer must address each cause of discipline set forth in the order and may state specific facts or reasons as grounds for the appeal. ~~If an answer denying the causes for discipline set forth in an order is not filed, said causes for discipline will be deemed admitted.~~

c. Waiver of Right to Appeal. If the employee fails to file a written appeal and request a hearing within the prescribed time, the employee shall have waived the right to a hearing and all rights to further appeal of the disciplinary action, and the disciplinary action shall be final.

### 64. Hearing Procedures

#### a. Review of Appeal

(1) After receipt of the appeal and request for hearing, the City Manager shall review the appeal and answer to the charges within five (5) working days subsequent to ~~formal~~ his/her receipt of the appeal or at such later date as mutually agreed upon by the City Manager and the appellant. Hearings will be closed to the public, as allowed by law, unless the appellant requests in writing, at least two (2) days prior to the hearing, that the hearing be open.

(2) Where the City Manager or the City Council have designated an alternate authority to perform the functions of the City Manager pursuant to these Rules, in accordance with Rule I.C.2 ~~I.B. of these Rules~~, the designated authority shall perform all of the functions of the City Manager as set forth herein.

(3) The City Manager may, in ~~his or~~ his/her sole discretion and within thirty (30) days after the appeal is filed, elect to have the appeal heard by one of the following methods:



- (i) Hearing by the City Manager;
- (ii) Appoint a hearing officer who shall present findings and a recommendation to the City Manager for a final disposition; or
- (iii) Appoint a disciplinary review board composed of three members, including one member selected by the City Manager, one member selected by the employee and the third member selected by the two members previously described; or
- (iv) Appoint a hearing officer or hearing body, or any other hearing procedure mutually agreed between the City Manager and the employee.

(4) In the event that the City Manager determines to appoint a disciplinary review board pursuant to Subsection 6.a(iii) or another alternative hearing procedure pursuant to Subsection 6.a(iv), the disciplinary review board or other hearing officer or hearing body shall present written findings and recommendations to the City Manager for final disposition.

(5) The City Manager shall notify the appellant in writing as to the governing hearing proceedings.

(6) The City Manager shall have the final authority on all appeals and may uphold, reverse or modify the disciplinary action.

b. Hearing

(1) Time and Place

(i) Pursuant to the City Manager's decision in 6.a(3)a(2) above, the City Manager shall take every appropriate action necessary and reasonable to convene a hearing within the time prescribed. In scheduling the disciplinary hearing, the City Manager shall consider the availability the hearing officer, disciplinary review board or other hearing body/official at the convenience of the employee, the parties' representatives and all witnesses.

(ii) The purpose of the hearing is to determine the accuracy and the sufficiency of the facts attendant to the disciplinary action. The parties may stipulate to certain facts or evidence that shall be considered without abridgment or adulteration by the hearing body or officers upon which the action was based and any pertinent information that may establish the truth or falsity of such evidence.

(2) Parties

The Appellant ~~or~~ and a representative if so desired and the City's representative shall attend the hearing. Failure of the Appellant, with or without his/her representative, to appear in person at the time and place set for the hearing shall be deemed a withdrawal of the appeal unless otherwise excused by the City Manager.

(3) Rights

Each party shall have the right to:

meeting.

- (i) Choose a representative and be represented at the

- (i) Testify under oath.

- (iii) Call witnesses and present documentary evidence.

- (iv) Question all witnesses and examine the evidence.

- (v) Argue the matter or issues presented.

(4) Conduct and Order of the Proceedings

- (i) The City shall have the burden of proof at the disciplinary hearing and shall have to prove the charges against the employee by a preponderance of the evidence. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner which is conducive to determination of the truth.

- (ii) Any relevant evidence may be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions.

- (iii) Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence that may not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

- (iv) The rules dealing with privileges shall be effective to the same extent that they are now or hereafter may be recognized in civil actions or otherwise in accordance with law.

- (v) Irrelevant and unduly repetitious evidence may be excluded.

- (vi) Decisions made by the hearing board or hearing officer, including the City Manager, shall not be invalidated by any informality in the proceedings.

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

- (viii) The hearing shall be opened by the recording of the time, place and date of the hearing and the presence of the parties and their chosen representatives. The City shall first present its case on which the disciplinary action was based. A hearing guide may be used and will be made available to all parties.

(ix) If the appeal is to be heard by the City Manager, the City Manager shall have the sole discretion and authority to conduct the hearing. If the appeal is to be heard by the disciplinary review board, the disciplinary review board shall select a chairman to conduct the hearing. If a hearing officer is appointed to hear the appeal, the hearing officer shall have the sole discretion and authority to conduct the hearing.

(5) Record of the Hearing

A record of the proceedings shall be made and maintained by the City. The City may choose to make a mechanical or electronic record of the proceedings. Costs of preparing transcripts shall be borne by the requesting party.

(6) Adjournment

The hearing may be adjourned or recessed for good cause, upon the request of a party, hearing body or hearing officer.

(7) Exhibits and Witnesses

(i) The names of witnesses and exhibits shall be properly identified and shall be made part of the official record. The hearing body or officer may exclude witnesses not under examination and admonish witnesses to refrain from discussing the subject of their testimony with other witnesses or potential witnesses. The parties may remain at all times during the proceeding.

(ii) Witnesses shall be required to testify under oath and affirmation. The oath shall read:

“Do you solemnly swear (or affirm) that the testimony that you are about to give in this matter shall be the truth, the whole truth and nothing but the truth?”

(9) Confidentiality

The hearing shall be closed to the public and shall not be a public record unless an open public hearing is requested by the appellant as set forth in Section 6.a(1) above.

(10) Expenses

The City shall make available any current employee(s) of the City who are identified by the appellant as witness(es) requested to be present. The appellant shall be responsible for arranging for the attendance of any former employees or any other witnesses who the appellant wishes to present during the hearing, and the appellant shall bear any expenses of causing former employees or witnesses to be present.

(11) Closing of Hearing

The hearing body or hearing officer shall inquire if either side has anything further to offer. Upon receiving negative replies, the hearing shall be closed. The hearing body or hearing officer shall report their written recommendation to the City Manager and the parties within thirty (30) days after the closing of the hearing.

(12) Action of the City Manager

Within a reasonable time after the disciplinary hearing, the City Manager shall issue a written decision containing findings and conclusions. The City Manager shall ~~act upon that recommendation by either upholding, reversing or modifying~~ have the authority to affirm, revoke or modify the decision. If the hearing was conducted by a hearing officer or a disciplinary review board, the City Manager shall consider the written findings and recommendation of the hearing officer or disciplinary review board before issuing his or her findings and decision on the appeal. The City Manager shall notify the parties within five (5) working days of ~~his or~~ his/her final decision. The decision of the City Manager on any appeal ~~shall be final~~ constitutes the final resolution of any appealable disciplinary action.

(13) Status of Appellant

The imposition of any major discipline, including but not limited to, a discharge, shall not be stayed by any appeal filed by an employee following issuance of the order of discipline by the City Manager. Any salary or other benefits following a hearing on any appeal shall be reinstated only if determined to be appropriate by the City Manager following the completion of any such appeal hearing.

F. JUDICIAL REVIEW

1. Judicial review of any decision of the City Manager may be had pursuant to Section 1094.5 of the California Code of Civil Procedure only if the petition for writ of mandate pursuant to such section is filed within the time limits specified in this Section.

2. Pursuant to Code of Civil Procedure Section 1094.6, any such petition shall be filed not later than the ninetieth (90<sup>th</sup>) day following the date on which the City Manager gives written notice of his/her final decision.

~~XX.~~ XXI. LAYOFF POLICY AND PROCEDURE

A. STATEMENT OF INTENT

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

B. NOTIFICATION

Employees to be laid off shall be given, whenever possible, at least two weeks (fourteen (14) calendar days') written notice of layoff.



### C. VACANCY AND DEMOTION

Except as otherwise provided, whenever there is a reduction in the work force, the Appointing Authority shall first demote employees in the competitive service to a vacancy, if any, in a lower class for which the employee who is the latest to be laid off in accordance with Paragraph F is qualified. All persons so demoted shall have their names placed on the re-employment list. Demotion for purposes of this Section is not disciplinary and shall not trigger discipline or appeal rights.

### D. EMPLOYEE DISPLACEMENT RIGHTS

An regular employee affected by layoff shall have the right to displace an employee in the same department who has less seniority in a lower class in the same class series or in a lower classification in which the affected employee once had permanent status. For the purpose of this ~~Paragraph~~ Section and ~~Paragraph~~ Section E, seniority includes all periods of full-time service at or above the classification level where layoff is to occur.

### E. SENIORITY

1. In order to retreat to a former or lower class, ~~an~~ a regular employee must have more seniority than at least one of the incumbents in the retreat class and request displacement action in writing to the Personnel Director within five (5) working days of receipt of notice of layoff.

2. Employees retreating to a lower or similar class shall be placed at the salary step representing the least loss of pay. In no case shall the salary be increased above that received in the class from which the employee was laid off.

3. Employees retreating to a lower or similar class shall serve a probationary period in the new class unless they have previously successfully completed a probationary period in the class or a class in the class series.

### F. EMPLOYMENT STATUS

1. In each class ~~of~~ or position, employees shall be laid off according to employment status in the following order: temporary, provisional, probationary, and regular, subject to the following provisions.

2. Temporary, provisional, ~~and~~ probationary and any other at-will employees in non-management positions shall be laid off according to the needs of the service as determined by the Appointing Authority, and such employees shall not have the right to displace any other employee nor shall their layoff be determined based on seniority.

3. In cases where there are two or more ~~permanent~~ regular employees in the class from which the layoff is to be made, such employees shall be laid off on the basis of performance and seniority. The last evaluation rating in the class, providing such rating has been on file at least thirty (30) days and no more than twelve (12) months prior to layoff as follows:

- a. First, all employees having ratings of “improvement needed;”
- b. Second, all employees having ratings of “competent;” and
- c. Third, all employees having ratings of “outstanding.”

4. Employees within each rating category shall be laid off in inverse order of seniority in City service.

5. Management employees may be laid off in accordance with the needs of the City as determined in the discretion of the City Manager and/or City Council.

#### G. RE-EMPLOYMENT LIST

The names of persons laid off or demoted in accordance with these Rules shall be entered upon a re-employment list. Lists from different departments or at different times for the same class of position shall be combined into a single list. Such list shall be used by every Appointing Authority when a vacancy arises in the same or lower class of position before certification is made from an eligible list.

#### H. DURATION OF RE-EMPLOYMENT LIST

Names of persons laid off shall be carried on a re-employment list for one (1) year, except that persons appointed to permanent positions of the same level as that which laid off, shall, upon such appointment, be dropped from the list. Persons who refuse re-employment shall be dropped from the list. Persons re-employed in a lower class, or on a temporary basis, shall be continued on the list for the higher position for the one (1) year.

### ~~XXI.~~ XXII. SEPARATION FROM SERVICE

#### A. DISCHARGE

An employee in the competitive service may be discharged at any time by the Appointing Authority. Whenever it is the intention of the Appointing Authority to discharge an employee in the competitive service, the Personnel Director shall be notified. Disciplinary discharge action shall be taken in accordance with Rule ~~XVIII~~ XX (Disciplinary Actions).

Any person employed in an at-will position may be discharged at any time by the Appointing Authority, without cause, and without prior notice of right of appeal or grievance. The discharge of an at-will employee for cause shall not modify his/her status as an at-will employee or provide him/her with any right of appeal under Rule XX or the right to file a grievance under Rule XXIII.

#### B. RESIGNATION

An employee wishing to leave the competitive service in good standing shall file with the Appointing Authority a written resignation stating the effective date and reasons for leaving at least two (2) weeks (fourteen calendar days) before leaving the service, unless such time

limit is waived by the Appointing Authority. A statement as to the resigned employee's service performance and other pertinent information shall be forwarded to the Personnel Director. Failure to give notice as required by this rule shall be cause for denying future employment by the City.

## ~~XXI.~~ XXIII. GRIEVANCE PROCEDURE

### A. PURPOSE

A grievance procedure has been established for the following purposes:

1. Promoting improved employer/employee relations by establishing an appropriate means for determining the validity of grievances, that is, claims by an employee that the City has violated, misrepresented, or misapplied an obligation to the employee as that obligation is expressed and written in the Personnel Rules, the City's Rules and Regulations, or otherwise as required by law.

2. Providing a method of resolving such claims as closely as possible to the point of origin, as informally as possible.

3. Encouraging free communications between supervisors and employees.

4. ~~Disciplinary action and/or other actions specified in Rule XX and disciplinary proceedings are not subject to this Grievance Procedure.~~

### B. DEFINITIONS

1. A "grievance" is a written allegation by an employee, submitted as herein specified, claiming violation(s) of the specific express terms of the Personnel Rules for which there is no other specific method of review provided by the City ~~except as otherwise excluded by these Rules~~. Examples of matters that may be grieved include, but are not limited to, the following: requests for leave; assignment of standby compensation; training opportunities; and work schedule.

2. A "grievant" is an employee or group of employees adversely affected by an act or omission of the employer.

### C. GRIEVANCE PROCEDURE STEPS

#### 1. Step One: Supervisor

An employee who has a grievance shall first take it up formally with his/her immediate supervisor within five (5) working days after he/she knows or reasonably should have known the occurrence of the cause for grievance.

#### 2. Step Two: Department Manager

If the grievance is not resolved within two (2) working days after its submission in Step One, the aggrieved employee(s) may submit his/her/their grievance in writing

to the Department Manager within five (5) working days thereafter. No formal format is required for the written grievance. The Department Manager shall meet with the employee within two (2) working days after receiving the grievance and shall deliver ~~his or~~ his/her answer in writing to the employee within two (2) working days after such meeting.

3. Step Three: City Manager

a. If the grievance is not resolved in the Second Step, the employee may submit it in writing to the City Manager, or any alternate authority which may have been designated by the City Manager or the City Council pursuant to section I.B of these Rules, within five (5) working days. After having received the grievance, the City Manager shall deliver ~~his or~~ his/her response to the employee in writing within five (5) working days. At this step, and at ~~an~~ all subsequent steps in the grievance procedure, the employee shall have the right to present his/her/their grievance with, or without, a representative of his/her/their choice. These time limits may be extended to a definite date by mutual agreement of the employee and the City Manager. The decision of the City Manager shall be final and binding, and no further review of the subject matter of the grievance shall be permitted within the City's administrative process.

b. Disputes concerning the applicability of the Grievance Procedure that persist through the third step shall be submitted for determination by a court, unless the grievant and the Personnel Director agree otherwise.

D. GENERAL PROVISIONS

1. If appeal is not made within the time limits indicated, the grievance will be considered to have been settled on the basis of the last decision rendered. Any grievance not responded to within the prescribed time limits as described in this Section will be automatically advanced to the next higher step unless the time limit is extended by mutual agreement.

2. Employees are assured freedom from reprisal for using the grievance procedure.

E. EXCLUSIONS FROM THE GRIEVANCE PROCEDURE

The grievance procedure set forth in this Rule XXIII shall not be used for any of the following:

1. ~~This procedure is not to be used for the purpose of resolving~~ To resolve complaints, requests or changes in wages, hours and working conditions.

2. ~~This procedure is not to be used to~~ To challenge the content of employee evaluations or performance reviews.

3. ~~This procedure is not to be used in~~ To challenge, obtain review of or otherwise address cases of discipline of any kind, including, but not limited to, counseling, oral or written reprimand, reduction in pay, demotion for disciplinary purposes or due to failure to meet job standards, suspension or ~~discharge~~ termination.



4. ~~This procedure is not to be used to~~ To challenge examinations, or appointment or failure to appoint to positions.

5. To challenge rejection from probation ;

6. To challenge any ~~or~~ discipline or discharge of any at-will employee.

7. To challenge any transfer.

## ~~XXII.~~ XXIV. ANTI-HARASSMENT POLICY

### A. POLICY

1. It is the policy of the City to provide a neutral work environment free from discrimination, including unwelcome sexual overtures and advances for all employees of the City. City employees are expected to adhere to a standard of conduct that is respectful and courteous to all persons. All employees, consultants, independent contractors, volunteers, and members of the public are to be treated with respect, courtesy and tact. Conduct that is personally offensive to others will not be tolerated. Abusing the dignity of anyone through ethnic, sexist or racial slurs or other derogatory or objectionable conduct may be cause for disciplinary action up to and including discharge from employment. Included in this area of offensive behavior are suggestive remarks, physical advances or intimidation.

2. The City prohibits sexual harassment, as well as the harassment of any individual on the basis of gender, race, color, ancestry or national origin, religion or creed, age, disability, sex or gender, sexual orientation, gender identity and gender expression, medical condition, marital status, military and veteran status, or other ~~specially~~ class specially protected by law. This policy applies to all areas of employment, including recruitment, hiring, training, promotion, compensation, benefits and transfer. The City recognizes that impermissible harassment may take many forms, including:

a. Verbal conduct such as epithets, derogatory comments, slurs or unwanted sexual advances, invitations, or comments.

b. Visual conduct such as derogatory posters, cartoons, drawings or gestures.

c. Physical conduct such as assault, blocking normal movements, or interference with work based on gender, race, or other protected class.

d. Threats or demands to submit to sexual requests in order to maintain employment or avoid some other loss, and offers of job benefits in return for sexual favors.

e. Retaliation for having reported harassment or making a complaint of harassment, cooperating in the investigation of a complaint, or for testifying or making a statement as part of the investigation or discipline process.

f. No such harassment will be tolerated. ~~Any incident of work-related harassment should be reported to the employee's immediate supervisor, or to any supervisor or the City Manager. A thorough, objective and discreet investigation will be undertaken, which will be confidential to the extent appropriate. If harassment is found to have occurred, prompt and appropriate remedial action will be taken. If an employee is found to have engaged in harassment or otherwise inappropriate conduct, disciplinary action, up to and including termination, will occur. No employee will be retaliated against for reporting harassment or participating in an investigation.~~

## **B. COMPLAINT PROCEDURE:**

1. This procedure applies to all employees of the City, include persons in at-will positions and persons in the competitive service. Any City employee who feels that he or she has been the victim of prohibited harassment, discrimination or retaliation has the right and the responsibility to notify his/her supervisor, Department Head, Personnel Director, human resources manager, City Manager, or any other supervisor of the incident or incidents of prohibited harassment, discrimination or retaliation and provide the names of the individuals involved.

2. If the person to whom the prohibited harassment, discrimination or retaliation is to be reported is him/herself thought to be engaged in the improper conduct, the employee may contact the City Manager directly. In the event the City Manager is thought to be involved, the employee may contact the City Attorney. An employee is never required to present a complaint to a party alleged to be involved in the improper conduct.

3. Any supervisor, manager or official receiving or aware of a complaint shall report the complaint immediately to the Personnel Director who shall assure that an appropriate investigation is started promptly and completed. In the event the Personnel Director is thought to be involved in the improper conduct, the complaint shall be reported to the City Manager or City Attorney, who shall be responsible for assuring an appropriate investigation.

4. While written complaints are encouraged and provide the best opportunity for a proper investigation, complaints may also be verbal or anonymous. All complaints will be investigated promptly, objectively and thoroughly. Investigations will be conducted in a confidential manner to the extent reasonably possible, with information about the complaint being released only on a need-to-know basis.

5. If the City concludes that prohibited harassment, discrimination or retaliation occurred, appropriate corrective action will be taken, including action to stop further harassment, discrimination or retaliation. Disciplinary action, up to and including termination, may be imposed on employees who violate this policy. If the perpetrator is a non-City employee, the City shall take such action as may be consistent with the law and within the City's control.

6. The party presenting the complaint will be notified of the results of the investigation and will be advised if disciplinary action or other action is taken. If the allegations of the complaint cannot be supported or are found to lack merit, the parties will be notified. Consistent with the policy of confidentiality, employees are not entitled to copies of notes, an investigation report or similar confidential documents, except as required by law.

7. Any employee who witnesses prohibited harassment, discrimination or retaliation directed at or perpetrated by a City employee, consultant or other independent contractor, volunteer, member of the public or other person has a duty to report it through the process identified above.

#### C. EMPLOYEE TRAINING

1. All supervisors shall receive training and instruction on prevention of sexual harassment in the workplace. Training and instruction shall be provided within six months of their assumption of a supervisory position and once every two years thereafter or as otherwise required by law. Training shall also be provided to all new employees and to all employees given new job assignments for which specific anti-harassment training has not previously been provided. Such training shall include training to prevent abusive conduct, as defined in Rule XXVI of these Rules..

### ~~XXIV~~ XXV. POLICY AGAINST WORKPLACE VIOLENCE

#### A. STATEMENT

The City is strongly committed to ensuring the safety of all City employees and has adopted this Policy regarding workplace violence. Consistent with this policy, acts or threats of physical violence, including intimidation, harassment, and/or coercion which involve or affect any City employee(s) will not be tolerated. This policy applies to all employees of the City, include persons in at-will positions and persons in the competitive service.

#### B. OBJECTIVE

1. To ensure all workplace threats and violent behavior are addressed promptly.

2. To ensure the level of physical/facility security in City workplaces is sufficient to protect the health and safety of City employees.

3. To ensure all employees are appropriately trained in workplace security, diffusing hostile situations and steps to take during an emergency incident.

4. To ensure that all disciplinary action taken for behavior prohibited under this policy is reviewed, evaluated, and administered consistently and equitably throughout the City, and in a timely manner.

#### C. ACTS OR THREATS OF VIOLENCE DEFINED

1. "Threats or acts of violence" include conduct against persons or property that are sufficiently severe, offensive, or intimidating to alter the employment conditions, or to create a hostile, abusive, or intimidating work environment for a City employee or employees. Although the City has a strong commitment to Customer Service, the City will not permit employees to be subjected to verbal or physical abuse.

2. General examples of prohibited workplace violence include, but are not limited to:

1. Threatening to harm an individual or his/her family, friends, associates, or their property.

2. Making harassing or threatening telephone calls, letters or other forms of written or electronic communications.

3. Intimidating or attempting to coerce an employee to commit wrongful acts that would affect the business interest of the City.

4. Harassing surveillance, also known as “stalking,” the willful, malicious and repeated following of another person and making a credible threat with intent to place the other person in reasonable fear of ~~his or~~ his/her safety.

5. Making a suggestion or otherwise intimating that an act to injure persons or property is “appropriate.”

6. Possession of firearms, weapons, or any other dangerous devices on City property, by anyone other than safety personnel who are governed by their own policies and procedures.

7. Use of personal or City-issued tools in a threatening manner toward a City employee or other individual.

#### **D. COMPLAINT PROCEDURE**

1. Any employee who feels he or she has been the victim of threats or acts of violence, or has witnessed threats or acts of violence in violation of this Policy, has the right and the responsibility to notify his/her supervisor, or Department Head, or the City Manager, of the incident or incidents of abusive conduct and provide the names of the individuals involved. The employee may use the Complaint Procedure set forth in Section B of Rule XXV (Anti-Harassment Policy).

2. Any complaint will be investigated in accordance with the procedures set forth in Section B of Rule XXV (Anti-Harassment Policy). If the City concludes that prohibited conduct occurred, appropriate corrective action will be taken, including action to stop further abusive conduct. Disciplinary action, up to and including termination, may be imposed on employees who violate this policy. If the perpetrator is a non-City employee, the City shall take such action as may be consistent with the law and within the City’s control.

#### **E. EMPLOYEE TRAINING**

All employees shall receive training and instruction on workplace security practices. Training and instruction shall be provided within twelve (12) months following the adoption of this policy and periodically thereafter. Training shall also be provided to all new employees and to all employees given new job assignments for which specific workplace security



training has not previously been provided. Additional training and instruction can be provided to all City personnel whenever the City is made aware of new or previously unrecognized hazards, which may affect the workplace.

#### ~~D.F.~~ APPLICATION OF PROHIBITION

1. The City prohibition against threats and acts of violence applies to all City personnel, contract and temporary workers, customers and anyone else who may be in or on City property or any place where City personnel work or otherwise conduct City business. Violations of this policy by any individual may be followed by legal action as appropriate.

2. Violation by an employee of any provision of this policy may lead to appropriate disciplinary action, up to and including termination, as provided in ~~Section XIX~~ Rule XXII (Disciplinary Actions).

3. The City may also seek a Temporary Restraining Order or Injunction on behalf of City workers if the situation warrants such action.

#### XXVI. POLICY AGAINST ABUSIVE CONDUCT

##### A. POLICY

1. The City is strongly committed to ensuring that City employees are not subjected to abusive conduct in the workplace. Abusive conduct, including bullying, which involves or affects any City employee(s) will not be tolerated. This policy applies to all employees of the City, include persons in at-will positions and persons in the competitive service.

2. The purpose of this Rule is to ensure that all abusive conduct is addressed promptly; to ensure all employees are appropriately trained to recognize abusive conduct; and to ensure that all disciplinary action taken for behavior prohibited under this policy is reviewed, evaluated, and administered consistently and equitably throughout the City, and in a timely manner.

3. Abusive Conduct Defined. The phrase “abusive conduct” means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person’s work performance. A single act generally does not constitute abusive conduct, unless it is severe and egregious. Abusive conduct may be found to have occurred by the acts of one employee or by several employees (“mobbing”).

4. Examples of Abusive Conduct: General examples of prohibited abusive conduct include, but are not limited to, the following:

a. Harmful gossip (rumor and innuendo based on incomplete facts or fiction spread with the intent or impact of causing turmoil or discrediting certain individuals or institutions);

b. Behavior that demeans, humiliates or intimidates others in the workplace;

c. Deliberate exclusion of another employee from work assignments or networks that is not due to legitimate business reasons;

d. Unnecessary and unwelcome intrusion in the personal life of an employee;

e. Verbal or physical behavior that is derogatory or abusive.

5. Examples of What is Not Abusive Conduct: The following are examples of conduct that is not abusive conduct and does not constitute a violation of this policy:

a. Reasonable counseling, disciplinary actions or job performance evaluation actions, including but not limited to, constructive and fair criticism of an employee's work performance;

b. Differences of opinion and non-aggressive conflicts and problems in working relations or in interactions with other public agencies or members of the public;

c. A direct or assertive management style, including high workplace expectations;

d. Legitimate management responses to situations that require immediate action.

## B. COMPLAINT PROCEDURE

1. Any employee who feels he or she has been the victim of abusive conduct, or has witnessed abusive conduct in violation of this Policy, has the right and the responsibility to notify his/her supervisor, or Department Head, or the City Manager, of the incident or incidents of abusive conduct and provide the names of the individuals involved. The employee may use the Complaint Procedure set forth in Section B of Rule XXV (Anti-Harassment Policy).

2. Any complaint of abusive conduct will be investigated in accordance with the procedures set forth in Section B of Rule XXV (Anti-Harassment Policy). If the City concludes that prohibited abusive conduct occurred, appropriate corrective action will be taken, including action to stop further abusive conduct. Disciplinary action, up to and including termination, may be imposed on employees who violate this policy. If the perpetrator is a non-City employee, the City shall take such action as may be consistent with the law and within the City's control.

## C. APPLICATION.

1. This Policy applies to all City employees, including all regular full-time and regular part-time employees, all other temporary/part-time employees, contract employees, volunteers, customers and other members of the public, and anyone else who may be in or on City property or any place where City personnel work or otherwise conduct City business. Violations of this policy by any individual may be followed by legal action as appropriate.

#### D. TRAINING

All supervisors and managers shall receive training and instruction on how to recognize and prevent abusive conduct, as provided in Section C of Rule XXV (Anti-Harassment Policy). Additional training and instruction may be provided or required for other employees.

### XXVII. DRUG-FREE WORKPLACE POLICY

#### A. PURPOSE.

1. It is the intent of this personnel rule to eliminate substance abuse and its effects in the workplace. While the City has no intention of intruding into the private lives of its employees, involvement with drugs and alcohol off the job can impact job performance and employee safety. Drug and alcohol abuse has been found to be a contributing factor to absenteeism, tardiness, substandard performance, increased potential for accidents, disruptive behavior, increased workload for co-workers, poor morale and impaired public relations. To further its interests in service to the community, avoiding accidents, promoting and maintaining a safe and productive workplace and protecting City property, equipment and operations, the City may conduct drug and alcohol testing, as provided in this policy.

2. This policy applies to all employees regardless of appointment type or time basis, including but without limitation, full-time, part-time, temporary, regular, probationary, or management employees), and to all applicants for employment with the City.

3. This policy applies to alcohol and all substances, drugs, or medications (legal or illegal) which could impair an employee's ability to perform the functions of the job effectively and safely.

4. The City is committed to providing reasonable accommodation to those employees whose drug or alcohol problem classifies them as disabled under federal and/or state law.

5. Additionally, employees are expected to be in suitable mental and physical condition to perform their job satisfactorily and behave appropriately. Should the use of alcohol or other drugs interfere with job performance, employees may be offered rehabilitative assistance. However, failure to meet satisfactory levels of job performance could result in disciplinary action up to, and including, dismissal.

#### B. EMPLOYEE RESPONSIBILITIES

1. An employee must not report to work or be on-call while his/her ability to perform the job duties is impaired due to on duty or off duty alcohol or drug use.

2. An employee must not report to work with alcohol or impairing drugs (illegal drugs and prescription drugs without a prescription) in their systems or possess or utilize such substances while they are on duty or on-call or during meal periods or breaks.

3. An employee must not possess or use alcohol or impairing drugs (illegal drugs and prescription drugs without a prescription) during work hours or while on-call, on breaks, meal periods or at any time while on City property.

4. An employee must not directly or through a third party sell, purchase or provide drugs or alcohol to any person, including any employee, while either employee or both employees are on duty or on-call.

5. An employee must submit immediately to an alcohol or drug test when reasonable suspicion exists, as supported by the observance of objective signs of impairment, that the employee is in violation of this rule and when requested to submit to the test(s) by a responsible City representative.

6. An employee must notify his/her supervisor, before beginning work, when taking any medications or drugs (prescription or non-prescription) which may interfere with the safe and effective performance of duties or operation of City equipment.

7. An employee must provide to the City, or its designated Medical Review Officer, within twenty four (24) hours of a request or, if the request is made on a Friday or the day before a holiday by the close of the next business day, a bona fide verification of a current valid prescription for any potentially impairing drug or medication identified when a drug screen/test is positive. The prescription must be in the employee's name.

#### C. MANAGEMENT RESPONSIBILITIES AND GUIDELINES:

1. Managers and supervisors are responsible for reasonable enforcement of this rule.

2. Managers and supervisors may request through the Personnel Office that an employee submit to a drug and/or alcohol test when a manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol while on the job or on-call. "Reasonable suspicion" shall have the meaning set forth in Subsection D.

#### D. REASONABLE SUSPICION TESTING

1. When an employee's supervisor and a second employee or supervisor have reasonable suspicion to believe an employee may be under the influence of alcohol or a controlled substance, that employee may be given a medical evaluation by a City-designated medical clinic on City time and at City expense. This medical evaluation will be conducted to determine if alcohol or drugs are in the employee's system.

2. "Reasonable suspicion" is based on objective facts sufficient to lead a reasonably prudent supervisor to suspect is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability



to perform his/her job safely is reduced. The items listed below include, but are not limited to, objective conditions which alone, or in combination, could lead to a reasonable suspicion that an employee was under the influence of drugs or alcohol.

3. Reasonable suspicion may be justified by one or a combination of the following indicators:

- Bloodshot or watery eyes
- Slurred speech
- Alcohol on the breath
- Physical and/or verbal altercation
- Inability to walk a straight line
- An accident involving City property
- Possession of drugs or alcohol
- Frequent absenteeism
- Confusion/difficulty in concentration
- Noticeable change in behavior

NOTE: The foregoing list is not intended to be exhaustive. Other factors will be considered by a supervisor or manager in determining that there is a reasonable suspicion that the employee is under the influence of, of his/her fitness for duty is impaired by drugs and/or alcohol.

4. The following steps establish a procedure to facilitate the medical evaluation process:

Step 1: The Department Head who believes based on his/her observations or the observations of the employee's supervisor or manager, that an employee may be under the influence of alcohol or drugs, must work with the City Manager and document, in writing within reasonable time, the facts constituting reasonable suspicion that the employee in question is under the influence of drugs and/or alcohol. The Department Head will meet with the City Manager, or designee, to discuss the employee's behavior. At that time, it will be determined if the employee should be tested for drugs. The City Manager, or designee, will arrange for an immediate appointment with a medical facility to conduct the test, unless the employee admits to being under the influence of alcohol or controlled substance.

An employee's refusal to submit immediately to an alcohol or drug analysis when directed by management may constitute insubordination, and may be grounds for disciplinary action up to, and including, dismissal.

The City Manager, or designee, encountering an employee who refuses an order to submit to a drug and/or alcohol analysis/test shall, with the assistance of the Personnel Director remind the employee of the requirements to comply and the disciplinary consequences of failing to comply with this rule.

Step 2: The City will immediately provide transportation for the employee to the medical facility and wait for the tests to be completed. The type of testing required will be determined by the physician.

Step 3: After being tested, the employee will be transported home, or in appropriate situations, to the hospital. The employee will continue receiving pay during this time and disciplinary action will not be administered for alcohol or drug use in violation of this policy unless the test results show the presence of alcohol or drugs. Information obtained through this testing will be treated with strict confidentiality. When warranted, discipline may still be considered for other misconduct, such as unsatisfactory work performance, insubordination or workplace violence.

Step 4: If alcohol or drugs are found in the employee's body, the City Manager, or designee, shall meet with the employee and explain the proposed disciplinary action. The employee shall be encouraged to seek professional assistance.

5. If an employee is convicted of criminal drug activity, the employee must notify the City Manager, or designee, of the conviction in writing within five calendar days after the conviction.

#### **E. SEARCHES**

1. The City reserves the right to lawfully search, without employee consent, all areas and property in which the City maintains control or joint control with the employee, including but not limited to, offices, desks, filing cabinets, , closets, or other furnishings, vehicles or facilities.

2. Managers and supervisors shall not physically search the person of the employee(s) without the freely given consent of, and in the presence of, the employee(s) and his/her representative(s) if so desired.

#### **F. FOLLOW-UP; DISCIPLINE**

1. A positive result from a drug and/or alcohol analysis/test may result in disciplinary action, up to and including termination.

a. If the drug analysis/test is positive, the employee must provide within twenty four (24) hours of the request bona fide verification of a valid current prescription for the drug identified in the drug analysis/test to the Personnel Director or the City's designated Medical Review Officer. The prescription must be in the employee's name. If the employee does not provide acceptable verification of a valid prescription, or if the prescription is not in the employee's name, or if the employee has not previously notified his /her supervisor, as provided under Subsection B, paragraph 6 of these Rules, the employee will be subject to disciplinary action up to, and including, discharge. The City Manager, or designee, the Department Head and the City Attorney will determine the most suitable disciplinary action based on all pertinent facts and these Rules.

2. Should the results of the alcohol or drug test be negative, the employee may return to the workplace and perform regular job duties, and no further action will be taken on the incident that gave rise to the reasonable suspicion, absent other factors indicating that return to work is not advisable or that further action is appropriate.

3. Nothing in this Policy shall prevent the City from contacting appropriate law enforcement should the City determine that the employee is engaged in the unlawful use, sale or distribution of controlled substances or otherwise engaged in illegal activity while on City premises, property or using City equipment.

#### G. DOCUMENTATION AND CONFIDENTIALITY

1. Records relating to job performance, attendance, and behavior shall be maintained in the employee's personnel file. Only the behavior and discipline associated with alcohol or drugs should be documented and placed in the employee's personnel file.

2. Laboratory reports or test reports shall not appear in an employee's general personnel folder. All tests shall be maintained, along with the employee's medical records, in a confidential medical file separate from the personnel records and kept securely under the control of the Personnel Director. The reports or tests results may be disclosed to City management on a strictly need-to-know basis, to the tested employee upon requests or in response to a valid subpoena, a valid search warrant, a valid court order or other similar legal orders.

3. Various federal, state and local laws protect the rights of individuals with disabilities and others with regard to the confidentiality of medical information, medical treatment, and the use of prescription drugs and substances taken under medical supervision. Nothing contained in this policy is intended to interfere with individual rights under, or to violate, these laws.

#### ~~Substance Abuse Testing~~

#### ~~XXIV.~~ XXIX. MANAGEMENT RIGHTS

1. The City shall retain, whether exercised or not, solely and exclusively, all express and inherent rights and authority pursuant to law with respect to determining the level of, and the manner in which, the City's activities are conducted, managed and administered.

2. The City has the exclusive right and authority to schedule work and/or overtime work as required in the manner most advantageous to the City.

3. Every incidental duty connected with operations enumerated in job descriptions is not always specifically described; nevertheless, it is intended that all such duties shall be performed by the employee.

4. The Appointing Authority reserves the right to discipline or discharge employees subject to the procedures set forth in these Personnel Rules.

5. The City shall determine assignments, and establish methods and processes by which assignments are performed.

6. The City shall have the exclusive right to transfer employees within departments and to positions outside a department in a manner most advantageous to the City.

7. The City shall have the authority, without prior meeting and conferring, to contract for matters relating to municipal operations, including contracting out bargaining unit work. The right of contracting or subcontracting is vested exclusively in the City.

8. The City has the right, without prior meeting and conferring, to effect reorganizations and reallocation of work of the City.

9. The inherent and express rights of the City, including those herein specifically referred to which are not expressly modified or restricted by a specific provision hereof, are not in any way, directly or indirectly, subject to meeting and conferring or the Grievance Procedure herein.



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## **APPENDIX A**

### **CITY OF HIGHLAND POLICY ON TECHNOLOGY USE AND SECURITY**

#### **I. Authority**

This Policy is enacted by the City Council to implement and administer Rule VI.F of the City of Highland Personnel Rules and Regulations ("Personnel Rules" or "Rules"). The City Manager is authorized to supplement this Policy by the modification and/or addition of provisions as he or she deems appropriate.

#### **II. Purpose**

The City of Highland ("City") provides various Technology Resources to authorized employees to assist them in performing their job duties for the City. The City believes that both productivity and efficiency are improved through the use of electronic information systems such as the Internet and E-mail. The City encourages employees to use these resources in the work place for research, education and communications, but use of these resources is strictly limited to City-related business and official activities and shall be conducted in accordance with the City's standards of professionalism and Personnel Rules and federal and state law. Each employee has a responsibility to use the City's Technology Resources in a manner that increases productivity, enhances the City's public image, and is respectful of other employees.

Failure to follow the City's policies regarding Technology Resources may result in loss of or restriction upon an employee's privileges to use Technology Resources at any time without prior notice, and may lead to imposition of disciplinary action up to and including termination of employment. In addition, violation of the City's policies regarding Technology Resources may lead to civil or criminal action or other legal action.

As set forth below, any non-employee authorized to use any of the City's Technology Resources shall also abide by and comply with all terms of this Policy, including but expressly not limited to, any appointed official, volunteer, consultant or other independent contractor.

The City reserves the right to advise law enforcement or other appropriate legal authorities of any violation of law by any employee or non-employee resulting from, arising out of or relating to such person's use of the City's Technology Resources.

#### **III. Applicability to all City Officers and Employees**

This Policy applies to all employees of the City, including but not limited to employees in the competitive service, probationary employees, temporary/part-time employees, contract employees, management employees, and all other at-will employees, who use any City-provided access to the Internet and/or E-mail, or who use or access any other Technology Resource of the City, regardless of the user's location when accessing the network or other Technology Resource.

#### **IV. Technology Resources Definition**

Technology Resources shall have the meaning set forth in Rule VI.F, as may be amended from time to time, or as supplemented by the City Manager, and shall include but is not limited to, all electronic media and storage devices, software, and means of electronic communication including any of the following: personal computers and workstations; laptop computers; iPads; mini and mainframe computers; computer hardware such as disk drives, tape drives, external hard drives and flash/thumb drives; peripheral equipment such as printers, modems, fax machines, and copiers; computer software applications and associated files and data, including software that grants access to external services, such as the Internet, applications, or cloud storage accounts; City servers and WiFi connection; electronic mail; mobile phones; tablets; personal organizers and other handheld devices; pagers; voicemail systems; and instant messaging systems. Technology resources is also intended to broadly include new or emerging devices, technology, software and means of communications that may be developed or implemented in the future.

#### **V. Authorization**

Access to the City's Technology Resources is within the sole discretion of the City. Generally, employees are given access to the City's various technologies based on their job functions. Only employees whose job performance will benefit from the use of the City's Technology Resources are authorized to access and use the necessary technology. Additionally, employees may be required to successfully complete City-approved training before they are authorized to access and use the City's Technology Resources.

#### **VI. Use of Technology Resources**

Except as otherwise expressly provided in this Section, the City's Technology Resources shall be used by employees only for the purpose of conducting or carrying out City business and official activities.

Employees may use the City's Technology Resources for the following incidental personal uses as long as such use does not interfere with the employee's duties, is not done for pecuniary gain, does not conflict with the City's mission and activities, and does not violate the Personnel Ordinance, the Personnel Rules, the provisions of this Policy or any other City ordinance or policy, or any provision of state or federal law:

1. To use mobile telephones or cellular telephones for brief and necessary personal calls;
2. To send and receive necessary and occasional personal communications; and
3. To prepare and store incidental personal data (such as personal calendars, personal address lists, and similar incidental personal data) in a reasonable manner; and

Notwithstanding the foregoing, the City Manager, a director or department head may further limit or exclude use of City Technology Resources for disciplinary or non-disciplinary reasons.



The City assumes no liability for loss, damage, destruction, alteration, receipt, transmission, disclosure, or misuse of any personal data or communications transmitted over or stored on the City's Technology Resources. The City accepts no responsibility or liability for the loss or non-delivery of any personal electronic mail or voicemail communications or any personal data stored on any City property. The City strongly discourages employees from storing any personal data on any of the City's Technology Resources.

As provided in Personnel Rule VI.F of the Personnel Rules, and Section VIII of this Policy, an employee has no expectation of privacy in any personal information, communications or data contained in or stored on any of the City's Technology Resources.

## **VII. Improper Uses**

The City is aware that employees use electronic mail for correspondence that is less formal than written memoranda. Employees must take care, however, not to let informality degenerate into improper use. The City's Technology Resources shall not be used in violation of any provision of the Personnel Rules, or state or federal law, including but not limited to, any of the following.

### **A. Prohibition Against Harassing, Discriminatory and Defamatory Use**

As set forth more fully in the Personnel Rules, including but not limited to the City's Anti-Harassment Policy (Rule XXIV of the City's Personnel Rules), the City does not tolerate discrimination or harassment based on gender, pregnancy, childbirth (or related medical conditions), race, color, religion, national origin, ancestry, age, physical disability, mental disability, medical condition, marital status, sexual orientation, family care or medical leave status, military status, veteran status, or any other status protected by state and federal laws. Under no circumstances shall employees use the City's Technology Resources to transmit, receive, distribute, display or store any information, graphic images, messages or texts that is discriminatory, harassing, defamatory, obscene, indecent, threatening, retaliatory, or that otherwise could adversely affect any individual, group, or entity (e.g., sexually explicit or racial messages, slurs, jokes, or cartoons).

### **B. Prohibition Against Workplace Violence**

As set forth more fully in the Personnel Rules, the City does not tolerate violence or threats of violence in the workplace, toward any person, including but not limited to, toward any other employee, official, independent contractor, vendor or member of the public. (See Rule XXV, Policy Against Workplace Violence). Under no circumstances shall employees use the City's Technology Resources to transmit, receive, distribute, display or store any information, images, messages or texts that contain any threats of violence or otherwise violate that Policy.

### **C. Prohibition Against Abusive Conduct**

As set forth more fully in the Personnel Rules, the City does not tolerate abusive conduct, or threats of abuse or bullying. (See Rule XXVI, Policy Against Abusive Conduct). Under no circumstances shall employees use the City's Technology Resources to transmit, receive, distribute, display or store any information, graphic images, messages or texts that is abusive, threatens or otherwise violates that Policy.

#### **D. Prohibition Against Violating Copyright Laws**

#### **E. Other Prohibited Uses**

In addition to the foregoing, employees shall not use the City's Technology Resources for any of the following additional purposes:

1. Any unlawful or illegal purpose;
2. Any use for or in connection with the establishment or conduct of outside employment or activities, or for other personal or pecuniary gain or solicitation;
3. Transmitting, receiving, disclosing or otherwise communicating in any way confidential or proprietary information of the City or third parties;
4. Browsing, posting messages on bulletin boards, social media, or participating in chat rooms, except for City business or other official activities;
5. Threats, libel, slander, or defamation;
6. Political or campaign endorsements or other advocacy;
7. Use of software not required for City business or other official activities, use of software for games, or any other entertainment software;
8. Purchasing items not intended for City related business or other official activities through the Internet;
9. Downloading of applications or programs from the Internet, unless permission is granted in writing by the Director and Administrative Services Manager. This restriction is required in order to prevent infection of the City's local network by computer viruses or impairment of the City's security systems;
10. Attempting to circumvent security and data protection policies; or
11. Any purpose or use that violates any other City ordinance, resolution, policy, or regulation, or any other provision of law.

#### **VIII. City Access To Technology Resources; No Right of Privacy**

All messages sent and received, including both City-related and personal messages, and all documents, information and data contained in or stored on any of the City's Technology Resources (including on its electronic mail system, voicemail system, telephone system, or computer systems), and all applications and programs created or stored on the City's Technology Resources systems are **City property** regardless of the content. As such, the City reserves the right to access all of its Technology Resources including but not limited to its computers, voicemail, other telephone and electronic mail systems, and technology resources, at any time, in

its sole discretion. No City official or employee, other than the City Manager, has authority to waive, vary or amend the City's right to access its Technology Resources. To be effective, any such waiver by the City Manager must be in writing and include the purpose, scope and duration for the waiver.

#### **A. No Reasonable Expectation Of Privacy; Right of Inspection**

Although the City does not wish to examine personal information of its employees, on occasion, the City may need to, and shall, monitor and access its Technology Resources including computer files, electronic mail messages, and voicemail messages. All City employees who use any of the City's Technology Resources are on notice that they are subject to all of the following:

1. **Employees have no right of privacy with respect to any files, messages, documents, information or data created, collected, or maintained on the City's Technology Resources, including personal information or messages.**
2. **The City may, at its discretion, inspect all files, messages, documents, information or data on or stored in any of its Technology Resources at any time and without notice, to ensure that use of the City's Technology Resources is limited to City business or other official activities, and to ensure compliance with this Policy, the Personnel Rules and Personnel Ordinance, and all provisions of state and federal law.** The City's inspection includes but is expressly not limited to, reviews of the content of documents, messages, files information, data, and web sites visited on the Internet, communications with other employees or officials, and communications with third parties, including random reviews, as well as all other information, documents, photographs, videos, images and any other data of any kind, stored, accessed, reviewed, displayed, received or sent with the use of the City's Technology Resources.
3. **The City may also monitor its Technology Resources at any time in order to confirm compliance with its policies, for purposes of legal proceedings, to investigate misconduct, to locate information, or for any other business or official purpose.**

#### **B. Passwords**

Certain of the City's Technology Resources can be accessed only by entering a password or using login credentials. Passwords and login credentials are intended to prevent unauthorized access to information. Employees shall be provided with passwords and login credentials as may be deemed necessary by the Administrative Services Manager, City Manager, Director or Department Head, may deem appropriate or necessary. Employees shall maintain any City-provided passwords and login credentials as confidential. Employees shall not share City-provided passwords or forward login credentials unless authorized by the City Manager, Director, Department Head or Administrative Services Manager and must not access or use coworkers' systems without express authorization.

No employee shall place a lock, password, or other security device or code on any Technology Resource without written approval from the Administrative Services Manager. Concurrent with installation of any such approved lock, password, or other security device or code, the employee shall also provide the login credentials and password, or other security device or code, or copy of any key, to the Administrative Services Manager, for the purpose of allowing the Administrative Services Manager, City Manager, Director and/or Department Head to maintain access any City-issued Technology Resource.

Any City-issued security,, code or device may be modified or removed at any time, in the City's sole discretion.

**Employees are advised that passwords and login credentials do not confer any right of privacy upon any employee of the City.** Thus, even though employees may maintain passwords or be provided with login credentials for accessing Technology Resources, employees must not expect that any information maintained on Technology Resources, including electronic mail and voicemail messages, are private.

### **C. Data Collection**

The best way for employees to ensure the privacy of personal information is not to store or transmit it on the City's Technology Resources. So that employees understand the extent to which information is collected and stored, examples of information currently maintained by the City are provided below. The City may, however, in its sole discretion, and at any time, alter the amount and type of information that it retains.

1. Telephone Use and Voicemail: Records are kept of all calls made from and to a given telephone extension. Although voicemail is password-protected, an authorized administrator can listen to voicemail messages and also reset the password.
2. Electronic Mail: Electronic mail is backed up and may be archived. Although electronic mail is password-protected, an authorized administrator can read electronic mail and also reset the password.
3. Desktop Facsimile Use: Copies of all facsimile transmissions are maintained in the facsimile server.
4. Document Use: Each document stored on City computers has a history that shows which users have accessed the document for any purpose.
5. Internet Use: Internet sites visited, the number of times visited, and the total time connected to each site are recorded and periodically monitored.

### **D. Deleted Information**

Deleting or erasing information, documents, or messages maintained on the City's Technology Resources is, in most cases, ineffective. All employees should understand that any information kept on the City's Technology Resources may be electronically recalled or recreated regardless



of whether it may have been “deleted” or “erased” by an employee. Because the City periodically backs up all files and messages, and because of the way in which computers reuse file storage space, files and messages may exist that are thought to have been deleted or erased. Therefore, employees who delete or erase information or messages should not assume that such information or messages are confidential or ever were confidential. If a legal dispute arises, or may arise in the future, it may be unlawful to attempt to delete or erase certain information. Employees shall fully comply with City policy regarding retention or destruction of information.

## **IX. The Internet And On-Line Services**

The City provides authorized employees access to online services such as the Internet as deemed necessary by the City for performance of an employee’s duties. The City expects that employees will use these services in a responsible way and for business-related purposes only. Under no circumstances are employees permitted to use the City’s Technology Resources to access, download, or contribute to Internet sites that contain inappropriate content such as that which is discriminatory, harassing, defamatory, obscene, indecent, threatening, or that otherwise could reasonably adversely affect any individual, group, or entity.

Additionally, employees shall not use the City’s Technology Resources to post, comment, send, or otherwise upload any information to any Web sites or other online groups, including web logs (i.e., “blogs”), social networking Web sites, newsgroups, discussion groups, or non-City email groups, except in accordance with the City’s Blogging Policy or as authorized by the City Manager and Administrative Services Manager. These actions will likely generate junk electronic mail and may expose the City to liability. Employees who wish to access the Internet for non-work-related activities should obtain their own personal Internet access accounts that are unaffiliated with the City, and use such accounts at home on their own personal computer without making any reference to the City.

## **X. Online Monitoring**

The City monitors both the amount of time spent using online services and the sites visited by individual employees. The City reserves the right to limit such access by any means available to it, including revoking access altogether. The City, through technological tools, may also prohibit or limit access to certain Web sites considered inappropriate by the City or its technology provider.

## **XI. Confidential Information**

The City is sensitive to the issue of protecting confidential information and, where applicable, to the protections of trade secrets and proprietary information of third parties (“Confidential Information”). Therefore, employees are expected to use good judgment when using or transmitting Confidential Information on the City’s Technology Resources.

Confidential Information should not be accessed through the City’s Technology Resources in the presence of unauthorized individuals. Similarly, Confidential Information should not be left visible or unattended. Moreover, any Confidential Information transmitted via Technology Resources should be marked with an appropriate confidentiality legend, such as:

“This message contains confidential information. Unless you are the addressee (or authorized to receive such information for the addressee), you shall not copy, use, or distribute this information. If you have received Confidential Information in error, you shall immediately advise the sender, addressee and Administrative Services Manager at \_\_\_\_\_, or return it promptly by mail.”

Employees shall be required to adhere to City’s security policy with regard to Confidential Information and take all appropriate measures to safeguard the confidentiality and security of such information. Employees should avoid sending Confidential Information via the Internet, except when absolutely necessary. Employees should also verify electronic mail addresses before transmitting any messages containing Confidential Information.

## **XII. Software Use**

### **A. License Restrictions**

All software in use on the City’s Technology Resources is officially licensed software. No software is to be installed or used that has not been duly paid for and licensed appropriately for the use to which it is being put. As outlined above, no employee may load any software on the City’s computers, by any means of transmission, unless authorized in writing in advance by the Administrative Services Manager, and Director or Department Head, and thoroughly scanned for viruses or other malware prior to installation.

### **B. Software and Other Technology Resources For Home Use**

Before transferring or copying any software from a City Technology Resource to another computer or other device, employees must obtain written authorization from the Administrative Services Manager and Director or Department Head. It is the employee’s responsibility to adhere to applicable licensing requirements, including not making or distributing unauthorized copies of software to others. Upon departure from the City, it is the employee’s responsibility to remove all City software from non-City computers and other devices on which City software has been installed. If an employee sells or otherwise transfers out of his or her own possession or control his or her own personally owned computer, he or she must delete all City software prior to such sale or other transfer in accordance with the instructions from the Administrative Services Manager.

### **C. Security**

The City has installed a variety of programs and devices to ensure the safety and security of the City’s Technology Resources. Any employee found tampering with or disabling any of the City’s security devices will be subject to discipline up to and including termination.

To maintain the effectiveness of the City’s security measures, employees should use only secure networks established by the City to access or use Confidential Information. Such information may not be downloaded, stored, or copied onto any non-City equipment or media (including personally owned computer, handheld devices, external memory devices, or disks) without prior written approval of Administrative Services Manager and Director or Department Head. If Confidential Information is downloaded, stored, or copied onto non-City equipment or media,

employees must take all appropriate measures to safeguard against loss, theft, damage, or breach of such equipment or media. If Confidential Information is downloaded, stored, or copied onto non-City equipment or media, employees must permanently delete such information prior to selling or otherwise transferring out of their own possession or control such equipment or media. If Confidential Information is downloaded, stored, or copied onto non-City equipment or media and employee resigns, is terminated, or is requested to do so by management, employees must delete all Confidential Information they received, including any and all copies thereof. Similarly, employees may not send Confidential Information to their personal e-mail accounts, even for work-related purposes, without prior written approval of the Administrative Services Manager and Director or Department Head..

Any loss or suspected loss of Confidential Information, or any suspicious activity such as external hacking attempts or unusual internal activity, shall be reported immediately to City management.

#### **D. Remote Access To Technology Resources**

The City may, at its sole discretion, provide certain employees with remote access systems such as a laptop, smartphone, iPad, tablet, or other personal organizer to allow such employees to handle the tasks associated with their jobs while working away from the office. Any authorization for use of such remote access system must be in writing, signed by Administrative Services Manager and Director or Department Head.

Employees must take care to ensure the security of all City-provided equipment. Employees must not share network passwords, security codes, login credentials or other PINs with anyone. As soon as an employee believes City-provided equipment is lost or that the security and confidentiality of the data on that equipment has been compromised, he or she must immediately notify his/her Department Head or Director and the Administrative Services Manager. The City-provided remote access system shall only be used for City-related business or official City activities.

The City may decide that it is no longer necessary for certain employees to possess a remote access system and their ability to use such systems may be discontinued, in which case such employees shall promptly return any City-issued remote access systems in accordance with City policy

Use of public or home networks, such as unencrypted WiFi networks, can be a threat to the security and reliability of the City's Technology Resources. Accordingly, employees must only access City Technology Resources via means that are specifically approved by the Administrative Services Manager.

#### **E. Electronic Mail Guidelines**

Employees are expected to use sound judgment with respect to use of the City's electronic mail ("e-mail"). All employees should adhere to the following with respect to use of e-mail:

1. Always ask before sending an e-mail if it is the appropriate medium of communication. When communicating about a sensitive subject, consider

whether e-mail is the appropriate medium or whether using the phone rather than e-mail might be more appropriate (but keep in mind that voicemail is similar to e-mail; voicemail may be stored on a computer server and may be forwarded to third parties).

2. Use the “front page” test. Assuming that e-mail is the appropriate medium of communication, each e-mail should be treated as a formal written document. Do not write anything in an e-mail that could not be printed on the front page of the newspaper. Off-the-cuff, sarcastic, or angry comments can come back to haunt the author.
3. E-mail is part of the workplace environment. E-mail containing rude and insensitive comments is not only personally embarrassing, but also may serve as the basis for legal liability. Employees and managers should exercise the same care and sensitivity in communicating via e-mail as they would when communicating in person or in letters. Offensive e-mail received from others should not be forwarded, and the recipient should ask the sender to refrain from sending inappropriate e-mail.
4. Provide context. As with other forms of communication, there is a risk that an e-mail message may be taken out of context. To reduce the risk that the message will be taken out of context, consider including the original message to which the reply e-mail relates.
5. Know your audience. When sending an e-mail, always double-check to whom the e-mail is addressed, especially when using the “reply to all” button. Ask whether it is appropriate for each addressee to receive the e-mail and whether sending the e-mail to a particular addressee will result in the unauthorized disclosure of Confidential Information. If in doubt, remove the doubted addressee.
6. Avoid using a home or personal computer for business purposes. If there is any concern that a legal dispute or litigation involving the City and a third party may require producing one's hard drive from a home or personal computer, the employee should not use the device for business-related purposes. E-mail relating to City business, even though stored on a home or personal computer, is recoverable and discoverable in litigation.

## **F. Retention and Destruction**

Retention and destruction of information retained on the City's Technology Resources may be subject to other City ordinances, resolutions and policies, including but not limited to, the City's Records Retention Policy, as well as federal, state and local laws such as the California Public Records Act (Cal. Gov. Code § 6250 et seq.). All employees shall abide by all provisions and terms of such other ordinances, resolutions, ordinances and laws.

## **G. Violations**



Violations of the City's Technology Resources Policy shall be reviewed on a case by case basis. Violation of this Policy may result in loss of or restriction upon an employee's privileges to use Technology Resources at any time without prior notice. In addition, an employee who violates this Policy may be subject to disciplinary or legal action up to and including termination from employment and/or criminal or civil penalties or other legal action.

Employees should be aware that access to Internet sites from City computers leaves an electronic trail which may be tracked back to a City computer and that E-mail messages and other information and data which has been erased from the hard drive on an individual computer may still be retrieved by computer technicians.

#### **H. Audits**

The City may perform auditing activity or monitoring to determine compliance with these policies. Audits of software and data stored on the City's Technology Resources may be conducted without warning at any time or disclosure to employees.

#### **I. Modifications**

The City may at any time delete, modify, amend and/or supplement the Technology Use Policy, at its sole discretion.

### **EMPLOYEE ACKNOWLEDGMENT**

I have received and read a copy of the City of Highland Technology Use Policy. I acknowledge and understand the terms of this Policy and agree to abide by them at all times. I understand that violation of this Policy may result in result in loss of or restriction upon my privilege to use Technology Resources at any time without prior notice. I further understand that my violation of this Policy may subject me to disciplinary or legal action up to and including termination from employment and/or criminal or civil penalties or other legal action.

I further acknowledge that this document will be placed in my personnel file.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Employee Name      *[Please print]*

## **APPENDIX B**

### **CITY OF HIGHLAND MILITARY LEAVE POLICY**

#### **I. PURPOSE**

The City provides eligible employees with military leave in accordance with federal law (Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 et seq.) (USERRA) and California law (Military & Veterans Code § 387 et seq.), as amended from time to time. This Section sets out the basic parameters of applicable law, and is not intended to expand any rights beyond those provided by federal and state laws. In the event of any conflict between this Section and applicable federal or state law, the applicable federal or state law will prevail. Answers to specific questions regarding the application of USERRA and state law may be obtained by reviewing the applicable statutes directly.

#### **II. PAYMENT OF FULL SALARY**

An employee on active duty and who otherwise qualifies for military leave under this Section is entitled to receive his/her full salary for the first thirty (30) calendar days of that military leave, subject to all of the following requirements:

##### **A. Temporary Military Leave of Absence**

An employee ordered to active military training, encampment, naval cruises, special exercises or the like, is entitled to receive his/her Full Salary for the first thirty (30) calendar days of the temporary military leave of absence.

##### **B. Indefinite Military Leave of Absence**

An employee who is inducted, enlists, enters or is otherwise ordered or called into active duty is entitled to receive his/her Full Salary for the first thirty (30) calendar days of that indefinite military leave of absence.

##### **C. Emergency Military Leave**

An employee who is a member of the California National Guard who is ordered to active duty during an emergency declared by the Governor of California or under other circumstances where the Governor is authorized to call the National Guard into active service is entitled to receive Full Salary for the first thirty (30) calendar days of the declared emergency. Eligible employees are entitled to pay for the first (thirty) 30 calendar days included during each declared emergency in California, regardless of the number of emergencies declared during a particular fiscal year. (California Military & Veterans Code § 395.05; 83 Ops. Cal Atty. Gen. 148 (2000).)

##### **D. Determination of Full Salary**

Full Salary is determined based on the number of working days the employee would normally work during the thirty (30) calendar days. Stated differently, it is the salary or compensation that is normally received by the employee during thirty (30) calendar days, not thirty (30) work days of pay.

E. Determination of 30-Day Period

Military leave begins on the first day of ordered duty and ends on the last day of ordered duty; and includes workdays, non-workdays, holidays and reasonable travel time.

F. Inactive Military Duty Unpaid

An employee on Temporary Military Leave of Absence, Indefinite Military Leave of Absence, of Emergency Military Leave of Absence for inactive duty training is not eligible for payment of Full Salary. (California Military & Veterans Code §§ 395(b) and 395.01(b).)

G. Fiscal Year Limitation

Eligible employees are entitled to a maximum of thirty (30) calendar days of Full Salary for any one leave, or for a combination of temporary and indefinite leaves, during a fiscal year. (California Military & Veterans Code § 395.03.) If an employee is on a military leave for active duty that extends from one fiscal year into the next fiscal year, the number of calendar days falling in the second fiscal year will be included in the calculation of the 30 calendar day period for the second fiscal year. In no event shall an employee receive Full Salary while on military leave(s) for active duty for more than thirty (30) calendar days in any one fiscal year.

H. Repayment Obligation

If the City overpays Full Salary to any employee while the employee is on military leave, the employee shall promptly repay the City for such overpayment within thirty (30) calendar days of service of written notice from the City.

I. Withholding

Full Salary shall be subject to all appropriate mandatory deductions and withholdings (e.g., federal and state income tax withholdings, SDI, Medicare, and any applicable wage garnishment orders), and any voluntary withholdings and deductions. Voluntary deductions shall continue unless the employee notifies the City through submittal of the appropriate cancellation forms.

### **III. USE OF ACCRUED LEAVE.**

An employee on military leave may, upon his/her request, during such period of military leave use any vacation, annual, or similar leave with pay accrued by the employee before the commencement of such military leave. The City will not require an employee to use vacation, annual, or similar leave during such period of military leave.

#### IV. BENEFITS

During military leave, employees are entitled to the non-seniority rights and benefits generally provided by the City to other employees with similar seniority, status, and pay that are on furlough or leave of absence, except as provided in subparagraph D.

- A. Health Insurance and Disability Premium Benefits. Employees on military leave may continue to be covered by the City's health insurance and disability insurance plans if they elect continuation coverage in accordance with this Section.
1. Employees with less than thirty (30) days of service with the City will not be eligible for health insurance or disability insurance benefits pursuant to the requirements of the City's health insurance and disability insurance plans.
  2. Employees who are covered by the City's health insurance or disability insurance plan at the time their military leave commences, may elect to pay for continuation coverage (similar to COBRA) for up to the lesser of (i) twenty-four (24) months from the date the leave began or (ii) the day after the date on which the person fails to apply for or return to a position of employment. (38 U.S.C. § 4317.)
  3. Employees shall comply with any applicable requirements for election of continuation coverage, as imposed by the health care or disability plan, and further subject to any applicable federal regulations.
  4. If an employee performs service in the military for less than thirty-one (31) days, the employee's health care coverage will continue for that period of time subject to the employee's payment of the employee's regular share of employee health insurance premiums. During this period, the employee will not be required to pay more than the regular employee share of the health insurance premiums for health plan coverage.
  5. For any period of unpaid military leave of thirty-one (31) days or more, employees may elect to pay for continuation coverage as provided in subparagraph (b). The employee may be required to pay no more than 102% of the full premium under the plan, which represents the employer's share plus the employee's share, plus 2% for administrative costs. (20 C.F.R. § 1002.166(b).)
  6. **[COMMENT:** If the City pays for health care premiums during any period of paid or unpaid military leave, insert appropriate language here, e.g., "The City will continue to pay its designated contribution toward the cost of health and disability insurance premiums for the employee and any dependents for up to four (4) months in a calendar year for an employee on military leave, whether such military leave is paid or unpaid."]
  7. Military leave of more than thirty (30) days constitutes a "qualifying event" that triggers COBRA notification to qualified dependents.



B. Service Credit

Service credit accrues during military leave of absence for purposes of retirement, any length of service requirements under the City's retirement program or any other benefit program. A person reemployed under this Section shall be treated as not having incurred a break in service with the City by reason of such person's period or periods of service in the uniformed services.

C. Other Benefits While on Unpaid Leave

Questions regarding other benefit plans should be referred to Personnel. Regardless of continued coverage under or the availability of the various plans, war exclusions may apply, as provided by the involved plan, carrier or both.

D. Notification of Intent Not to Return.

Any employee on military leave who knowingly provides written notice of intent not to return to his/her position of employment after service in the uniformed service, is not entitled to rights and benefits that are not determined by seniority as are generally provided by the City to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, Section, practice, or plan in effect at the commencement of such service or established.

**V. REEMPLOYMENT/REINSTATEMENT.**

Following release from military service, employees will have the right to return to City employment, subject to the procedures and limitations provided by federal and state laws. Employees must timely follow reporting, application and documentation requirements.

A. Five-Year Limit

An employee has a right to reemployment where the cumulative length of absence from the City by reason of service in the uniformed services does not exceed five (5) years. The five-year period, including any periods exempt from the five-year period, shall be determined in accordance with applicable statutes and regulations. (38 U.S.C. § 4312.)

B. Reporting Requirements

1. 30 Days or Less: Employees performing 30 days or less of military service must report back to work at the beginning of the next regularly scheduled work shift that begins after the employee's safe return home plus twenty-four (24) hours.
2. Fitness to Perform Service: Employees who are absent from work for a period of any length for purposes of an examination to determine their fitness to perform service in the uniformed services, must report back to work at the beginning of the next

regularly scheduled work shift that begins after the employee's safe return home plus eight (8) hours.

- 2.
3. —31 Days to 180 Days: Employees returning from 31 to 180 days of military leave must submit an application for reemployment no later than fourteen (14) days after completion of military service.
4. 181 Days or More: Employees returning from 181 days or more of military leave must submit an application for reemployment no later than ninety (90) days after the completion of service.

#### C. Seasonal and Temporary Employees

Seasonal and temporary employees will have a right to reinstatement and reemployment only to the extent required by federal and state laws.

#### D. Notice/Application

Notice that an employee is returning to work or an application for reemployment must be made to the Personnel Manager, unless the employee is notified that a different supervisor or manager will serve as the contact. If that person is not available, the application may be provided to the Chief Executive Officer. An application for reemployment may be oral or written. However, an application for reemployment in writing is strongly encouraged as the best means to preserve the employee's reemployment request. If the 14-day or 90-day deadline falls on a day when no one is available to accept the application, the time is extended to the next business day.

#### E. Failure to Meet Deadlines

Time deadlines may be excused or extended only under the special circumstances provided by law. Employees who fail to apply for reemployment or report for work or both, within the time limits required by law, may be considered to have resigned their employment, waived reemployment rights or may be subject to disciplinary action up to and including termination, as provided under City policies, rules or procedures.

#### F. Establishing Eligibility

Employees returning after 31 days or more of military service must provide documentation establishing their military service and eligibility for reemployment. An employee is entitled to reemployment upon establishing that:

1. The employee must have provided prior oral or written notice of the impending service.
2. The employee's cumulative period or periods of service while employed with the City shall not have exceeded five years.



3. The employee must have completed the period of service without having received a punitive or other than honorable discharge or having been dismissed or dropped from the rolls of the uniformed service.
4. The employee must have made a timely application for reemployment or have been timely in reporting back to work.
  - ~~— He or she made timely application for reemployment;~~
    - ~~1.—~~
    - ~~— The cumulative time in service has not exceeded the five (5) year limit (or a longer period, if authorized under the limited exceptions under Federal law or provisions of State law); and~~
      - ~~2.—~~
      - ~~3.— Separation under honorable conditions.~~

#### G. Unavailable Documentation

The failure to provide documentation will not be used as the basis for denying reemployment if it does not exist or is not available at the time of the City's request. However, if after reemployment, documentation becomes available showing that the employee did not meet the reemployment criteria, the City may retroactively deny reemployment and immediately terminate the employee's employment.

#### H. Honorable Separation from Service

The City has the right to refuse reemployment or to terminate an employee for separation from the service with a dishonorable, bad conduct or other than honorable discharge, dismissal of a commissioned officer in certain situations involving a court martial or order of the President in time of war, or having been absent without City for more than three months or imprisoned by a civilian court, or on such other basis provided by Federal or State law.

#### I. Reemployment Position

1. An employee returning from military service will be placed in the reemployment position with the pay, rights and benefits required by law. Generally, the returning employee is returned to the same or equivalent position with equivalent benefits, pay and other terms and conditions of employment and without loss of job seniority or any other status or benefits accrued prior to or during military leave, provided the employee would still be employed if military leave had not been taken (with the exception of an uncompleted observation period or as otherwise specified in Subdivisions (2) and (3), below).
2. If an employee has not yet completed his/her observation period at the time his/her military leave commences, his/her observation period must be completed upon reinstatement. Time spent on military leave(s) shall not count toward completion of an observation period. An employee's observation period will be extended by the

length of the military leave, and is further subject to any other requirements of this Personnel Manual.

3. If the employee's position has been abolished or otherwise ceased to exist during the employee's absence, the employee will have the same rights and privileges as though he/she had occupied the position when it ceased to exist.

#### J. Other Rights and Benefits

As noted, military service is considered service with the City for retirement vesting and certain benefit accrual purposes. In addition, where applicable, reemployed service members will be credited with additional seniority, rights and benefits the member would have received if the member had remained continuously employed. If a returning employee's health plan terminated while on military leave, no exclusion or waiting period will apply on reemployment unless such exclusion or waiting period would have applied had the coverage not been terminated as a result of the military service or as authorized by law.

#### K. Leave of Absence on Spouse's Return from Deployment (Mil. & Vet. Code § 395.10)

##### 1. Eligibility Requirements

- a. During those periods of time that the City has twenty-five (25) or more employees, the City will provide unpaid leave to an employee whose spouse is on leave from deployment, if the employee meets all of the following conditions:
  - i. The employee works an average of twenty (20) hours or more per week for the City; and
  - ii. The employee's spouse is a member of the National Guard, United States Armed Forces, or Reserves, who is deployed during a period of military conflict and is on leave from a deployment to a combat theater or combat zone.
- b. "Period of Military Conflict" means either a declaration of war from the United States Congress or the calling up of reserve military units for active duty pursuant to 10 USC Sections 12301 and 12302, or Title 32 of the United States Code.

##### 2. Length of leave

The maximum duration of leave shall be ten (10) days.

##### 3. Purpose of leave

The leave must be while the employee's military spouse is on leave from deployment.

##### 4. Procedures



- a. The employee must give notice of intent to take unpaid leave within two business days of being notified of his/her spouse's leave from deployment; and
- b. The employee must submit written documentation to the Personnel Manager, certifying that his/her spouse will be on leave from deployment.

## **VI. SPECIAL PROTECTION AGAINST DISCHARGE, EXCEPT FOR CAUSE**

The returning veteran who meets the USERRA eligibility criteria (Section V, Subsection F of this Policy) may not be discharged, except for cause, within one year after reemployment, if the veteran's period of service was 181 days or more. If the period of service was 31-180 days, the period of special protection is 180 days. If the employee is discharged during the special protection period, the City must prove that the employee was discharged *for cause*. This special protection provision applies even if the employee was in an at-will or probationary status before leaving for service. As used in this Policy, "cause" shall have the meaning set forth in Section (B), Causes for Disciplinary Action, of Rule XX, Disciplinary Action, of the Personnel Rules.

## **~~VI.~~VII. DISCRIMINATION AND RETALIATION PROHIBITED**

It is the intent of the City that discrimination, ~~and~~ retaliation and acts of reprisal against persons who have served or are serving in the uniformed services, including those who apply to be a member of or to perform service, ~~and acts of reprisal,~~ are prohibited, as provided in federal and state laws.

## **APPENDIX C**

### **CITY OF HIGHLAND PAID SICK LEAVE POLICY FOR PART-TIME AND TEMPORARY EMPLOYEES**

#### **I. Purpose and Authority**

This Policy is enacted pursuant to Rule XV (Employee Benefits), Section C.4.b of the Personnel Rules of the City of Highland in accordance with the Healthy Workplaces, Health Families Act of 2014 (Cal. Labor Code § 145 et seq.) (Assembly Bill 1522), as amended by Assembly Bill 304, Stat. of 2015 (collectively “the Act”). The provisions of the Act became operative on July 1, 2015. The Act provides that employee who work 30 or more days in a twelve-month period are entitled to paid sick leave to be accrued at a rate of no less than one hour for every 30 hours worked beginning on July 1, 2015, or the first day of employment, whichever comes later.

#### **II. Applicability**

- A. This Policy applies to any person employed on a temporary basis by the City as a (i) seasonal employee; (ii) temporary/part-time employee; or (iii) contract employee, as designated by the City Manager or designee at time of hire, and who work 30 or more days in a twelve-month period, eligible pursuant to Section III.B of this Policy.
- B. This Policy does not apply to any of the following positions in the City:
  - 1. The City Manager and any other management employees;
  - 2. Probationary or regular employees (either full-time or part-time) ;
  - 3. Any employees covered under any memorandum of understanding between the City of Highland and any bargaining unit of the City that meets the requirements of Section 245.5(a)(1) or (20 of the California Labor Code ; or
  - 4. Any employee of the City who is a recipient of a retirement allowance and employed without reinstatement into his/her respective retirement system pursuant to either Article 8 (commencing with Section 21220) of Chapter 12 of Part 3 of Division 5 of Title 2 of the Government Code, or Article 8 (commencing with Section 31680) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code.
- C. In accordance with the Act, employees subject to this Policy shall be eligible to accrue and use paid sick leave for the employee’s own health condition and for a family member’s health condition, subject to the terms and conditions outlined in this Policy and as otherwise required by the Act.

### **III. Definitions**

The following terms shall have the following meanings when used in this Policy, except as otherwise stated herein or in the City of Highland Personnel Rules:

- A. "City" means the City of Highland.
- B. "Department Director" means any person appointed or employed in a position to oversee, supervise, and manage a City department, including but expressly not limited to, the Building Official, City Clerk, Director of Administrative Services, Director of Community Development, and Director of Public Works/City Engineer. Also known as a "Department Head."
- C. "Eligible Employee" or "Employee" means any employee listed in Section I.A of this Policy who is eligible for sick leave pursuant to this Policy, including any employee employed on an as-needed or temporary basis and who works less than twenty (20) hours per week, or less than one thousand (1,000) hours per year, and who may or may not have a regular schedule.
- D. "Family Member" means an employee's child, spouse, registered domestic partner, sibling, parent, grandchild, or grandparent; a child, sibling, sibling, parent, grandchild or grandparent of the employee's spouse or registered domestic partner; or other members of the employee's family residing in the employee's home to whom the employee stands in loco parentis.
  - 1) "Child" means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parent; and this definition is applicable regardless of age or dependency status.
  - 2) "Domestic Partner" means a member of a domestic partnership, as that term is defined in Family Code section 297.
  - 3) "Parent" means a biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.
- E. "Management employee" shall have the same meaning as "management employee" in Rule II of the Rules.
- F. "Personnel Ordinance" means Ordinance No. 39, as codified in Highland Municipal Code Chapter 2.52 (Sections 2.52.010 et seq.), and as amended from time to time.
- G. "Personnel Director" means the employee appointed by the City Manager to carry out the designated duties of the Personnel Director or Personnel Officer set forth in the Personnel Ordinance and/or the Rules.
- H. "Rules" means the City of Highland Personnel Rules, as amended from time to time.

#### **IV. Eligibility and Accrual.**

- A. Eligible employees shall start accruing Paid Sick Leave once they have completed thirty (30) days of service with the City. Such eligible employees will accrue one (1) hour of Paid Sick Leave per each thirty (30) hours worked starting upon date of hire, or July 1, 2015, whichever is later, up to a maximum of 3 (three) days or 24 hours per calendar year.
- B. Eligible employees may use accrued Paid Sick Leave for uses defined by state statute or regulation as set forth in Section V of this Policy.
- C. An employee may use available paid sick days beginning on the 90th day of employment. The City may lend Paid Sick Leave to an eligible employee in advance of accrual, with proper documentation required by this Policy and upon the approval of the City Manager or his/her designee, in the City Manager's/designee's sole discretion.
- D. When an employee has been on sick leave, the City reserves the right to make any investigation of the illness it deems necessary, including, but not limited to requiring a doctor's certificate. All approvals of sick leave usage shall be made by the Department Director subject to the approval of the Personnel Director.

#### **V. Allowable Uses of Paid Sick Leave**

The City will allow use of Paid Sick Leave in accordance with the Act and its implementing state regulations, which currently include the following purposes:

- A. Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member;
- B. For an employee who is a victim of domestic violence, sexual assault, or stalking, the purposes described in California Labor Code Section 230(c) and Section 230.1(a) including, but not limited to the following:
  - 1) To take time off from work to obtain or attempt to obtain any relief, including but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or their child.
  - 2) To seek medical attention for injuries caused by crime or abuse.
  - 3) To obtain services from a domestic violence shelter, program, rape crisis center, or victim services organization or agency as a result of the crime or abuse.
  - 4) To obtain psychological counseling or mental health services related to an experience of crime or abuse.



- 5) To participate in safety planning and take other actions to increase safety from future crime or abuse, including temporary or permanent relocation.

C. Any other use required by state law, as amended from time to time.

## **VI. PROCEDURES:**

- A. Paid Sick Leave is compensated based upon the eligible employee's normal hourly rate or an average of multiple rates, should the employee work in multiple pay classifications, for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment—Paid sick time for exempt employees shall be calculated in the same manner as the City calculates wages for other forms of paid leave time.
- B. Eligible employees shall follow established department procedures for requesting sick leave. Reasonable advance notice, orally or in writing, shall be provided for foreseeable leave. For unforeseeable leave, the employee must notify their employer as soon as practicable. All requests for the use of Paid Sick Leave, whether foreseeable in advance or otherwise, shall be made and recorded using the approved leave request form. The approved leave form shall then be attached to the timesheet upon submission to the Payroll Division. In addition, the employee shall comply with the following requirements:
  - 1) The employee shall notify the department not later than 30 minutes prior to the beginning of the employee's work shift that the employee will be absent due to illness.
  - 2) The notification must be left with the employee's immediate supervisor, or if the supervisor is not available, with the Department Director. A message left on an answering machine or a text message to either the employee's immediate supervisor or the Department Manager does not constitute notification of the department unless specifically authorized in advance by the Department Director in writing.
- C. Employees will only be eligible to receive paid sick time for the number of hours they would have worked during their scheduled shift. For example, if the employee was scheduled for a four hour shift, they will be compensated with four hours of paid sick time only.
- D. The City limits the use of paid sick days to 24 hours or three days in each calendar year. See also Section VI.I regarding accrual, below.
- E. Paid Sick Leave hours shall be recorded on an employee's timesheet in the pay period in which the absence occurs and shall be recorded to reflect the day of the absence.

- F. Eligible employees must use sick leave in at least one-quarter (.25) hour increments.
- G. The employee shall not be required, as a condition of using paid sick days, to search for or find a replacement worker to cover the days during which that employee uses Paid Sick Leave.
- H. The amount of accrued leave per pay period shall be recorded on the eligible employee's payroll stub each pay period.
- I. Accrued paid sick days shall carry over to the following year of employment subject to the following provisions. The City limits an eligible employee's use of accrued paid sick days to 24 hours or three days in each calendar year. An employee's accrual of paid sick leave shall not exceed a total of 48 hours or 6 days.

## **VII. Non-Retaliation Policy**

Employees shall not be denied the use of accrued Paid Sick Leave, shall be free from discharge, threats of discharge, demotion, or suspension, and shall not be subjected to discrimination or retaliation for exercising their right to use accrued Paid Sick Leave, attempting to use Paid Sick Leave, filing a complaint with the California Department of Industrial Relations, alleging a violation of the Act, cooperating in an investigation or prosecution of an alleged violation of the Act, or opposing any policy or practice or act that is prohibited by the Act.

## **VIII. Termination Procedures; Reinstatement Upon Rehire**

- A. Paid Sick Leave has no cash value upon separation. The City shall not compensate any temporary/part-time employee for accrued, unused paid sick days upon termination, resignation, retirement, or other separation from employment.
- B. The City shall maintain a record of the employee's balance of accrued Paid Sick Leave at separation. To the extent required by state law, if an employee separates from the City and is rehired by the City within one year from the date of separation, previously accrued and unused paid sick days shall be reinstated; and the employee shall be entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring, up to a maximum of 48 hours or 6 days.

## **IX. Reservation of Rights**

The City reserves the right to modify this policy to the extent the legal obligations under the Act are further modified or clarified by the Legislature, a Court, or other regulatory body.