

## Section 10. Compensation and Salary Administration

### 10.01 Application of Salary Ranges and Rates

- A. Appointment: Initial appointments designated in the City Job Classification Plan shall normally be at the first step of appropriate salary range. Because it is sometimes difficult to secure qualified personnel at the normal hiring rate, or a person of unusually high qualifications is available, the City Manager may hire or promote at a higher range and step at his/her discretion. If the City Manager exercises his/her discretion to hire or promote a person at a step higher than set forth above, said person shall be eligible for a step increase upon successful completion of the probationary period.
- B. Promotion: Any employee receiving a promotion shall start on the first step of the salary range of the class to which promoted, and be eligible for merit increases as elsewhere provided, unless the present salary level is equal to or exceeds the first step of the class to which promoted. In that event, the employee shall be assigned to the step in the salary range to which promoted, which is the equivalent to at least a five (5%) increase in salary.
- C. Out of Class Pay: An employee working out of class for at least ten (10) consecutive work days to temporarily perform duties in a higher classification shall be compensated at the next higher step in the worked classification which is at least 5% above the employee's current salary. At no time should any employee work out of class for a period of more than 6 (six) months. There will also be no change to the employees current benefits.

### 10.02 Advancement within Salary Range

An employee shall be considered for salary advancement in accordance with the following time intervals:

- Step 1** Payable during probationary period. The first step in an assigned range is normally the minimum rate at the initial hiring for a specific classification.
- Step 2** Payable after successful completion of probation.
- Step 3** Payable after one year of service at Step "2" and upon recommendation of the Department Director based on a positive performance evaluation and an employee's demonstrated ability to meet or exceed job standards. Approval by the City Manager is required.

**Step 4** Payable after one year of service at Step "3" and upon recommendation of the Department Director based on a positive performance evaluation and an employee's demonstrated ability to meet or exceed job standards. Approval by the City Manager is required.

**Step 5** Payable after one year of service at Step "4" and upon recommendation of the Department Director based on a positive performance evaluation and an employee's demonstrated ability to meet or exceed job standards. Approval by the City Manager is required.

- A. Step advancements are merit increases and are not automatic. An employee must perform the duties of the position and be rated satisfactory by the Department Director to receive a step advancement.
- B. Salary adjustments shall become effective on the first day of the pay period coinciding with or following the employee's step advancement, promotion, demotion, reclassification, transfer, basic salary rate change, longevity pay eligibility, bilingual pay eligibility, education incentive pay eligibility, etc. Such salary adjustments shall not be retroactive.

#### **10.03 Criteria for Step Increase**

No salary advancement shall be made which exceeds any maximum rate established in the pay plan for the class to which the advanced employee's position is assigned.

#### **10.04 Request for Step Increase**

- A. In the event the Department Director fails to complete the required performance evaluation, the step increase within range shall not be withheld.
- B. Nothing herein prohibits granting a merit salary advancement prior to the normal time intervals, subject to approval of the Personnel Officer. A Department Director may recommend a step increase through the City Manager for any employee in the department as a result of outstanding service or any special circumstances which merit a step increase on a date other than the anniversary date. Such step increases are effective on the date approved by the City Manager, and does not change the employee's anniversary date.

#### **10.05 Assignment for Reclassification and Demotion**

- A. No Classified employee shall suffer a salary reduction as a result of reclassification, but the employee's salary may be held at the current amount at time of reclassification until the salary range of the new

classification is equal to or exceeds the employee's salary. This shall be referred to as "Y-rate". An employee may be placed in a lower or higher salary step at the time of reclassification with the approval of the Personnel Officer.

- B. In the event of demotion due to discipline, the Personnel Officer shall determine the step within the applicable salary range to which the employee shall be assigned.

#### **10.06 Computation of Salary**

Salary rates for all authorized classified positions are set forth in the Classification and Compensation Plan. Hourly rates are based on 2080 hours per year. Hourly rates for Fire personnel are based on 2912 hours per year.

#### **10.07 Compensation during Attendance at Training Courses During Vacation, Holidays, and Days Off**

City employees should feel free to attend training courses available during their vacation, holidays or days off if authorized to do so in advance by the Department Director. However, compensation for attendance at training courses held during days off, weekends, vacations, or holidays will be authorized only where employees have been directed by their Department Director to attend on the following basis:

- A. Days Off: Employees directed to attend training courses held on their day(s) off will have their work schedule adjusted to reflect day(s) off in compensation.
- B. Holidays: Employees directed to attend training courses on a holiday will be compensated double times their regular rate of pay, or allowed to take off another day for missed holiday, unless a different rate of compensation is provided in a current ratified and approved MOU, in which case the latter shall apply.
- C. Vacations: Employees directed to attend training courses held on vacation days will be permitted to reschedule their vacation days spent in such training courses in lieu of compensation.

## **Section 11. General Working Conditions**

### **11.01 Attendance**

Employees shall be in attendance and on time at their assigned workstation in accordance with Department rules regarding hours of work. All departments shall keep daily attendance records of employees. An employee absent without approved leave may be subject to disciplinary action.

### **11.02 Meal and Break Periods**

Each regular employee should be entitled to an uninterrupted, unpaid meal period of a minimum of thirty (30) minutes and a maximum of sixty (60) minutes at or about the mid-point of their workday. The length of the meal period and the time the meal period is taken shall be determined by the Department Director unless provided otherwise in a ratified and approved MOU. Employees are entirely relieved of responsibilities and restrictions during their meal period, unless they have been directed to work by a supervisor or management staff, in which case it will be treated as paid time.

Each regular employee is also entitled to two (2) fifteen-minute paid break periods to be scheduled by a supervisor based on operational needs. The initial break period shall be taken within the first half of the shift, and the second within the second half of the shift.

### **11.03 Standard Work Periods**

The standard workday for regular employees shall be forty (40) hours worked in five (5) consecutive workdays. The workday and workweek for regular, part-time employees shall be established and directed by the Department Director.

### **11.04 Exceptions to Standard Work Periods**

With the approval of the Personnel Officer, Department Directors are authorized to designate other work periods and working hours for employees when the best interest of the City may be served by such adjustment of the standard work periods and hours. Exempt employees are expected to work the number of hours necessary to complete the task.

### **11.05 Overtime and Compensatory Time**

Overtime is any time worked at the direction of management beyond the standard forty (40) hour work week for non-exempt employees.

- A. Overtime shall be worked only at the request and authorization of the Department Director. Regular employees required to work in excess of forty (40) hours in a work week shall be compensated at time-and-a-half, or compensatory time off at a rate of time-and-a-half at the option of the

Department Director. Unless otherwise required by law, the workweek commences at 12:01 a.m. each Saturday and ends at 11:59 p.m. each Friday.

- B. Work schedules may be changed, by mutual agreement, to reflect work hours in excess of eight (8) within a day without overtime premium being required, e.g., four-ten hour days, or as provided in a ratified and approved MOU.
- C. The use of compensatory time shall be scheduled by mutual agreement between the employee and Department Director. Employees retain the right to cash payment for any compensatory time on the books as provided in a ratified and approved MOU, or with the approval of the Personnel Officer.
- D. Unless otherwise previously accrued, exempt employees shall not be eligible for overtime pay and/or compensatory time off.
- E. Classified employees who are designated as exempt under the Fair Labor Standards Act (FLSA) shall not be eligible for overtime pay and/or compensatory time off.
- F. There may be variations to standard overtime and work schedules as permitted by FLSA Section 7(k) exemption.

#### **11.06 Compensatory Time Accumulation and Use**

Employees may accumulate up to forty-eight (48) hours of compensatory time off. If compensatory time is not allowed, the employee shall be paid for such overtime in cash at the rate of one and one-half times the regular rate of pay, or as provided in a ratified and approved MOU. Non-exempt employees who move to an exempt status shall have their approved compensatory time off cashed out by the end of the current fiscal year.

#### **11.07 Bilingual Pay**

The City retains the right to determine how many and which positions it needs to provide bilingual services, and which languages shall qualify. To be eligible, the Department Director must approve the employee for certification testing, and then pass an oral examination in the applicable language certifying that the person has the appropriate language skills.

#### **11.08 Paid Holidays**

- A. All regular and probationary employees are entitled to municipal holidays off as provided in a ratified and approved MOU or Resolution adopted by the City Council.

- B. When a holiday falls on a Saturday, the preceding Friday shall be deemed to be the holiday. When a holiday falls on a Sunday, the following Monday shall be deemed to be the holiday. Unless otherwise required by law, employees must be on paid status on the working day immediately preceding the holiday, and on the working day immediately following the holiday, in order to receive holiday pay.
- C. When a holiday occurs during an employee's approved leave of absence covered by the Family Medical Leave Act, the California Family Rights Act, the California Pregnancy Disability Act, or any other legally mandated leave, the employee will receive full holiday pay only if the employee is in paid status the working day immediately preceding the holiday and the working day immediately following the holiday.
- D. Employees who are required to continue their job responsibilities on holidays (such as in the Public Works, Police and Fire Departments) shall receive holiday pay as provided in a ratified and approved MOU, and/or Resolution adopted by the City Council. The rate of pay for the holiday shall be based on eight (8) hours.
- E. In cases where employees are afforded a Floating Holiday, the "holiday" must be used no later than December 31, the end of the City's current calendar year. If not used by that date, said holiday will be canceled and removed from Payroll Records. There is no waiting period applicable to use of Floating Holidays for newly hired employees.
- F. Council approved holidays, except floating holidays, will be considered work days for purposes of calculating overtime.

#### **11.09 Tuition Reimbursement**

- A. Regular employees may be eligible to receive tuition reimbursement for educational purposes which improve their ability to accomplish their City job duties, subject to approval of the Department Director and the Personnel Officer.
- B. Except as provided in a ratified and approved MOU, reimbursement will be for books, tuition, and enrollment only up to a maximum of five hundred (\$500) dollars per fiscal year. The employee must achieve at least a "C" in the class, and be reimbursed after proper proof of completion of the class.

#### **11.10 Credit for Training**

Participation in and successful completion of special training courses may be considered in making advancement and promotions, as provided in a ratified and approved MOU. Evidence of such activity shall be filed by the employee with the Department Director and Human Resources.

### **11.11 Training Responsibility**

The City encourages the training of employees. Responsibility for developing training programs for employees shall be assumed jointly by the Personnel Officer and Department Directors. Such training programs may include, but not limited to, lecture courses, workshops, demonstrations, assignment of reading materials, or such other assignments as may be available for the purpose of improving the effectiveness and broadening the knowledge of municipal employees in the performance of their respective duties.

### **11.12 Uniform, Official Badge or Insignia**

Officials or employees who wear a uniform, badge, or other official insignia as evidence of authority and City identity shall not permit such uniform or insignia to be used or worn by any other person.

### **11.13 Compensation for Use of Private Automobile on City Business and City Vehicle Assignment**

- A. General Policy: It is the policy of the City to assure that all employees requiring transportation for the satisfactory completion of their assigned duties will either (1) have a City vehicle available for their use as required by the nature of their work, or (2) be reimbursed for the use of their own private vehicle when such use is authorized.
- B. Authorization for Use of Privately-Owned Vehicles: Use of privately owned vehicles in connection with official City business during normal work hours shall be authorized prior to such use by the Personnel Officer or Department Director.
- C. Mileage Allowance: Subject to direction concerning the use of a City vehicle, the City will make a City vehicle available for official use to employees when so required. If there are no City vehicles available and the employee must use a personal vehicle, the employee will be reimbursed at the IRS authorized mileage reimbursement rate in effect at the time.
- D. Administrative Regulations: Administrative regulations covering conditions for use, financial responsibility, procedures for requesting travel authorization and reimbursement shall be established by the City Manager, or designee, consistent with the Fair Labor Standards Act (FLSA).
- E. With the approval of the City Manager, the Department Director may from time to time authorize the use and assignment of a City vehicle for ongoing "Bonafide-Official" business of the City in the course of employment of the employee. The Department Director shall take into

consideration the employees job duties, responsibilities and "around-the-clock" availability.

Vehicles shall not be used for personal use. City Employees shall report all accidents involving personal or City assigned vehicles while being used in City Business, no matter how minor the damage may be to the employee's immediate supervisor or City Manager or designee handling risk and insurance claims. Any injury sustained by an employee while operating a vehicle (personal or City assigned vehicles) on city business should be reported as required under the worker's compensation policy.

Each employee shall be responsible for the lawful operations of vehicles in accordance with both state and local law. Violations of law are the responsibility of the vehicle operator. Fines and other expenses that result from traffic violations or parking violations, other than mechanical problems of a City vehicle, are responsibilities of the employee.

Employees shall give due consideration of the Internal Revenue Code (IRC) under "Imputed Income" creating a taxable issue which may apply to assignment of city vehicles.

#### **11.14 Pay Periods**

- A. Pay periods for all employees shall be on a biweekly basis, every other Friday of each month. When a regular payday coincides with a holiday, paychecks will be issued on the workday immediately preceding such holiday. Salaries will be paid on a regular payday only, unless early payment is approved by the Personnel Officer.
- B. The method of distributing payroll checks shall be established by the Personnel Officer. All employees shall be required to participate in the City's direct deposit program.

#### **11.15 Deductions from Pay**

Deductions from employee's pay shall include all required employment deductions, as well as union dues, voluntary deductions, or court orders.

#### **11.16 On-The-Job Injuries/Workers' Compensation**

- A. Report of Injury: Any employee who sustains any injury on the job shall report the injury to a supervisor or Department Director before completing the shift in which the injury occurred. The injury report must be written and made within the specified time or said employee may be subject to disciplinary action up to and including dismissal for non-compliance.
- B. Treatment at Authorized Facilities: Any employee who sustains an on the job injury shall report for medical treatment only at those medical facilities

approved by the City for treatment of employees or pre-designated physician.

If the employee suffers the injury at a location outside the City which makes this impractical, the employee may seek medical attention at the nearest medical facility where the injury occurred.

- C. Workers' compensation benefits shall be as provided in Section 13.12 of these Personnel Rules.
- D. Unless otherwise required by law, any employee absent from work because he or she is reporting to medical facilities for treatment of on the job injuries shall be required to use paid sick leave.

#### **11.17 Modified Duty: Return to Work Program**

- A. Program Objectives: The City acknowledges the high cost of workers' compensation insurance, and strives to reduce this cost by all reasonable means. An essential feature of a cost containment effort includes the availability of a modified duty return to work program which enables injured employees to return to work as soon as medically released.
- B. Modified duty/return to work assignments are designated for employees who were injured in the course of City employment and can return to work within the physical restrictions set forth by the attending physician. Modified duty may be made available to employees for non-work related injuries, at the discretion of the Department Director. Modified duty/return to work assignments are temporary in nature to assist injured or ill employees to progress to full-duty status. The length of the assignments will be at the discretion of the Personnel Officer in consultation with the Department Director. Assignments established for modified duty/return to work participants are not permanent in nature. The City has the responsibility to reasonably accommodate injured employees within their current work assignment, under the requirements of the Americans With Disabilities Act (ADA).
- C. Modified duty/return to work assignments will be established on a case-by-case basis, depending on the specific limitations of the injured employee. Modified duty/return to work assignments shall be established with the approval of the Department Director and Personnel Officer. Assignments may be made based on the following:
  - 1. The assignment is not designed to be demeaning and/or punitive;
  - 2. The assignment should benefit the employee by offering an opportunity to return to work and benefit the City by providing supplemental tasks, enhancing services, or having tasks

accomplished which may not have otherwise been completed without additional expense;

3. Modified duty/return to work assignments will be based upon the availability of modified duty assignments. Any modified duty/return to work assignment shall be made based upon the business necessity or business requirements of the City.

While assigned to a modified duty/return to work assignments, the injured employee will earn the normal classification rate.

### **11.18 Fitness for Duty Examinations**

- A. As deemed necessary and with the recommendation of the Department Director, the Personnel Officer shall have the authority to request employees to submit to medical and or psychological fitness-for-duty examinations from time to time to assure City employees maintain the necessary health to perform their assigned work tasks in a full, complete and safe manner. Such examinations shall be done at the City's expense by physicians or medical care providers as the City may select.
- B. Periodic physicals and/or psychological fitness-for-duty examinations for all Sworn Peace Officers are mandatory and shall be conducted in accordance with their applicable ratified and approved Memoranda of Understanding.

### **11.19 Reports of Change Status**

All actions involving employment and change in status of employment shall be reported by the Department Director to the Personnel Officer in writing utilizing the Personnel Action Form (PAF). Copies of such reports shall be furnished to the employee involved. All recommendations of transfer, promotion, demotion, change of salary rate, and any other temporary or permanent change in status of employees shall be submitted in writing to the Personnel Officer by the respective Department Director utilizing the PAF.

### **11.20 Absence Without Leave**

Unless otherwise required by law, an employee absent from duty without authorization for two or more consecutive working days without satisfactory explanation to the Department Director or the Personnel Officer shall be deemed to have voluntarily resigned without notice and the Department Director or Personnel Officer shall initiate the process to discharge the individual from City employment.

**11.21 Resignation and Exit Interview**

- A. Resignation: An employee wishing to leave City employment in good standing shall file with the Department Director a written resignation stating the effective date and reasons for leaving the service at least fourteen (14) calendar days prior to the effective date of said resignation. A final performance evaluation as to the resigned employee's service performance and other pertinent information may be forwarded to the Personnel Officer by the Department Director. Failure of the employee to give notice as required by this section may be cause for denying future employment by the City. The Department Director or the Personnel Officer may authorize a resignation in good standing when, in their opinion, there are sufficient reasons to waive the requirements of this section.
- B. Exit Interview: The Personnel Officer or designee may conduct an exit interview for employees who resign to verify the reasons for resignation. Copies of the information obtained during the exit interview shall be furnished to the Department Director as appropriate.
- C. Employees, including those released during their initial probationary period, or dismissed for disciplinary reasons, will receive their final paycheck on the next regular payday following separation from City service. The final paycheck will include payment for all earned salary due and not previously paid, and accrued but unused leave balances subject to pay-off.

## **Section 12. Personnel Files and Records Policy**

### **12.01 In General**

- A. An employment history of each City employee will be maintained by the City. The information in the personnel file shall be maintained in a manner consistent with the American Health Insurance Portability and Accountability Act (HIPAA), and other applicable laws and regulations. The personnel file shall contain, but is not limited to, information pertinent to date of employment, positions held, salary history, payroll, benefits, sick leave, annual leave, performance evaluations, leave of absence requests, training data, compensation and other information as may be deemed appropriate and/or required by law, including, but not limited to, provisions of the American Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B. The official repository of the personnel file and records for all employees shall be maintained by Human Resources. Department files may be established for the purpose of having readily available pertinent employee records related to the employee's daily performance. An employee shall be entitled to read any statement written by the Supervisor or Department Director, regarding the employee's work performance or conduct, if such statement is to be placed in the personnel file. The employee shall acknowledge reading such material by affixing a signature or initials and date on the document, with the understanding that such signature or initials merely signifies that the employee has read the material in the file and may not necessarily indicate agreement with its content. If the employee refuses to initial, the Personnel Officer, or designee, will sign, noting the refusal of the employee to affix his/her signature or initials.
- C. Each employee has the responsibility to keep personal data up-to-date and must notify Personnel within ten (10) calendar days in the event of any change of name, address, telephone number, persons(s) to be notified in case of an emergency, and any change of beneficiary or dependent(s).
- D. Request for verification of employment or employment-related inquiries should be directed to the Personnel Officer or designee. The City will only verify length of employment and current employment status. Any requests for additional information contained in the personnel file shall be based upon written employee consent and must be approved by the Personnel Officer, or designee.
- E. An employee shall have thirty (30) calendar days upon becoming aware of any adverse comment entered in the employee's personnel file, within which to file a written response. Such written response shall be attached to and shall accompany the adverse comment. Personnel files are the

permanent property of the City, and access to the information they contain is restricted, subject to, and in accordance with, this Policy.

### **12.02 Inspection of Current or Former Employee's Personnel File**

- A. A current or former employee wishing to inspect his/her personnel file must submit a written request to the Personnel Officer, along with reasonable proof of identity. A current or former employee who seeks to authorize another person to inspect copies of his or her personnel file must provide a satisfactory written authorization for inclusion with the written request along with proof of identity.
- B. The City shall issue a written notice setting a date for inspection of the personnel file within thirty calendar days of receipt of the request, to take place during normal business hours. With the requesting person's written consent, the date for inspection may be extended on one occasion by up to five calendar days. If the requesting person is a former employee who was terminated for violation of City policy or law involving harassment or workplace violence, the City shall have discretion to mail a copy of the personnel file at the City's expense instead of scheduling an in-person inspection.
- C. A current employee may inspect his/her personnel file at the place the employee reports to work. Inspection by former employees and authorized representatives shall take place at the Personnel Officer's office, unless otherwise mutually agreed in writing by the City, and may require additional reasonable proof of identity.
- D. A designated City employee must be present throughout the inspection. No personnel files nor contents of personnel files shall be removed from the place of inspection without advance written authorization from the Personnel Officer.
- E. The employee will have access to all contents of the file except those materials which are a part of the employment/selection process, including letters of reference and letters of recommendation, and any records relating to investigations of possible criminal offenses. A copy of the material in the personnel file to which the employee has access will be provided to the employee upon request, at the prevailing cost for duplication.

### **12.03 Obtaining Copies of a Current or Former Employee's Personnel File**

- A. A current or former employee wishing to obtain copies of documents or other materials in his/her personnel file in person or by mail must submit a written request to the Personnel Officer along with reasonable proof of identity. A current or former employee who seeks to authorize another person to obtain copies of his/her personnel file must provide a

satisfactory written authorization for inclusion with the written request. Reasonable proof of identity may be required at the time of in-person pick up of requested documents.

- B. The City shall issue a written notice setting a date on which the requested copies may be picked up in person during normal business hours and identifying the cost of reproduction that must be paid to the City at the time of pick up. The date for in-person pick up of the documents shall be no more than thirty calendar days after receipt of the request by the City. With the requesting person's written consent, that date may be extended on one occasion by up to five calendar days. If the requesting person is a former employee who was terminated for violation of City policy or law involving harassment or workplace violence, the City shall have discretion to mail a copy of the personnel file at the expense of the City instead of scheduling an in-person pick up. If the requesting person chooses delivery by mail instead of in-person pick up, the notice provided by the City under Section 12.03.B. shall also identify the additional actual postage expenses for which the requesting person must reimburse the City prior to receipt of the copies.

### Section 13. Leave of Absence Provisions

#### 13.01 Annual Vacation Leave

- A. Employees shall be entitled to accrual of vacation leave upon the date of hire. Eligible employees working a forty-hour work week shall earn vacation credits based on the following schedule, or as provided in a current ratified and approved MOU.

YEARS OF SERVICE	ANNUAL EXECUTIVE MANAGEMENT	ANNUAL REGULAR FULL-TIME CLASSIFIED SERVICE EMPLOYEE
Date of hire – 36 months	15 days/yearly 10 hours/monthly 4.62 hours/bi-weekly	10 days/yearly 6.67 hours/monthly 3.08 hours/bi-weekly
37 – 120 months	20 days/yearly 13.33 hours/monthly 6.15 hours/bi-weekly	15 days/yearly 10 hours/monthly 4.62 hours/bi-weekly
121 – 180 months	22 days/yearly 14.67 hours/monthly 6.77 hours/bi-weekly	17 days/yearly 11.33 hours/monthly 5.23 hours/bi-weekly
181 months and over	25 days/yearly 16.67 hours/monthly 7.7 hours/bi-weekly	20 days/yearly 13.33 hours/monthly 6.15 hours/bi-weekly

- B. Vacation accrues to an eligible employee only during pay periods when the employee is on pay status one-half time or more. Employees cannot use accrued vacation leave during the same pay period in which the leave is accrued. Employees on a half-time pay status shall accrue only half of their vacation entitlement. An employee on full-time pay status shall accrue full vacation during that pay period. An employee on a part-time status (no less than 30 hours/week) shall accrue vacation on a prorated basis, or shall accrue full vacation credits when assigned to full-time status approved by the Personnel Officer.
- C. All employees may not accrue more than two times the annual accrual specified in Section 13.01 (A).
- D. Loss of accrued vacation shall not occur if vacation has been delayed by written request and approval of a Department Director or Personnel Officer.
- E. Temporary employees are not eligible for vacation leave benefits.

#### 13.02 Use of Vacation

- A. An employee must complete six (6) months of continuous service before becoming eligible to use accrued vacation leave.

- B. Request for vacation leave usage of two weeks or more must be requested at least two (2) weeks prior to the desired vacation period and approved before leaving on vacation. Employees who leave on vacation without advance approval shall be considered to have abandoned their work, and be subject to appropriate disciplinary action up to and including discharge.
- C. Vacation or compensatory time may be used when taking time off for illness of family members who do not qualify under the sick leave policy or other applicable rules and regulations.
- D. An employee shall not work for the City during vacation leave, unless requested to do so by the Department Director.

### **13.03 Holidays Falling During Vacation**

In the event a City holiday falls within an employee's vacation period which would have excused the employee from work, and for which no other compensation is made, said holiday shall not be charged as a vacation day.

### **13.04 Vacation at Termination**

- A. Employees who terminate their employment shall be paid in a lump sum for all accrued vacation and compensatory time earned at the employee's applicable rate of pay on the pay period following last day of work.
- B. Vacation leave will not be granted immediately prior to termination of employment for the purpose of extending service to encompass paid holidays or completing a full month of service for additional vacation leave accrual. City service cannot be extended through the use of vacation, sick leave, or any other compensable accumulation balances.
- C. In the event of death of an employee during employment with the City, all earned vacation and compensable paid leave balances will be paid to employee's designated beneficiary on file with Human Resources.
- D. Unused vacation entitlement may be paid to employees upon separation provided they have completed at least twelve (12) months of continuous service. Pay may be computed based on the rate earned upon separation.

### **13.05 Sick Leave**

- A. Applicability: Unless otherwise stated in this Section, this policy does not apply to part-time employees.
- B. Definitions.

The following terms as used in Section 13.05 and Section 13.06 (part-time

employees) shall have the following meanings:

1. **Family Member:** Family member shall include any of the following: a biological, adopted, or foster child, stepchild, legal ward, a child to whom the Employee stands in loco parentis, or a child of a registered domestic partner, regardless of the child's age or dependency status; 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; a spouse; a State of California registered domestic partner; a grandparent; a grandchild; and a sibling.

C. Accrual.

1. All eligible employees working a forty-hour workweek shall earn sick leave credits based on the following schedule:

PER YEAR	PER MONTH	PER PAY PERIOD
12 DAYS	1 DAY	3.69 HOURS

2. Unless otherwise required by law, sick leave accrues to an eligible employee only in those pay periods when the employee is on pay status one-half time or more; employees who are on a half time pay status shall accrue only half of their sick leave entitlement. An employee on a pay status on a full-time basis shall accrue full sick leave credits during that pay period.
3. Carryover and Cap on Accrued Sick Leave: Unused sick leave may be accumulated up to a maximum of 720 hours. Accrued and unused sick leave may be carried over from calendar year to calendar year.

D. Sick Leave Eligibility: Regular and probationary employees shall be eligible to accrue sick leave. Use of sick leave prior to the first 90 days of employment may be granted for extraordinary reasons with the approval of the Personnel Officer.

E. Use of Sick Leave. Upon the oral or written request of an Employee, the City shall permit eligible Employees to use accrued sick leave for the following purposes:

1. Diagnosis, care, or treatment of an existing health condition of, or preventative care for, an Employee or an Employee's family member.

2. For Employees who are victims of domestic violence, sexual assault, or stalking, taking time off 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 his or her child.
3. For Employees who are victims of domestic violence, sexual assault, or stalking, taking time off to seek medical attention for injuries caused by the domestic violence, sexual assault, or stalking; to obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking; to obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking; and to participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

This rule is also applicable to Section 13.06 of these Personnel Rules.

F. Request for Sick Leave.

1. The employee shall notify the immediate supervisor prior to the time set for the beginning of daily duties, but in any event no later than fifteen (15) minutes after the time set for the beginning the employee's daily duties. If the need for sick leave unforeseeably arises, the employee shall notify the immediate supervisor as soon as practicable. Failure to provide such notification may be the basis for disciplinary action, up to and including termination.
2. An Employee is not responsible for searching for or finding another employee to cover his or her shift in order to use sick leave.

G. Verification of Need for Sick Leave: Unless otherwise deemed necessary by the Department Supervisor, employees off work on sick leave for a period of three or more consecutive days may be required at any time to provide a doctor's note or other relevant documentation certifying that the reason for the employee's absence is a permitted use of sick leave, and if the employee is unable to return to work, stating how long the Employee is expected to be unable to do so. This rule is also applicable to Section 13.06 of these Personnel Rules.

H. Deductions of Sick Leave.

1. All City employees shall be charged sick leave at the rate of their normally scheduled shift for each full day of absence, unless exceptions to this rule are approved by the Personnel Officer. An

absence less than a full day will be charged to sick leave at the rate of one hour of sick leave for each hour absent.

- I. **When illness occurs on a Holiday:** Employees scheduled to work on a holiday that report sick will have their scheduled shift charged to sick leave.  
**Depletion of Sick Leave:** In accordance with Section 13.09, upon completion of accumulated sick leave for a permitted purpose, a leave of absence without pay may be authorized by the Personnel Officer.
- J. **Sick Leave Buy Back:** Upon an employee's resignation, the City shall compensate employees in all classifications a portion of their accumulated sick leave if leaving in good standing. Employees who are terminated are not considered to have left in good standing. In case of resignation, each employee shall be compensated up to but not exceeding fifteen (15) days or 120 hours of accumulated sick leave. In case of retirement, each employee shall be compensated up to but not exceeding thirty (30) days or 240 hours. Retirement shall be defined as meeting service and age requirements necessary to qualify and receive pension payments. Said compensation shall be based on the individual's regular salary rate of pay.
- K. **Reinstatement of Unused Sick Leave:** If an employee separates from employment and is rehired by the City within one year from the date of separation, up to 24 hours of previously accrued and unused sick leave shall be reinstated to the employee, provided any such leave was not paid out pursuant to Section 13.05(K). Where a rehired employee has more than 24 hours of previously accrued and unused sick leave, more than 24 hours may be reinstated to the employee at the City's discretion. The rehired employee shall be entitled to use the previously accrued and unused sick leave and to also accrue additional sick leave upon rehiring. This rule is also applicable to Section 13.06 of these Personnel Rules.
- L. **Records Documenting Hours Worked and Sick Days Accrued and Used:** The City shall keep records documenting the hours worked and Sick Leave accrued and used by an employee for three years. This rule is also applicable to Section 13.06 of these Personnel Rules.
- M. **Employee Inspection of Records Pertaining to Sick Leave:** Upon reasonable request to the Personnel Officer, and within ten (10) calendar days after the request, the City shall afford current and former Employees the right to inspect or copy records pertaining to their hours worked and Sick Leave accrued and used. This rule is also applicable to Section 13.06 of these Personnel Rules.

### **13.06 Sick Leave for Part-time Employees**

- A. **Applicability:** Section 13.05, subsections B, F, H, L, M, and N are applicable to this policy. Unless otherwise stated in this Section, this policy

applies to part-time, temporary, seasonal, contract, or any other class of employees the City employs in a less than standard forty-hour week capacity.

- B. Sick Leave Eligibility: Employees hired by the City become eligible for sick leave after they work for the City for 30 days. Employees who work for the City less than 30 days are not eligible for sick leave under this policy.
- C. Annual Sick Leave Advance: At the time of hiring, and on January 1<sup>st</sup> of each calendar year thereafter, the City shall grant employees 24 hours of sick leave to use for permitted purposes as described in this policy.

Temporary employees hired to work for the City for a period of less than 120 days will not receive 24 hours of sick leave up front, but will instead receive 1 hour of sick leave for every 30 hours worked.

- D. Qualification Period Prior to Use of Sick Leave: Employees may use accrued Sick Leave only after completing 90 days of employment. Employees who work less than 90 days are not entitled to use any Sick Leave. The days worked for the City, by an employee who separates from the City and is rehired within one year from the date of separation, shall count toward the 90 day qualification period.
- E. Permitted Uses of Sick Leave: Upon the oral or written request of an Employee, the City shall permit eligible Employees to use accrued Sick Leave for the same purposes outlined in Section 13.05, subsection F of these Personnel Rules.
- F. Request for Sick Leave.
  - 1. The employee shall notify the immediate supervisor prior to the time set for the beginning of daily duties, but in any event no later than fifteen (15) minutes after the time set for the beginning the employee's daily duties. If the need for sick leave unforeseeably arises, the employee shall notify the immediate supervisor as soon as practicable. Failure to provide such notification may be the basis for disciplinary action, up to and including termination.
  - 2. When an employee has advance notice of the need for sick leave, such as when scheduling non-emergency medical and dental appointments, the employee is required to notify his or her supervisor at least one working day in advance of his or her need for sick leave. Employees are encouraged to schedule medical and dental appointments outside normal working hours if possible.
  - 3. An employee is not responsible for searching for or finding another employee to cover his or her shift in order to use sick leave.

- G. Minimum Increments of Sick Leave: The minimum charge to an employee's sick leave account shall be 15 minutes. Increments of less than fifteen minutes shall be rounded to the nearest fifteen minute increment. For example, an employee who is gone from work for two hours and ten minutes shall be charged two and one-quarter hours of sick leave. If an Employee has less than 15 minutes of accrued sick leave to utilize, the remaining increment of sick leave may be charged.
- H. No Lending of Sick Leave: The City shall not lend or advance sick leave to any employee prior to the City's annual sick leave advance on January 1 of any given calendar year.
- I. Forfeiture of Unused Sick Leave: Except for temporary employees hired to work for the City for a period of less than 120 days, any accrued and unused sick leave shall be forfeited on December 31 of every calendar year. Temporary employees hired to work for the City for a period of less than 120 days may carryover up to 48 hours of accrued and unused sick leave to the next calendar year.
- J. No Compensation for Unused Sick Leave: No employee shall be compensated for, or allowed to exhaust any accrued sick leave upon resignation, retirement, termination, dismissal, lay-off or death.
- K. Abuse of Sick Leave: Abuse of sick leave may be grounds for discipline. Abuse shall be determined on a case-by-case basis. Sick leave abuse may include, but is not limited to, failure to abide by the provisions of this policy, and use of sick leave for purposes other than those permitted in this policy.

### **13.07 Bereavement /Compassion Leave**

- A. The City shall provide employees with paid bereavement leave to handle affairs and attend a funeral as follows: Three (3) days or five (5) days, if travel is required over a 600 mile radius (300 miles one way); five (5) days of paid leave is permitted in case of the death of an immediate family member, meaning spouse or domestic partner, a parent, grandparent, child, brother, sister, aunt, uncle, mother-in-law, father-in-law, brother-in-law or sister-in-law of an employee, step-mother, step-father, and spouse's grandparent.
- B. When authorized by the Department Director, leave for family members other than immediate family and others shall be taken as vacation or compensatory time off. Exceptions are at the discretion of the Personnel Officer.

### **13.08 Catastrophic Leave; Medical Leave of Absence Without Pay**

- A. Policy and Guidelines:

1. Catastrophic leave benefits have been established for the benefit of regular City employees who have exhausted all accumulated leave rights. Catastrophic leave is an attempt to provide a portion or all of an employee's pay during the time the employee would otherwise be on medical leave of absence without pay due to an unforeseen catastrophic illness. Although employees on catastrophic leave will receive catastrophic pay, for all other purposes, such employees will be considered on leave of absence without pay, and shall not accrue any vacation, sick or holiday leave rights.
2. The Catastrophic Leave Bank will consist of voluntary time transfers of donor vacation and sick leave, and shall not be administered in a fashion, which is discriminatory or gives preferential treatment to a particular employee.
3. Catastrophic leave and leave of absence without pay, including leaves of absence under the Family Medical Leave Act (FMLA), shall run concurrently. An eligible employee may be paid catastrophic leave for a maximum ninety (90) day period for all or a portion of the time off work, depending on the amount of catastrophic leave donated to the employee. One extension of ninety (90) days may be granted at the sole discretion of the Personnel Officer.
4. This policy allows employees to donate sick leave or vacation to a catastrophic leave bank when the donating employee's combined vacation, sick, and/or compensatory time would not be reduced to less than forty (40) hours, and the recipient employee has met all the requirements of this section. Information about donors will be kept strictly confidential.
5. Donated hours do not affect eligibility for Sick Leave Payout at Calendar Year End.
6. Each year, an employee may donate up to a maximum of forty (40) hours of sick leave, vacation leave, or compensatory time off, or any combination thereof. All donations are irrevocable.

**B. Establishing a Catastrophic Leave Bank.**

Procedures for establishing a Catastrophic Leave Bank will be established, administered, and distributed by Human Resources. Employee donations are irrevocable and will be placed in the Catastrophic Leave Bank on a straight hour-per-hour basis.

1. Regular employees, or their designees, requesting catastrophic leave donations from the Bank must submit a written request to the Personnel Officer, or designee. The request must provide sufficient

information to enable a determination to be made whether the employee qualifies for catastrophic leave. This information will be maintained confidential.

2. Catastrophic leave requests for injury/illness must include medical verification from a physician which describes the employee's catastrophic illness or injury.
3. Medical insurance coverage will continue as if the recipient employee was on sick leave; however, the recipient employee will not accrue sick leave, vacation benefits, or holidays while using catastrophic leave.
4. Federal and state income taxes will be deducted from the leave recipient's pay at the time of usage based on the recipient's normal payroll deductions.

C. Participation in the Catastrophic Leave Program shall be terminated when one or more of the following occurs:

1. The employee has exhausted ninety (90) calendar days of "Leave of Absence Without Pay". Any leave of absence for a period of time longer than ninety (90) calendar days must be approved by the Personnel Officer, during which such time the employee may only participate in the Catastrophic Leave Program if approved by the Personnel Officer, and shall be supported by the same documentation noted above.
2. Donated leave credits have been exhausted.
3. If the recipient employee should become eligible to receive long-term disability payments, the employee will no longer be eligible to receive donations under this section.

### **13.09 Authorized Leave Without Pay**

- A. Leave of absence without pay may be granted in cases of emergency, or where such absence would not be contrary to the best interests of the City. The Personnel Officer shall make such determination. Such leave is not a right but a privilege.
- B. Leave of absence without pay may be authorized by the Personnel Officer depending on the merit of the individual case. Written request for leave of absence without pay must be made by the employee in writing to the respective Department Director, with copy to the Personnel Officer, and subject to approval or disapproval of the Personnel Officer. A leave request form cannot be substituted for notification in writing for an authorized leave of absence.

- C. Employees on an authorized leave of absence without pay may not extend such leave beyond ninety (90) days without the expressed approval of the Personnel Officer. Employees are required to submit an additional written request for each extension of leave of absence.
- D. No vacation, sick leave or holiday benefits shall be accrued during the time that an employee is on leave of absence without pay.
- E. While on an approved absence without pay, the employee shall be responsible for direct payment to the City for health insurance providers. The City shall not provide fringe benefits such as uniform, bilingual pay, etc. during absences without pay.
- F. It is the employee's responsibility to continue paying Union dues or representational fees directly to the Union, or formally recognized employee organization during absences without pay.

Failure on the part of an employee on leave to report promptly at its expiration, or within three (3) working days after written notice to return to duty during this leave shall be cause for discharge for work abandonment.

#### **13.10 Pregnancy Disability Leave (PDL)**

- A. Regular and probationary female employees shall be provided up to a maximum of four (4) months disability leave for pregnancy. Such leave may be taken before or after birth or at any period of time she is physically unable to work because of the pregnancy or pregnancy-related condition. Periods of leave shall be totaled in computing the four (4) months. Pregnancy-related absenteeism may be counted against the four (4) month leave requirement.
- B. Use of accumulated sick leave and/or vacation credits during the four (4) month disability leave shall be granted to the employee at her request.
- C. As with all other types of leave of absences without pay, employees on Pregnancy Disability Leave will not earn sick leave, vacation or holiday accruals during such leave.
- D. The City requires that the employee obtain written medical verification from her physician of her inability to work because of the pregnancy, and medical verification that continuing work will not be hazardous to the employee or fetus.
- E. The employee is obligated to inform her Department Director or the Personnel Officer in writing as soon as she determines with reasonable certainty the date and duration of her intended pregnancy leave. If the employee desires to return to work earlier than agreed, the City has up to thirty (30) days to accommodate her request for change in the return date.

- F. The employee is entitled to the same job upon return only if she returns no later than the end of the four-month disability leave. If business necessity requires placement in a different position, the City shall offer a job that is similar in terms of pay, location, job content, promotion, and all other opportunities associated with the position.

### 13.11 Family Care Leave

The City shall provide Family Care Leave consistent with the Moore-Brown-Roberti California Family Rights Act of 1993 (CFRA), California Government Code Section 12945, et. seq., and the Federal Family and Medical Leave Act of 1993 (FMLA), United States Code, Section 2600, et. seq., as follows:

- A. **Eligibility for Unpaid Leave:** Employees with at least twelve (12) months of service with the City, which need not be consecutive months, and have worked at least 1250 hours during the 12-month period immediately preceding the commencement of the leave, may take up to twelve (12) workweeks of unpaid leave in a 12-month period because of:
1. The birth of a child or to care for a newborn of an employee;
  2. The placement of a child with an employee in connection with the adoption or foster care of a child;
  3. The employee is needed to care for a family member (child, spouse, or parent) with a serious health condition;
  4. The employee's own serious health condition makes the employee unable to do the job.
- B. Entitlement to leave for the birth or placement of a child for adoption or foster care expires twelve (12) months after the birth or placement.
- C. **Accrued Leave:** A leave granted under this provision will normally be leave without pay, except that an employee must exhaust accrued sick leave, vacation or other accrued time off prior to leave without pay. At the request of an employee and with the prior approval of the Personnel Officer, or designee, an employee may retain and not use accrued sick leave in connection with a leave for the care of a newborn, adopted or foster care child, or to care for a family member with a serious health condition.
- D. **Intermittent Leave:** Leave may be used in one or more increments, but shall not exceed a total of twelve (12) workweeks of leave in a 12-month period measured backward from the date leave begins. A leave for the care of a newborn, adopted or foster care child shall be taken on a continuous basis in increments of not less than two (2) weeks. An employee may request intermittent leave in one-day increments for the

care of a seriously ill family member; or for the treatment of a serious health condition of the employee. A reduced leave schedule (i.e. a work schedule that reduces the number of hours per workweek or workday) may be established where medically necessary for an employee to care for a seriously ill family member; or for the treatment of a serious health condition of the employee.

- E. Advance Notice: Unless the need for leave arises out of an unforeseen emergency, employees requesting leave will be expected to provide reasonable advance written notice no more than seven (7) calendar days prior to the start of leave. Failure to provide advance notice may be cause for delaying the effective date of the leave to assure adequate coverage of the position.
- F. Medical Certifications: The City shall require employees requesting family care leave for the care of a seriously ill family member, or medical leave for the treatment of a serious health condition of the employee to provide medical certification of the illness.
- G. Definition of Serious Health Condition: Serious health condition is defined as an illness, injury (including on the job injuries), impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice, or a residential medical care facility (i.e., an overnight stay), or continuing treatment or continuing supervision by a health care provider. "Continuing treatment" is any condition, which warrants absence from work or school or usual daily activities for more than three (3) consecutive calendar days and requires treatment from a health care provider. Serious health condition also includes any period of incapacity due to pregnancy, any period of incapacity due to a chronic health condition, such as asthma, diabetes, or epilepsy, and periods of incapacity due to conditions for which there is no treatment.
- H. Insurance Premiums: Employees on leave will be eligible to continue medical and dental insurance coverage and other group coverage as if the employee were on a regular pay status. The City will pay the premiums necessary to maintain coverage as if the employee remained on a paid status. If an employee elects to maintain insurance coverage while on family care leave and there is normally a payroll deduction, the employee may authorize a payroll deduction or pay the premiums in advance in accordance with the requirements necessary to maintain coverage. Failure to pay premiums that are the employee's responsibility may result in cancellation or loss of benefit coverage. For the period of family care leave on paid status, if any, the employee will continue to accrue vacation, sick leave and holidays.
- I. Employee Status while on Leave: Employees retain "employee" status while on medical and family leave. The leave shall not constitute a break

in service for seniority or any employee benefits. An employee on leave without pay for thirty (30) or more consecutive calendar days, shall have their anniversary date adjusted to reflect the time absent without pay. Employees on probation will have their probationary period extended by the length of time on leave.

- J. Reinstatement Guarantee and Fitness for Duty: The employee shall cooperate with the City in scheduling the date to return to work, and, whenever possible shall give the city at least thirty (30) days advanced notice of availability. Upon return from leave, the City shall restore the employee to the previous or comparable position provided the employee gives the City thirty (30) days advance notice. Where the medical leave was for the treatment of a serious health condition of the employee, the City shall require the employee to provide medical verification of fitness to return to duty.
- K. Exemptions: The City retains the right to exempt key salaried employees who are among the highest paid (in the upper 10% salary bracket) from Family Medical Leave Act, if required to prevent substantial and grievous economic harm to the City.

### **13.12 Worker's Compensation Leave and Benefits**

Employees shall receive disability benefits as required by the *Labor Code*.

- A. An employee who is required to be off work because of his/her workers' compensation injury or illness shall be designated as being on workers' compensation leave. Such workers' compensation leave shall be unpaid except as otherwise required by law. The employee is required to exhaust his/her paid leave banks, in coordination with any workers' compensation benefits he/she is receiving. The City will exhaust the employee's paid leaves in the following order, unless another order is more beneficial to the employee or the employee requests a different order within 14 days of the date of injury: sick leave, compensatory time off, holiday, administrative leave, and vacation.
- B. Unless otherwise required by law, if an employee falls into unpaid leave status, he/she will not accrue any employment benefits, including, but not limited to, the accrual of vacation, sick leave or holiday benefits.
- C. The City coordinates benefits with State Disability, therefore an employee utilizing State Disability to supplement their income while away from work can never earn more, or not exceed the amount they would have regularly been paid by the City. If this occurs, the employee must reimburse the City all monies in excess of their regular pay from the first paycheck they receive from the City upon their return to work.

- D. An employee on workers' compensation leave may also qualify for leave under the FMLA/CFRA. The City will inform the employee if he/she qualifies under the FMLA/CFRA in accordance with City policy. Unless otherwise required by law, the City may require leave qualifying under the FMLA, CFRA or other State or Federal law for the employee's own serious health condition to be exhausted concurrently with leave qualifying under this policy.

### 13.13 Fitness for Duty Leave

- A. Employees are expected to report to work fit for duty, which means able to perform their job duties in a safe, appropriate, and effective manner, free from adverse effects of physical, mental, emotional, and/or personal problems. This Section is intended to provide a safe environment and protect the health and welfare of employees and the public. If an employee feels that he/she is not fit to perform his/her duties, he/she must notify his/her supervisor immediately.
- B. Reasons for Fitness for Duty Leave. In the discretion of the City, an employee may be placed on a paid Fitness for Duty Leave and/or ordered to participate in a fitness for duty examination in any of the following situations:
1. An employee returns from a medical leave of absence of more than five working days.
  2. An employee is involved in the interactive process with the City under Section 3.02.
  3. Supervisor observes or receives a reliable report of an employee's possible lack of fitness for duty. Observations and reports may be based on, but are not limited to, employee's own self-report of potential unfitness, dexterity, coordination, alertness, speech, vision acuity, concentration, disproportionate response to criticism, and inappropriate or uncharacteristic interactions with the public, co-workers, and supervisors.
  4. Fitness for duty examinations based on a reasonable suspicion that an employee is under the influence of illegal drugs or alcohol shall be conducted in accordance with the City's Alcohol and Controlled Substance Abuse Policy and Drug Testing Policy.
- C. Procedures for Ordering a Fitness for Duty Examination. When a Supervisor becomes aware of or observes behavior that makes him/her reasonably suspect that the employee may not be fit for duty, the Supervisor, shall refer the employee to Personnel Officer who will determine if a fitness for duty examination is appropriate, and, if so, will schedule the employee for a fitness for duty examination. If the

circumstances warrant it, the Personnel Officer may place the employee on paid leave pending the results of the employee's fitness for duty examination. The examination shall be paid for by the City.

- D. Procedure Following Receipt of Examination Results. The doctor examining the employee shall be limited to finding the employee "fit for duty" or "fit for duty with restrictions" or "unfit for duty". In the case of finding an employee fit for duty, the doctor may issue work restrictions. In no case shall the doctor reveal the underlying cause of the fitness or unfitness for duty without the employee's permission.
1. *Fit for Duty.* If the doctor finds the employee is fit for duty, the employee shall return to work immediately and perform all duties of his/her position.
  2. *Fit for Duty with Restrictions.* If the doctor finds the employee is fit for duty with restrictions, the doctor shall specifically enumerate what restrictions are necessary and for how long those restrictions are necessary. The City shall then evaluate those restrictions, and determine if the City can reasonably accommodate those restrictions. If the employee's restrictions are based on a disability as defined by the ADA and/or FEHA, the City shall engage in the interactive process as set forth in Section 3.02.
  3. *Unfit for Duty.* If the employee is found to be unfit for duty, he/she shall not be permitted to work. He/She may request a leave of absence in accordance with the appropriate applicable provision(s) of these Personnel Rules. If the employee can provide certification of fitness for duty prior to the exhaustion of all paid and unpaid leave that he/she is entitled to under these Personnel Rules, the employee shall be returned to work. However, if such certification is from the employee's own health care provider, the City may request a second opinion from a doctor of its choosing and at its cost to evaluate the employee under the requirements of this Section. If the two certifications conflict, a third opinion will be sought from a doctor chosen by the City and the employee, at the expense of the City. The opinion of fit or unfit rendered by the third doctor shall be binding. If the employee's restrictions are based on a disability as defined by the ADA and/or FEHA, the City shall engage in the interactive process as set forth in Section 3.02.

### 13.14 Jury Duty Leave

- A. Regular employees of the City required to serve as jurors shall be entitled to be absent from duty during the period of such service, or while requested by the Clerk of the Court to be present as a result of such call. Under such circumstances the employee shall be paid full salary provided

any payment received, except travel pay for such duty, is remitted and signed over to the City.

- B. An employee called to Jury Duty service on regular day off shall not be compensated by the City.
- C. A Leave Request must be submitted with a copy of the Jury Duty Notice attached for each such absence.

### **13.15 Witness Duty**

- A. A regular employee who because of employment with the City is requested to appear by subpoena as a witness in court, or to respond to an official order from a governmental agency for reasons not brought about through an action of the employee, or through the connivance or misconduct of the employee, may be granted a leave of absence with pay from such appearances. The employee shall remit all fees received for such appearances to the City within three (3) days from the date any fee is received by the employee. Compensation for mileage or subsistence allowance shall not be considered as a fee and shall be retained by the employee.
- B. In those instances where the required testimony is not related to knowledge or information gained pursuant to the employee's employment with the City (e.g., a car accident witnessed after hours or on a day off), and in which the employee is called to appear as a witness in court other than as a litigant, the employee has the option of requesting the time off from vacation leave and retain any received fees for such appearance.

### **13.16 Military Leave**

- A. Military leave shall be granted in accordance with the provisions of applicable federal and State laws. All employees entitled to military leave shall give the Department Director an opportunity within the limits of military regulations and obligations, such as weekend reserve duty, to determine when such leave shall be taken.
- B. An employee who interrupts municipal City employment because of extended military leave shall be compensated for accrued vacation at the time the leave becomes effective.
- C. In accordance with Section 395.01 of the California Military and Veterans Code, employees who have been employed by the City for at least one year will be paid their regular salaries for up to thirty (30) days of active duty.

- D. Employees returning from active military duty shall be reinstated to their regular full time job classification, or comparable position, without any loss of benefits.

### **13.17 Employee Time Off to Vote**

Time off with pay to vote at any general, local primary, or presidential primary election shall be granted to employees. Employees who are registered voters may request time off to vote at an election if the employee does not have sufficient time outside regular working hours to vote. The employee may, without loss of pay, take up to two hours of time off to vote. The time off for voting shall be only at the beginning or the end of the regular work shift, whichever allows the most free time to vote, and the least time off from work. The employee shall give the direct supervisor at least two (2) working days' notice of the need for time off to vote.

## Section 14. Layoff Procedure

### 14.01 Layoff Due to Lack of Work, Funds or Other Reasons

- A. The City Manager shall have the sole right to determine which class or classes shall be subject to lay-off. Before regular employees are separated due to lack of work, the City shall explore reasonable possibilities of reassignment. Reduction in Force (RIF) includes the following:
- Temporary Reduction: Recall to work is expected within twelve (12) months.
  - Permanent Reduction: Recall to work is not expected because the position has been eliminated, the contract has expired, the department has closed, or the reduction in force is due to budgetary constraints.
- B. Whenever, in the judgment of the City Manager, one or more positions are to be eliminated for reasons of lack of work, lack of funds, reorganization, or other reasons of economy or efficiency, an employee filling such position may be laid off, transferred or demoted without taking disciplinary action or the right of appeal, based on the following criteria:
- Years of service;
  - Overall performance in City employment; and
  - Special knowledge, skill, training, or experience.
- C. Thirty (30) calendar days before the effective day of layoff, the City Manager shall notify the employee in writing of the intended action indicating the reasons, and a statement certifying whether or not the employee's services have been satisfactory. A copy of such notice shall be given to the Department Director and the affected employee. If certified as having given satisfactory service, the name of the employee laid off shall be placed on an appropriate reemployment list as provided in these Rules and Regulations. Such non-disciplinary action shall not be subject to appeal.
- The City will provide a "Levine Hearing" for affected employees prior to making the layoff final.
- D. In the event of a reduction in force (RIF), or the reduction or elimination of a particular classification, there shall be no bumping into positions in which the employee has previous City service credit unless otherwise provided in a ratified and approved MOU.

- E. In the case of layoffs, temporary and probationary employees within the class or classes subject to lay-off will be laid off before any regular employees are affected by layoffs.

The order of lay-off of probationary and regular employees shall be according to seniority based on classification seniority with the employee(s) having the lowest seniority to be laid off first. Among employees with equal seniority, the order of lay-off shall be determined as provided in paragraph "B", above.

- F. Before hiring new regular employees from outside the City, employees laid off or demoted in lieu of lay-off shall have the right of return to their prior class or to any lower class in the same or comparable classification series. This right shall remain effective for one (1) year from the date of demotion or separation from City service. Re-employment Lists may be extended at the discretion of the Personnel Officer, but in no event shall an employment list remain in effect for more than two (2) years. When considering recall of employees with similar skills and abilities for job classifications for which they qualify, past performance and date of hire may be considered as the primary selection criteria. Employees recalled shall not be required to serve a new probationary period, unless recalled or rehired to a new or different classification. An employee to be recalled shall be notified by certified letter sent to the last known address on record. If the employee does not contact the City to make satisfactory arrangements for return to work within ten (10) days of the mailing date of the letter, the offer of recall will be deemed withdrawn, and the employee will be eligible for reinstatement only if some exceptional circumstances prevent the employee from responding, to the satisfaction of the City Manager.

## Section 15. Grievance Procedure

### 15.01 Grievance Procedure

- A. General Provisions: As used in these Rules and Regulations, a grievance is a dispute concerning an alleged violation in terms and conditions of employment as provided in an existing ratified and approved Memorandum of Understanding (MOU).
1. If a grievant fails to carry the grievance forward to the next level within the prescribed time period, the grievance shall be considered settled based upon the decision rendered at the previous step.
  2. If a Department Director fails to respond with a written answer within the specified time period, the grievant may appeal the grievance to the next higher level.
  3. Grievants may be represented by a Union Representative, Steward or person of their choice at any formal level of this procedure.
  4. Time limits and formal levels may be waived by mutual written consent of the parties.
  5. Proof of service shall be accomplished by registered mail served on the employee at the last known address on record in the employee's Human Resources personnel file.
  6. For purposes of this grievance procedure, "day" is defined as a day in which City Hall is open and doing business with the public.
- B. Grievance Procedure — Informal level
1. The employee may bring a grievance to the attention of the immediate supervisor at the earliest possible date, but no later than ten (10) calendar days from either the date of the alleged action that caused the grievance, or the date the employee should reasonably have become aware of such action. The employee shall inform the immediate supervisor of the desire to discuss an informal grievance. The supervisor shall discuss, or set a date and time for such discussion, and inform the employee. The grievance does not need to be in writing at the informal stage. The supervisor and the employee shall discuss and attempt resolution of the issues at the informal level.
  2. If the issues are not resolved at the informal level, or a supervisor is not available for discussion during the informal level, the employee may, within the time limits specified herein, file a formal grievance.

3. If the employee does not make himself/herself available for discussion during the informal process, the grievance shall be considered abandoned.

C. Grievance Procedure — Formal Level

The employee may file a formal grievance within fifteen (15) calendar days from either the date of the alleged action that caused the grievance, or the date the employee should reasonably have become aware of such action, provided the following have taken place:

- The employee has taken the grievance to the immediate supervisor for discussion.
- The issues have either been discussed without resolution or without resolution satisfactory to the employee; or a supervisor was not available for discussion.

Level 1. A formal grievance shall be submitted to the Department Director in writing on a union grievance form containing the name, classification, department of the grievant, the date and a description of the action that caused the grievance, the section(s) of the MOU allegedly violated, and the remedy sought. The formal grievance shall be signed by the employee, and specify the date(s) of discussion with the supervisor, and a brief summary of the outcome of that discussion.

The Department Director may meet with the grievant, and shall thereafter render a decision and comments in writing, and return the grievance to the employee within twenty (20) calendar days after receiving the grievance. If the grievant does not agree with the decision reached, or if no answer has been received within twenty (20) calendar days, the employee may present the grievance to the City Manager. Failure of the employee to take further action within twenty (20) calendar days after receipt of the decision, or within twenty (20) calendar days from the receipt of the grievance by the Department Director if no decision is rendered, will constitute withdrawal of the grievance.

Level 2. Upon receiving the grievance, the City Manager shall discuss the grievance with the employee and all other appropriate persons within ten (10) calendar days of receipt of the grievance. The City

Manager may designate an individual not in the normal line of supervision to advise or conduct whatever investigation is deemed appropriate or necessary concerning the grievance. The City

Manager shall render a decision in writing to the employee within twenty (20) calendar days after receiving the grievance.

All employees shall be free from reprisal, discrimination or coercion for using the grievance procedure. Compliance with all the steps outlined above shall be considered as mandatory to the exhaustion of available internal administrative remedies.

## **15.02 Advisory Arbitration Procedure**

### **A. Eligibility:**

Grievances not settled pursuant to the grievance procedure above and which either party desires to contest further, may be submitted to Advisory Arbitration. Only those grievances which directly concern or involve the interpretation or application of the specific terms and provisions of a current ratified and approved Memorandum of Understanding may be appealed to Advisory Arbitration.

### **B. Appointment of Arbitrator:**

1. As soon as possible, but no later than ten (10) calendar days after either party receives written notice from the other of the desire to submit the issue to advisory arbitration, the parties shall meet and attempt to agree on the appointment of an Arbitrator.
2. If no agreement is reached within ten (10) calendar days, an arbitrator shall be selected from a list of five (5) persons requested from the California State Mediation and Conciliation Service by alternate striking of names until one name remains. The party who strikes the first name from the panel shall be determined by mutual agreement. If there is no agreement on who should make the first strike, the party with the earliest letter in the alphabet by last name shall make the first strike. The Arbitrator remaining on the list received from the State Mediation and Conciliation Service shall serve as the Arbitrator.

### **C. Conduct of Hearing:**

1. The Arbitrator shall preside at the hearing and conduct the proceedings in accordance with acceptable arbitration procedures, be limited to the cited MOU sections at issue, and not exceed the authority allowed in the interpretation and application of the affected MOU provision(s).
2. Either the City or the employee's representative may call any employee as a witness, and the City agrees to release said witness from work at no loss of pay with adequate prior notification to the

City. A list of desired witnesses must be received by the City Manager at least five (5) calendar days prior to the date of the hearing so that adequate coverage for the absent employees may be arranged.

D. Timeliness of Decision:

The decision of the Arbitrator shall be rendered no later than forty-five (45) days from the close of the hearing, and submission of legal briefs by the parties, if briefs are requested by the Arbitrator. Such decision shall be set forth in writing, dated, and signed by the Arbitrator.

E. Effect of Decision:

The advisory decision of the Arbitrator shall be binding on all parties, unless the City Council overrules or modifies the decision within thirty (30) calendar days from the date of the decision. The City Council's decision shall be final and binding on all parties.

F. Extension of Time Limits:

The parties may extend any of the time limits by mutual agreement, and approval of the Arbitrator.

G. Copies of Proceedings:

All parties to the proceedings shall receive a copy of all documents, rulings and decisions at their own expense.

H. Fees and Expenses:

All fees and expenses of the hearing shall be shared equally by the City and the appealing party, except that each party shall be responsible for the fees of its own counsel if utilized.

I. Single Grievance:

The Arbitrator may collectively hear multiple grievances which raise the same issue, the same or related MOU provisions, or the same factual matters.

J. Limitation on Arbitrator's Authority:

The Arbitrator shall have no power to alter, amend, change, add to, or subtract from the cited or affected provisions of the MOU raised by the grievance.

## **Section 16. Disciplinary Procedure**

### **16.01 Purpose**

The standard for all City employees shall be to render the best service to the public, reflect credit upon City service, and serve the public interest and trust. The continued employment of every employee shall be conditioned on good behavior and satisfactory performance of assigned duties. Progressive corrective and disciplinary action is intended to improve employee performance and compliance with City Rules and Regulations, procedures, personnel policies, standards of conduct, and performance.

The procedures set forth in this section shall not apply to the following categories of persons who can be terminated at any time and have no rights to any pre or post-disciplinary procedures: 1) Temporary employees, 2) seasonal employees, 3) probationary employees, 4) any person employed under contract (unless the contract provides otherwise), 5) any person designated "at will". Any employee "exempt" from overtime provisions of the Fair Labor Standards Act (FLSA) is not subject to any disciplinary penalty or sanction inconsistent with FLSA overtime-exempt status regulations and standards.

The City Manager may take disciplinary action based on the recommendation of a Department Director, or initiate such action based on his/her own authority. In addition to any disciplinary action initiated by the City Manager, Department Directors are authorized to take appropriate disciplinary action up to, but excluding termination. The provisions of this section shall be subject to the Peace Officers Bill of Rights, Government Code Section 3300, et. seq., and the Firefighters Procedural Bill of Rights Act of 2007.

### **16.02 Causes for Disciplinary Action**

Grounds or causes for discipline shall include, but not be limited to, the following:

- A. Violation of these Rules and Regulations, safety policies, and OSHA Safety Standards.
- B. Absence without leave.
- C. Excessive absenteeism.
- D. Use of sick leave in a manner not authorized or provided in these Rules and Regulations, or other City policies.
- E. Making any false statement, omission or misrepresentation of material fact in the conduct of City or City-related business, including, but not limited to, City investigations.

- F. Falsification of records, providing wrong or misleading information or other fraud in securing an appointment, promotion or maintaining employment.
- G. Unsatisfactory job performance.
- H. Inefficiency.
- I. Malfeasance or misconduct, which shall be deemed to include, but not limited to conviction of a felony. "Conviction" shall be construed to be a determination of guilty by a court, including a plea of not guilty or *nolo contendere*, regardless of sentence, grant of probation, or lesser disposition; or misdemeanor involving moral turpitude.
- J. Insubordination, dishonesty, theft, or disobedience, including, but not limited to, negligence or misconduct which causes damage to public property, tools, equipment, communications and computer systems, intellectual property, or waste of supplies.
- K. The use, possession or consumption of, or being under the influence of an alcoholic beverage during the work day or at any time while at the workplace or in City uniform; the use, possession, consumption or sale, or being under the influence of illegal drugs or narcotics not lawfully prescribed.
- L. Sexual harassment, discrimination, retaliation, or workplace violence or threats.
- M. Mishandling of public funds.
- N. Discourteous treatment of the public or other employees.
- O. Failure to cooperate with a supervisor or fellow employees.
- P. Unapproved outside employment or activity in violation of the City's outside employment policy, or any enterprise which constitutes a conflict of interest with City service.
- Q. Conduct which impairs, disrupts, or causes discredit to the City, the employee's continued employment or that of other employees.
- R. Failure to report any contact with law enforcement authorities which may affect employment with the City.
- S. Altering, falsifying, and tampering with time records; recording time on another employee's time card, clocking in for another employee, or asking another employee to clock in or out for the employee.

- T. Disobedience to proper authority, refusal or failure to perform assigned work, to comply with a lawful order, or to accept a reasonable and proper assignment from a supervisor.
- U. Use of abusive or vulgar language toward or in the presence of others (employees, guests, members of the public) in the workplace.

### 16.03 Types of Disciplinary Action

As used in this section, "disciplinary action" shall mean any of the following taken singularly or in combination:

- A. Counseling Memo: A counseling memorandum will be placed in the employee's personnel file. The employee does not have the right to an evidentiary appeal as provided for in these Rules. Police and fire employees have the right to an administrative appeal before the Police/Fire Chief to discuss the counseling memorandum before or after it is placed in their employee's file.
- B. Oral Admonishment or Reprimand: An oral admonishment or reprimand shall be memorialized in writing, and will be placed in the employee's personnel file. The employee does not have the right to an evidentiary appeal as provided for in these Rules. Police and fire employees have the right to an administrative appeal before the Police/Fire Chief to discuss the oral admonishment or reprimand before or after it is placed in their officer's file.
- C. Written Admonishment or Reprimand: A Department Director may reprimand an employee by furnishing the employee a written statement of the reasons for the reprimand. A copy of the admonishment or reprimand will be retained in the employee's personnel file, and may not be appealed. The employee shall have the right to provide a written rebuttal, to be attached to the reprimand in the employee's personnel file. The employee does not have the right to an evidentiary appeal as provided for in these Rules. Police and fire employees have the right to an administrative appeal before the Police/Fire Chief to discuss the written reprimand before or after it is placed in their officer's file.
- D. Suspension: A Department Director may suspend an employee. Documents related to a suspension become part of the employee's permanent work record. An employee subject to suspension will receive prior written notice and the right to appeal any suspension exceeding five (5) days as provided herein. FLSA-exempt employees are not subject to suspension except in work day increments for violation of workplace conduct rules, or violations of major safety rules.
- E. Demotion: A Department Director may demote an employee. Documents related to a reduction in pay become part of the employee's permanent

work record. An employee subject to demotion shall be entitled to prior written notice and the right to an appeal as provided herein.

- F. Reduction in Pay: A Department Director may reduce an employee's pay. A reduction in pay for disciplinary purposes may take one of two forms: 1) a decrease in salary to a lower step within the salary range; or 2) a decrease in salary paid to an employee for a fixed period of time. Documents related to a reduction in pay become part of the employee's permanent work record. An employee subject to a reduction in pay shall be entitled to prior written notice and the right to an appeal as provided herein. FLSA-exempt employees are not subject to reductions in pay.
- G. Termination: An employee may be terminated by the City Manager. A terminated employee is entitled to prior written notice and appeal as provided herein. Documents related to discharge become part of the employee's permanent work record.

#### **16.04 Administrative Leave With Pay**

A Department Director or the City Manager may place an employee on administrative leave with pay pending potential disciplinary action 1) when it is believed the employee's continued presence in the work place could have detrimental consequences to the City's operations; or 2) pending investigation into charges of misconduct; or 3) the employee presents a threat to himself or other employees or City property.

#### **16.05 Notice of Intended Disciplinary Action and Skelly Hearing**

##### **A. Notices of Proposed Disciplinary Action**

In cases of proposed disciplinary action, except counseling, oral admonishment or reprimand, written admonishment or reprimand, the proposed disciplinary action shall be served on the employee personally or by mail at the last known address of record on file in Human Resources. The written notice of intended disciplinary action shall include:

1. The reasons for the proposed disciplinary action, the facts alleged to be the basis for the intended action, and copies of any documents, reports, or materials upon which the disciplinary action is based;
2. The specific proposed action to be taken, including any time period or other conditions associated with the discipline;
3. The proposed effective date of the intended disciplinary action;
4. The right of the employee to respond to the proposed disciplinary action either in writing or orally, or both, at the option of the

employee. The employee shall be advised that he/she has ten (10) calendar days within which to file a written response or request, in writing, an informal pre-disciplinary hearing before the City Manager or designee; and

5. Failure to respond within the specified time shall constitute a waiver of the right to respond prior to the imposition of disciplinary action. The employee's failure to make an oral response at the arranged conference time, or the employee's failure to submit a written response by the date and time specified in the notice, constitutes a waiver of the employee's right to respond prior to the imposition of the proposed discipline. In that case, the proposed disciplinary action and terminations will be imposed on the date specified in the notice of intended disciplinary action.

**B. Pre-Disciplinary "Skelly" Hearing**

An employee shall have the right to request an informal pre-disciplinary Skelly hearing for demotions, suspensions, reductions in pay, and terminations. The appointing authority may continue the hearing for the convenience of the City, or upon written application from the employee, for a period not to exceed an additional fifteen (15) calendar days from the receipt of the request by either party. The Skelly pre-disciplinary hearing is not an evidentiary hearing, but an opportunity for the employee or representative to present facts or circumstances which may cause the proposed disciplinary action to be modified or dismissed. The Skelly Officer may investigate any matter raised during the hearing. The Skelly Officer shall render a written decision within ten (10) calendar days from the close of the hearing, and send the written decision to the last known address of the employee on record with Human Resources.

**16.06 Appeal of Discipline**

A regular employee may appeal any disciplinary action except counseling, oral admonishment or reprimand, written admonishment or reprimand pursuant to these procedures.

The appeal must be received within ten (10) calendar days from the time the employee is notified of the disciplinary decision. Failure to file an appeal within such period constitutes a waiver of the right to appeal. The appeal must be in writing and must specifically state the reason for the appeal. As soon as practicable, the parties shall agree on a hearing date.

Appeals of suspensions, demotions or reductions in pay shall be heard by the City Manager or his or her designee.

Either party may be represented at the hearing by someone of his or her choice, including legal counsel. The conduct and decorum of the hearing shall be under

control of the City Manager or designee, with due regard to the rights and privileges of the parties appearing before him or her. All testimony shall be presented under oath, and need not be conducted according to technical rules of evidence. The City Manager or designee shall limit his/her decision to the interpretation, application, enforcement, or the intent of the terms or provisions of these Rules. All fees and expenses of the hearing shall be shared equally by the City and the labor organization representing the employee in the appeal, except that each party shall be responsible for the fees of its own counsel. If a transcript of the hearing is requested, the party making such a request shall bear the entire cost.

The decision of the City Manager or designee shall be final and binding.

An employee who is terminated has the right to appeal the decision to a neutral hearing officer. No later than fifteen (15) calendar days from the date the City Manager receives notice of the requested appeal, the parties shall select a hearing neutral by mutual agreement of the parties, or from a list of five (5) names requested from the State Mediation and Conciliation Service. If selected from a list provided by the Service, the parties will use the strike method. The party with the first strike shall be selected by agreement and if the parties cannot agree, between the City Manager and appellant, the person with the earliest letter in the alphabet by last name shall make the first strike.

The hearing neutral shall notify all parties in writing of the time and place of the hearing, and shall have authority to call witnesses requested by the parties. Either party may be represented at the hearing by someone of his or her choice, including legal counsel. The conduct and decorum of the hearing shall be under control of the hearing neutral, with due regard to the rights and privileges of the parties appearing before him or her. All testimony, shall be presented under oath, and need not be conducted according to technical rules of evidence. The hearing neutral shall have no authority to add to, delete, or alter any provisions of these Rules and Regulations, but shall limit his/her decision to the interpretation, application, enforcement, or the intent of the terms or provisions of these Rules and Regulations. All fees and expenses of the hearing shall be shared equally by the City and any labor organization representing the employee in the appeal, except that each party shall be responsible for the fees of its own counsel. If a transcript of the hearing is requested, the party making such request shall bear the entire cost.

The decision of the neutral shall be final and binding.

## **Section 17. Employee Relations Policy**

### **Article I -- General Provisions**

#### **17.01 Statement of Purpose**

- A. This Policy implements Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 et seq.) captioned "Local Public Employee Organizations," by providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations. However, nothing contained herein shall be deemed to supersede the provisions of state law, City ordinances or resolutions, and rules which provide for other methods of administering employer-employee relations. This Policy is intended, instead, to strengthen methods of administering employer-employee relations through the establishment of a uniform and orderly process for communications between employees, employee organizations, and the City.
- B. It is the purpose of this Policy to provide procedures for meeting and conferring in good faith with recognized employee organizations regarding matters that affect terms and conditions of employment of employees in appropriate units and that are not preempted by federal or state law, City ordinances. However, nothing herein shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy, which include among others: The exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards of service; determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve employees from duty because of lack of work or for other lawful reasons; determine the content of job classifications; subcontract work; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology for performing its work.

#### **17.02 Definitions**

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

- A. "Appropriate unit" means a group of employee classes or positions, established pursuant to Article II herein.
- B. "City" means the City of Soledad, and, where appropriate, refers to the City Council or any duly authorized City representative as herein defined.
- C. "Confidential Employee" means an employee who has access to or advance knowledge of decisions relating to the City's employer-employee

relations or access to or advance knowledge of information relating to or developed for the purpose of making decisions relating to the City's administration of employer-employee relations. Confidential employees shall be excluded from any bargaining unit containing employees other than those designated as confidential, management and/or supervisory.

- D. "Consult," as used in this Policy, means to communicate orally or in writing with all effected recognized employee organizations for the purpose of presenting and obtaining views, or advising of proposed actions in a good faith effort to reach a consensus; and, as distinguished from meeting and conferring in good faith regarding matters within the scope of required meet and confer process, does not involve an exchange of proposals and counterproposals in an endeavor to reach agreement in the form of a Memorandum of Understanding, nor is it subject to Article IV herein.
- E. "Day" means calendar day unless expressly stated otherwise.
- F. "Employee" means any person holding a regular position of employment with the City.
- G. "Exclusively Recognized Employee Organization" means an employee organization which has been formally acknowledged by the City as the sole employee organization representing the employees in an appropriate unit pursuant to Article II herein, having the exclusive right to meet and confer in good faith concerning required subjects pertaining to unit employees, and thereby assuming the corresponding obligation to fairly represent such employees.

Such recognition status may not be challenged by another employee organization (1) within twelve (12) months of such recognition, and (2) to take effect during a Memorandum of Understanding having a term of up to three (3) years.

- H. "Factfinding." The process required by the MMBA in which disputes are submitted to a panel consisting of one member selected by each party and a chairperson selected either by the Public Employee Relations Board ("PERB") or by mutual agreement of the parties. After consideration of all the relevant facts, the panel makes findings of fact and provides recommended terms of settlement to the parties.
- I. "Impasse" means that the representatives of the City and a recognized employee organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a Memorandum of Understanding, and subjects over which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

- J. "Management Employee" means an employee having responsibility for formulating, administering or managing the implementation of City policies, procedures, and programs.
- K. "Meet and Confer in Good Faith" means as defined in Section 3505 of the California Government Code. Generally this term means the performance, by the Employee Relations Officer or his/her authorized representative, and by the duly authorized representative of a formally recognized employee organization, of their mutual obligation to meet and confer promptly upon request by either party and to continue for a reasonable period of time in order to freely exchange information, opinions and proposals. The process should include adequate time for the administration of impasse procedures set forth in these Rules, and to reduce any agreement to writing and to obtain the appropriate approvals. "Meet and confer in good faith" does not require either party to agree to a proposal or to make a concession.
- L. "Memorandum of Understanding" or "MOU" means a written, negotiated agreement or contract between the City and an Exclusively Recognized Employee Organization which incorporates all agreed upon matters, and which is signed by the duly authorized representative of the City and the exclusively recognized employee organization. MOU's are not binding until ratified by the labor organization and adopted by the City Council.
- M. "Peace Officer." An individual employed by the City as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code and Section 3508 of the MMBA.
- N. "Personnel Officer" means the City Manager or duly authorized representative or designee.
- O. "Professional Employee." An employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to engineers, architects, and the various types of physical, chemical, and biological scientists., as designated by the City Manager, subject to the provisions of California Government Code Section 3500 et seq., as applicable to the City. This definition shall include work of an employee that: (1) Is predominately intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (2) Involves the consistent exercise of discretion and judgment in its performance; (3) Is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (4) Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an

apprenticeship or from training in the performance of routine mental, manual or physical process; or is an employee who has completed the courses of specialized intellectual instruction and study described in this part (4), above, and is performing related work under the supervision of a professional person to qualify to become a professional employee as defined in (1) through (4), above. In the event of a dispute on the appropriateness of a unit of representation for professional employees, upon request of any of the parties, the dispute shall be submitted to the California State Mediation and Conciliation Service for mediation or for recommendation for resolving the dispute. The parties shall split any cost of such mediation.

P. "Proof of Employee Support" means Demonstrated proof that the requisite number of individual employees have clearly shown a desire to be represented by an employee organization for the purposes of meeting and conferring on wages, hours, and other terms and conditions of employment, or in the case of decertification petition, have clearly demonstrated that the employees no longer desires to be represented by the exclusive representative, using one or a combination of the following:

(1) an authorization card recently signed and personally dated by an employee, or

(2) a verified authorization petition or petitions recently signed and personally dated by an employee, or

(3) employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as proof of employee support for any employee organization.

The only authorization which shall be considered as proof of employee support hereunder shall be the authorization last signed by an employee. The words "recently signed" shall mean within ninety (90) days prior to the filing of a petition.

Q. "Scope of Representation" means as defined in Section 3505 of the California Government Code. Generally this means all matters relating to employment conditions in employer-employee relations, including, but not limited to, wages, hours and other terms and conditions of employment, except however, that the scope of representation shall not include matters reserved to management discretion under the MMBA - i.e. management rights, including consideration of the merits, necessity or organization of any service or activity carried out by the City.

- R. "Supervisory Employee" means any employee, regardless of job description, having authority, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or to recommend such action if, in connection with the foregoing, the exercise of such authority is not of a mere routine or clerical nature, but requires the use of independent judgment. Supervisory employees shall be excluded from any bargaining unit containing employees other than those designated as supervisory, management, and/or confidential.

### **Article II -- Representation Proceedings**

#### **17.03 Filing of Recognition Petition by Employee Organization**

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

- A. Name and address of the employee organization.
- B. Names and titles of its officers.
- C. Names of employee organization representatives who are authorized to speak on behalf of the organization.
- D. A statement that the employee organization has, as one of its primary purposes, the responsibility of representing employees in their employment relations with the City.
- E. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national or international organization, and, if so, the name and address of each such other organization.
- F. Certified copies of the employee organization's constitution and bylaws.
- G. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.
- H. A statement that the employee organization has no restriction on membership based on race, color, ancestry, religion, creed, gender, gender identity, gender expression, national origin, age, sex, sexual orientation, mental or physical disability; genetic information, marital status, military or veteran status, medical condition or any other basis protected by local, state and/or federal law.

- I. The group of job classifications or position titles of employees in the unit claimed to be appropriate, and the approximate number of employees in each job classification or job title, and the department and/or office to which they are affiliated with.
- J. A statement that the employee organization has in its possession proof of employee support, as defined herein, from at least 30% of the employees in the unit claimed to be appropriate. The proof of support must clearly demonstrate that a majority of the employees in the proposed unit desire to have the employee organization represent them for the purposes of meeting and conferring on wages, hours and other terms and conditions of employment. Such written proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed disinterested third party in a sealed envelope, marked "confidential."
- K. A request that the Employee Relations Officer formally acknowledge the petitioner as the exclusively recognized employee organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith on all matters within the scope of representation.

The Petition, including the proof of employee support and all accompanying documentation, shall be declared to be true, correct and complete, under penalty of perjury, by the duly authorized officer(s) of the employee organization executing it.

#### **17.04 City Response to Recognition Petition**

Upon receipt of the Petition, the Employee Relations Officer shall determine whether:

- A. There has been compliance with the requirements of the Recognition Petition set forth in 17.03; and
- B. The proposed representation unit is an appropriate unit in accordance with Section 17.09.

If an affirmative determination is made by the Employee Relations Officer on the foregoing two matters, the Employee Relations Officer shall so inform the petitioning employee organization, give written notice of such request for recognition to the employees in the unit, and take no action on said request for thirty (30) days thereafter. If either of the foregoing matters are not affirmatively determined, the Employee Relations Officer shall offer to consult thereon with such petitioning employee organization and, if such determination remains unchanged, shall inform that organization of the reasons therefore in writing within 15 working days of the date the petition for recognition was submitted.

The petitioning employee organization may appeal such determination in accordance with Section 17.11 of this Policy.

#### **17.05 Open Period for Filing Challenging Petition**

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the exclusively recognized employee organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some, but not all the classifications or positions set forth in the recognition petition being challenged), by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Section 17.03 of this Article II. If such challenging petition seeks establishment of an overlapping unit, the Employee Relations Officer shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Section 17.09 of this Article II. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the Employee Relations Officer to amend their petitions to conform to such determination, or appeal such determination pursuant to Section 17.11 of this Article II.

#### **17.06 Granting Recognition Without an Election**

When an employee organization petitioning for exclusive recognition as the representative of a unit determined to be appropriate, submits written proof that it represents at least 50 percent of the employees in such unit with its petition for recognition and if no other employee organization filed a challenging petition, the petitioning employee organization and the Employee Relations Officer shall request the California State Mediation and Conciliation Service, or another agreed upon neutral third party, to review the count, form, accuracy and propriety of the proof of support. If the neutral third party makes an affirmative determination, the Employee Relations Officer shall formally acknowledge the petitioning employee organization as the exclusive recognized employee organization for the designated unit.

#### **17.07 Election Procedure**

The Employee Relations Officer shall arrange for a secret ballot election to be conducted by a party agreed to by the Officer and the affected employee organization(s), in accordance with such party's rules and procedures, and subject to the provisions of this Policy. All employee organizations who have duly submitted petitions which have been determined to be in conformance with 17.03 shall be included on the ballot. The choice of "no organization" shall also

be included on the ballot. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which includes the date which is (15) days before the date of the election, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election. An employee organization shall be formally acknowledged as the exclusively recognized employee organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.

There shall be no more than one valid election under this Policy pursuant to any petition in a 12-month period affecting the same unit.

In the event that the parties are unable to agree on a third party to conduct an election, the election shall be conducted by the California State Mediation and Conciliation Service.

Costs of conducting elections shall be borne in equal shares by the City and by each employee organization appearing on the ballot.

#### **17.08 Procedure for Decertification of Exclusively Recognized Employee Organization**

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

- A. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
- B. The name of the established appropriate unit and of the incumbent exclusively recognized employee organization sought to be decertified as a representative of that unit.

- C. An allegation that the incumbent exclusively recognized employee organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.
- D. Proof of employee support that at least thirty (30) percent of the employees in the established recognized appropriate unit no longer desire to be represented by the incumbent exclusively recognized employee organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party within the time limits specified in the first paragraph of this Section 17.08.

The petition, including all accompanying documents, shall be verified, under oath, by the person signing it that its contents are true. It may be accompanied by a petition for recognition by a challenging organization.

- E. An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a Petition under this Section in the form of a Recognition Petition that evidences proof of employee support of at least thirty (30) percent, that includes the allegation and information and otherwise conforms to the requirements of Section 17.03 of this Article II. The employee organization must also state that it wishes to replace the incumbent employee organization as the exclusive representative

The Employee Relations Officer shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Article II. If the determination is in the negative, the Employee Relations Officer shall offer to meet thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefore in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 17.11 of this Article II. If the determination of the Employee Relations Officer is in the affirmative, or if a negative determination is reversed on appeal, the Officer shall give written notice of such Decertification or Recognition Petition to the incumbent exclusively recognized employee organization and to unit employees.

The Employee Relations Officer shall thereupon arrange for a secret ballot election to be held fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Section 17.07 of this Article II.

During the "open period" specified in the first paragraph of this Section 17.08 of this Article II, the Employee Relations Officer may on his/her own motion, when he/she has reason to believe that a majority of unit employees no longer wish to

be represented by the incumbent exclusively recognized employee organization, give notice to that organization and all unit employees that he/she will arrange for an election to determine that issue. In such event any other employee organization may within fifteen (15) days of such notice file a Recognition Petition in accordance with this Section 17.08, which the Employee Relations Officer shall act on in accordance with this Section 17.08 of this Article II.

If, pursuant to this Section 17.08 of this Article II, a different employee organization is formally acknowledged as the exclusively recognized employee organization, such organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

#### **17.09 Policy and Standards for Determination of Appropriate Units**

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

- A. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
- B. The extent to which members have similar work location and interaction with other City employees.
- C. The extent to which members interchange job functions and job duties.
- D. The extent to which members have a common line of supervision.
- E. History of representation in the City and similar employment; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.
- F. Consistency with the organizational patterns of the City.
- G. Number of employees and classifications, and the effect of the unit on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.
- H. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.

- I. The application and consistency of wage, hour, and benefit packages (including retirement benefits) within the proposed bargaining unit.

Notwithstanding the foregoing provisions of this Section, managerial, supervisory and confidential responsibilities, as defined in Section 17.02 of this Policy, are determining factors in establishing appropriate units hereunder, and therefore such managerial, supervisory and confidential employees may only be included in units that do not include non-managerial, non-supervisory and non-confidential employees. Managerial, supervisory and confidential employees may not represent any employee organization which represents other employees. In the establishment of appropriate units, professional employees shall not be denied the right to be represented separately from nonprofessional employees.

The Employee Relations Officer shall have the responsibility of designating the confidential, managerial, supervisory or professional status of employees upon the initial formation of a bargaining unit; and thereafter, upon the petition by an employee organization or by the recommendation of the City Manager.

Full-time Peace Officers may not be denied the right to be included in a "peace officer" only unit as that term is defined in these rules and regulations.

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

#### **17.10 Procedure for Modification of Established Appropriate Units**

Requests by employee organizations for modifications of established appropriate units may be considered by the Employee Relations Officer only during the period specified in Section 17.08 of this Article II. An employee organization may initiate a petition under this section to: (1) add unrepresented classifications to a unit it represents; (2) divide a unit it represents into 2 or more units; (3) to consolidate 2 or more units it represents into 1 unit; (4) to delete classifications or positions from a unit, where by virtue of changes in circumstances, the positions are no longer appropriate in the established unit; (5) to make technical changes to clarify or update the unit descriptions; (6) to resolve a dispute as to unit placement or designation of a new classification or position; or (7) to delete classifications or positions in cases where no changes in circumstance are alleged, on the basis that the classification or positions is management, confidential, supervisory, or professional, and is otherwise prohibited by law from inclusion in the unit. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Section 17.03 of this Article II, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Section 17.09 of this Article II, including:

- A. The name, address, and telephone and fax numbers of the exclusive representative(s) of the unit(s) affected by the petition;
- B. A brief description of the title(s) of the established unit(s);
- C. A brief description of the modification(s) sought by the petition, including, but not limited to, a statement of the position(s) or classification(s) that the petition seeks to include in the unit;
- D. A list of all classifications to be included in the modified unit and the number of employees in each classification, as well as the division(s) and/or department(s) to which they belong;
- E. Written proof of support that at least 30 percent of the employees within the classifications, who, if the proposed modification should be granted, would be moved from one represented unit to another; except that there is no proof of support requirement for the proposed addition of employees constituting less than ten percent of the original unit and where the proposed addition would increase the size of the established unit by less than ten percent.

(1) If the petition requests the addition of classifications or positions to an established unit, and the proposed addition would increase the size of the established unit by ten percent or more, the Board shall require proof of majority support of persons employed in the classifications or positions to be added.

(2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.

The Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article II.

The Employee Relations Officer may by his/her own motion propose that an established unit be modified. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter the Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Section 17.09 of this Article II, and shall give written notice of such determination to the affected employee organization(s). The Employee Relations Officer's determination may be appealed as provided in Section 17.11 of this Article II. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the exclusively recognized employee

organization for such new appropriate unit or units pursuant to Section 17.03 of this Article II.

### **17.11 Appeals**

An employee organization aggrieved by an appropriate unit determination of the Employee Relations Officer; or an employee organization aggrieved by a determination of the Employee Relations Officer that a Recognition Petition (Sec. 17.03), Challenging Petition (Sec. 17.05), Decertification Petition (Sec. 17.08), Unit Modification Petition (Sec. 17.10), or employees aggrieved by a determination of the Employee Relations Officer that a Decertification Petition (Sec. 17.08) has not been filed in compliance with the applicable provisions of this Article II, may, within ten (10) days of notice of the Employee Relations Officer's final decision, request to appeal such determination to the City Council for final decision.

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

## **Article III -- Administration**

### **17.12 Submission of Current Information by Recognized Employee Organizations**

All changes in the information filed with the City by an exclusively recognized employee organization under items (A.) through (K.) of its recognized petition under Section 17.03 of this Policy shall be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

### **17.13 Employee Organization Activities - Use of City Resources**

Access to City work locations and facilities by employee organizations shall be authorized only to the extent required by the MMBA or provided for in the appropriate Memoranda of Understanding for an exclusively recognized employee organization. Such activities and access shall be limited to:

- A. Activities pertaining directly to the employer-employee relationship and not other activities such as political campaigns;
- B. Non-work time when employees are free from duty, and in non-work locations within the City facilities unless prior arrangements have been made with management at the facility;

- C. Such times and locations that do not interfere with the employees' regular duties, or the efficiency, safety and security of City operations.

#### **17.14 Meeting and Confering in Good Faith and Memoranda of Understanding.**

Pursuant to the provisions of California Government Code, Section 3500 et seq., as said sections apply to City, the City, through its designated representatives, shall meet and confer in good faith with representatives of exclusively recognized employee organizations, regarding matters within the scope of representation. Only exclusively recognized employee organizations shall be entitled to negotiate with duly designated management representatives on wages, hours, and other terms and conditions of employment for the employees in the bargaining units for which they have been recognized as the exclusive representative.

When the meet and confer process is concluded between the City and an exclusively recognized employee organization, all agreed upon matters shall be incorporated in a written memorandum of understanding signed by the duly authorized City and the exclusively recognized employee organization. The memorandum of understanding shall be submitted to the City Council for determination and implementation on matters over which the Council has authority. A memorandum of understanding shall not be binding on the City or the exclusively recognized employee organization until approved by the City Council.

#### **17.15 Administrative Rules and Procedures**

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

### **Article IV -- Impasse Procedures**

#### **17.16 Initiation of Impasse Procedures**

If the meet and confer process has reached impasse as defined in Section 17.02 of this Policy, either party may initiate the impasse procedure by filing with the other party a written request for an impasse meeting, together with a statement of its position on all issues. An impasse meeting shall then be scheduled promptly by the Employee Relations Officer. The purpose of such meeting shall be:

- A. To review the position of the parties in a final good faith effort to reach agreement on a Memorandum of Understanding;
- B. To identify and specify in writing the issue or issues that remain in dispute; and

- C. If the impasse is not resolved, to discuss arrangements for the utilization of the impasse procedure provided herein, including mediation and possible factfinding.

### **17.17 Mediation**

- A. If the City and the exclusively recognized employee organization do not resolve the disputed issues at the impasse meeting, the parties may agree to submit the dispute to mediation within 5 working days following the impasse meeting. If the parties agree to submit the dispute to mediation, within 10 working days after the impasse meeting, the City Manager shall notify the California State Mediation and Conciliation Service that the parties have reached impasse and request the appointment of a mediator and scheduling of mediation as soon as possible. Alternatively, the parties may mutually agree to the selection and scheduling of a particular mediator or receive a list of seven (7) mediators from the California State Mediation and Conciliation Service. If the parties agree to select a mediator from a list of seven (7), the parties shall select one from the list by, after a toss of coin (with the winner of the coin toss to decide which party shall move first), alternately striking names until one name remains. That person remaining shall serve as the mediator. The parties shall provide to the mediator written statements outlining their relative positions on the remaining disputed issues. All mediation proceedings shall be private. The mediator shall make no public recommendation or statement, nor take any public position at any time concerning the issues.
- B. The mediator or either party shall have the right to terminate the mediation proceedings at any time and for any reason. When either party determines mediation is unsuccessful, but no later than thirty (30) calendar days after the appointment of the mediator, mediation shall be deemed to have concluded.

### **17.18 Factfinding**

- A. Request for Factfinding.
  - 1. When the Dispute was Submitted to Mediation. In the event that the City and the exclusively recognized employee organization fail to reach agreement through mediation, the exclusively recognized employee organization may request factfinding be used in an attempt to resolve the remaining issues in dispute. The exclusively recognized employee organization must submit the request for factfinding in writing to the Public Employment Relations Board ("PERB"), with a copy sent simultaneously to the City Manager. If the dispute was submitted to mediation, the exclusively recognized employee organization may request factfinding not sooner than thirty (30) calendar days, but not later than 45 calendar days,

- following the appointment or selection of the mediator, selected/appointed in accordance with 17.17 above.
2. When the Dispute was not Submitted to Mediation. If the dispute was not submitted to mediation, the exclusively recognized employee organization must request factfinding no later than 30 calendar days from the date either party presented a written declaration of impasse. Requests for factfinding shall be made in accordance with the MMBA and applicable PERB Regulations.
  3. Within 5 calendar days of submitting a request for factfinding with PERB, the exclusively recognized employee organization must submit the following written information to the City:
    - a. A statement that the parties are at an impasse and have been unable to reach agreement;
    - b. A statement identifying the issues in dispute; and
    - c. Any documentation to support the party's position.
- B. Selection of Factfinding Panel. If the exclusively recognized employee organization timely requests factfinding, a factfinding panel of three shall be appointed in the following manner:
1. Within five (5) calendar days of the request for factfinding, each party shall select one individual of its own choosing to serve on the factfinding panel.
  2. Within five (5) calendar days of the request for factfinding, the City and the exclusively recognized employee organization shall jointly select the third member of the factfinding panel ("Pre-Designated Chairperson") and the third person shall serve as the factfinding panel chairperson.
  3. If the parties are unable to mutually agree on a Pre-Designated Chairperson within five (5) calendar days of the exclusively recognized employee organization's request for factfinding, the City shall request that PERB provide the parties a list of seven (7) qualified factfinders, and the parties will select a factfinder from this list who will certify that he or she will start the factfinding proceedings within ten (10) calendar days of notification by the parties. After a toss of a coin to decide which party shall strike the first name, a representative of the City and a representative of the exclusively recognized employee organization shall alternatively strike one name from the list until one name remains, and such person shall act as the factfinding Pre-Designated Chairperson. The next to the last name stricken shall be the alternate factfinding

chairperson in the event the first named person is not available. The procedure shall be followed until there is an available Pre-Designated Chairperson. The City shall confirm, with PERB, the Pre-Designated Chairperson within ten (10) calendar days of the date it received a list of seven (7) qualified fact-finders from PERB.

- C. Factfinding Proceedings. All factfinding proceedings shall be private. The factfinding members and/or the factfinding panel shall not have the authority to resolve the dispute. The members of the factfinding panel, the City, and the exclusively recognized employee organization shall each maintain the confidentiality of the factfinding process.
1. The factfinding process shall be deemed to be completed thirty (30) calendar days after the appointment of the Pre-Designated Chairperson. The factfinding panel or chairperson may not extend the time lines without expressed mutual written consent of the parties.
  2. Failure by either party to be available within the thirty (30) calendar day time period shall not cause an extension of the time frames.
  3. The factfinding panel shall be limited in scope only to the matters the parties identified as having reached impasse over and to those matters within the mandatory subjects of bargaining unless the parties mutually agree, in writing, to submit issues that are non-mandatory subjects.
- D. Factfinding Criteria. The factfinding panel shall consider, weigh, and be guided by the following criteria:
1. State and federal laws that are applicable to the employer.
  2. Local rules, regulations, or ordinances.
  3. Stipulations of the parties.
  4. The interests and welfare of the public and the financial ability of the public agency.
  5. Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
  6. The consumer price index for goods and services, commonly known as the cost of living.

7. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
  8. Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.
- E. Factfinding Report. Within thirty (30) calendar days after its appointment, the factfinding panel shall submit in writing a report containing any findings of fact and recommended terms of settlement to the parties.
1. To the extent the factfinding panel makes findings and recommendations, those findings and recommendations shall be made on an issue-by-issue basis, either making no recommendation (and indicating that no recommendation is being made), or recommending either the City's position or the exclusively recognized employee organization's position.
  2. The factfinding panel shall limit its findings and recommendations to the issues that fall within mandatory subjects of bargaining, unless the parties mutually agree, in writing, to submit issues that are non-mandatory subjects.
  3. The parties shall maintain the confidentiality of the factfinding panel's report during the first nine (9) calendar days following its issuance. If the parties have not reached agreement on a new or successor memorandum of understanding by ten (10) calendar days following issuance of the factfinding panel's report, the City shall make the report public.
  4. The factfinding report shall be advisory only, and the City Council may choose to adopt or act on any, all, or none of the recommendations of the panel.
  5. On or after the date the City has released the factfinding panel's report to the public, the City may, after holding a public City Council hearing regarding the impasse, implement the last, best and final offer, but may not implement a memorandum of understanding.
  6. If the factfinding panel was unable to meet the deadline, and thereby is unable to recommend terms of settlement to the City Council, that fact shall constitute the totality of the report.
- F. Discontinuation of Factfinding. Notwithstanding any other provision of these Rules, the exclusively recognized employee organization may

choose to discontinue ongoing factfinding at any time by notifying the City in writing that it waives its right to complete the factfinding process. Written waivers shall be irrevocable. Upon receiving a waiver from the exclusively recognized employee organization, the City may, after holding a public hearing regarding the impasse, implement the last, best, and final offer.

- G. The factfinding provisions contained in these Rules shall remain in effect and apply only so long as state law requires the parties to proceed to factfinding.

### **17.19 Costs of Impasse Procedures**

The cost for the services of a mediator and fact-finder or chairperson of a fact-finding panel utilized by the parties, and other mutually incurred costs of mediation and fact-finding, shall be borne equally by the City and the exclusively recognized employee organization. The cost for a fact-finding panel member selected by each party, and other separately incurred costs, shall be borne by such party.

## **Article V -- Miscellaneous Provisions**

### **17.20 Construction**

This Policy shall be administered and construed as follows:

- A. Nothing in this Policy shall be construed to deny to any person, employee, organization, the City, or any authorized officer, body or other representative of the City, the rights, powers and authority granted by federal or State law.
- B. This Policy shall be interpreted so as to carry out its purpose as set forth in Article I.
- C. Nothing in this Policy shall be construed as making the provisions of California Labor Code Section 923 applicable to City employees or employee organizations, or of giving employees or employee organizations the right to participate in, support, cooperate or encourage, directly or indirectly, any strike, sickout or other total or partial stoppage or slowdown of work. In consideration of and as a condition of initial and continued employment by the City, employees recognize that any such actions are in violation of their conditions of employment except as expressly otherwise provided by legally preemptive state or contrary local law. In the event employees engage in such actions, they shall be subject to disciplinary action up to and including termination, and may be replaced, to the extent such actions are not prohibited by preemptive law; and employee organizations may thereby forfeit rights afforded to them under City law or a ratified and approved MOU.

**17.21 Severability**

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

**17.22 City Management Rights**

The City retains the sole right to manage its business and determine the merits, necessity, nature, or extent of services to be performed. Unless specifically in conflict with a ratified and approved MOU, all management rights shall remain vested exclusively with the City. In addition to all rights or powers granted by law, City's management rights include but are not limited to:

- A. The right to determine the mission of the City, including without limitation the City's departments, divisions, institutions, boards and commissions;
- B. The right of full and exclusive control of the management of the City; supervision of all operations; determinations of methods, means, location and assignments of performing all work; and the composition, assignment, direction, location and determination of the size and mission of the work force;
- C. The right to determine the work to be done by employees, including establishment of service levels, appropriate staffing and the allocation of funds for any positions(s) within the City;
- D. The right to review and inspect, without notice, all City-owned facilities, including without limitation desktop computers, work areas and desks, e-mail, computer storage drives, voicemail systems and filing cabinets and systems, to the full extent permitted by law;
- E. The right to change or introduce different, new or improved operations, technologies, methods or means regarding any city work, and to contract out for work;
- F. The right to establish and modify qualifications for employment, including the content of any job classification, job description or job announcement, and to determine whether minimum qualifications are met;
- G. The right to maintain and modify the City's classification plan;
- H. The right to establish and enforce employee performance standards;
- I. The right to schedule and assign work, make reassignments and assign overtime work;

- J. The right to hire, fire, promote, discipline, reassign, transfer, release, layoff, terminate, demote, suspend or reduce in step or grade, all employees;
- K. The right to establish and modify bargaining units; to assign new or amended classifications to particular bargaining units; and to designate any position confidential, supervisory, management or otherwise for bargaining unit assignments pursuant to the MMBA;
- L. The right to inquire and investigate regarding complaints or concerns about employee performance deficiencies or misconduct of any sort, including the right to require employees to appear, respond truthfully and cooperate in good faith regarding any City investigation;
- M. The right to maintain orderly, effective and efficient operations;
- N. The right to publish its views, and to distribute appropriate information, concerning any labor relations issue;
- O. The right to correct misstatements and other inaccurate information disseminated by third parties concerning the City's labor relations and any aspect thereof; and
- P. The right to take any appropriate lawful measure to ensure the best delivery of services to the public in response to any work stoppage, including without limitation: (a) altering work schedules or locations to ensure coverage; (b) investigating absences to ensure no violation of City policies.

Except in cases of emergencies as defined in the MMBA, the City shall provide advance notice to each recognized employee organization affected by any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the City and shall give such recognized employee organization the opportunity to meet with city representatives. In the event of emergency causing the City to immediately adopt an ordinance, rule, resolution or regulation directly relating to matters within the scope of representation, the City shall provide notice and opportunity to meet at the earliest practicable time.

### **17.23 Rights of City Employees**

Unless specifically in conflict with a ratified and approved MOU, all employees shall enjoy the following rights:

- A. The right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations;

- B. The right to refuse to join or participate in the activities of employee organizations;
- C. The right to represent themselves individually in their employee/employer relations; and
- D. The right to be free of interference, intimidation, restraint, coercion, or discrimination because of exercising rights specified in this section.

**CONFIDENTIAL**

**HARASSMENT/DISCRIMINATION/RETALIATION  
COMPLAINT FORM**

Name of Complainant: \_\_\_\_\_ Date: \_\_\_\_\_

Job Title: \_\_\_\_\_ Department: \_\_\_\_\_

Street Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Work Phone Number: \_\_\_\_\_ Home Phone Number: \_\_\_\_\_

I prefer to be contacted at  Home  Work Best time to Contact: \_\_\_\_\_  a.m.  p.m.

**Nature of complaint:** *(Please provide as much information as possible. Include description of incident, date, location, parties involved and other details you feel that we need to know. Use additional sheets if necessary)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Corrective Action Desired:**

\_\_\_\_\_  
\_\_\_\_\_

*I certify that the above statement is true and accurate:*

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**CITY OF SOLEDAD**

**Acknowledgement of Receipt of  
Personnel Rules and Regulations**

(Date \_\_\_\_\_)

This is to acknowledge that I have received a copy of the Personnel Rules and Regulations Manual dated and understand it contains important information on the City's Rules and Regulations, and my obligations and responsibilities as an employee. I acknowledge that I am expected to read, understand, and adhere to these Rules and Regulations and familiarize myself with the provisions in this Manual. I understand that I am governed by these Rules and Regulations, and that the City may change, modify, or revise the Manual from time to time at its sole and absolute discretion with or without prior notice. The City will advise recognized employee organizations of any changes, modifications, or revisions to this Manual which affect terms and conditions of employment, as defined by applicable MMBA and PERB provisions.

I acknowledge and agree to abide by these and any new or revised Rules and Regulations.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Department

*This document shall be signed by the employee and placed in the employee's personnel file*

**EXHIBIT A**  
**Electronic Communications Policy**

## **Exhibit A**

### **CITY OF SOLEDAD**

#### **POLICY ON THE USE OF ELECTRONIC COMMUNICATIONS**

##### **I. PURPOSE**

The City of Soledad is making every effort to provide its employees with the best technology available to conduct the City's business. In this regard, the City has installed, at substantial cost, equipment such as computers and advanced technological systems such as electronic mail (e-mail) for use to conduct its official business. This Policy was created to advise all users regarding the access to and the disclosure of information created, transmitted, received and stored via the use of land-line telephones, City-owned cellular phones, the Internet, City e-mail, computer systems, and Electronic Storage Systems. This policy also identifies the appropriate use of City cellular phones, ownership of City cellular phones, and address privacy of any data contained on or transmitted using City cellular phones, as outlined under this policy.

The City's Policy regarding the use of the Electronic Communications Systems, including, but not limited to, Internet, intranet, and e-mail is, among other things, intended to guide employees on the performance of their duties. This Policy is also intended to place all users on notice that they should have no expectation of privacy when using any of the City's Electronic Communications Systems.

The City reserves the right to monitor Internet use, all e-mail, and other computer transmissions, land-line telephones, City-owned cellular phones, as well as any stored information, created, or received by users within any of the City's Electronic Communications Systems. The reservation of this right is to ensure that public resources are being used appropriately and to ensure that the City's Electronic Communications Systems are operating as efficiently as possible in order to protect the public interest. All computer applications, programs, and any information, whether work-related or personal, created or stored by users on City's Electronic Communications Systems, are City Property.

This policy applies to all employees of the City of Soledad and to any person who is given access to the City's Electronic Communications Systems. No person shall access the City's Electronic Communications Systems without reading and complying with the procedures set forth in this Policy.

##### **II. DEFINITIONS**

- A. Cellular Phone (Mobile Phone):** A type of short-wave analog or digital telecommunication in which a subscriber has a wireless connection from a mobile telephone to a relatively nearby transmitter. Types of cellular phones include Digital/Analog, satellite, Wi-Fi, as well as Smartphones such as

Blackberry, iPhone, and other data-enabled phones including devices equipped with direct connect functionality.

- B. Electronic Communications:** Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photoelectric, or photo optical system, including but not limited to telephone calls, cellular phone calls, fax machine transmissions, text messages, and e-mail.
- C. Electronic Communications Systems:** All electronic equipment, devices, software, data, and/or other means of electronic communication (either furnished by the City or property of the employee used to conduct City business), including, but not limited to computer hardware and software, telephones, fax machines, cellular telephones, pagers, e-mail, Internet/World Wide Web, voice mail, personal digital assistants, and tablets. It also includes any wire, radio, electromagnetic, photo optical, photo electronic facilities for the transmission of Electronic Communications, and any computer facilities or related electronic equipment for the Electronic Storage of such communications as well as any newly created devices yet to be created.
- D. Electronic Mail (E-mail):** E-mail may include non-interactive communication of text, data, images or voice messages between a sender and designated recipient(s) by systems utilizing telecommunications links. It may also include correspondence transmitted and stored electronically using software facilities called "e-mail", "facsimile" or "instant messaging" system; or voice messages transmitted and stored for later retrieval from a computer system.
- E. Electronic Storage Systems:** Any stored data, wire or Electronic Communication incidental to electronic transmission thereof. It also means any stored communications by an Electronic Communications service for purposes of backup protection of such communication.
- F. Handsfree:** An adjective used to describe a device that can be used without the use of hands; most commonly used with mobile phones. Handsfree devices are equipped with both a speaker and a microphone. Common examples of handsfree devices are mobile headsets and earpieces, which can be wired or wireless, as well as blue-tooth devices, which use wireless technology to exchange data over short distances.
- G. Messaging (Instant / Text (SMS) / PIN):** A text-based conference over telecommunication lines such as the Internet and/or cellular frequencies between two or more people who may or may be connected at the same time.
- H. Internet:** A worldwide network of networks, connecting informational networks communicating through a common communications language or "protocol."

- I. **Land-line:** Standard telephone and data communications systems that use in-ground and telephone pole cables in contrast to wireless cellular and satellite services.
- J. **Smartphone:** A cellular phone that is characterized as a wireless telephone set with special computer-enabled features, such as e-mail, text-messaging, Internet, Web browsing, fax, PIM, and LAN connectivity that provides computing and information storage and retrieval capabilities for personal or business use. Examples include Blackberry, iPhone, and other data-enabled devices running software such as Windows Mobile and Android.
- K. **Social Networking Sites:** Any web-based URL site that allows for the public or private posting of messages, photos or video. Social networking sites include, but are not limited to, Facebook, LinkedIn, Twitter, YouTube, Yelp, and Instagram.
- L. **Standards:** Departmental directions or instructions describing how to achieve policy.
- M. **Users:** Any person using the City's Electronic Communications Systems.
- N. **Vendors:** Any private person or business enterprise doing business with the City.
- O. **Wi-Fi cellular phone:** A cellular telephone that can automatically switch between conventional cellular and Wi-Fi VoIP modes, even during the course of a conversation. A Wi-Fi LAN acts, in effect, as a cellular repeater for such a phone.

**III. POLICY AND PROCEDURES**

**A. Access of Electronic Communications Systems.**

- 1. No regular, probationary, temporary, seasonal, or contractual City employee or volunteer shall access the City's Electronic Communications Systems without reading and complying with the procedures set forth in this Policy.
- 2. All employees, Councilmembers, Commissioners, and volunteers provided access to the City's Electronic Communications Systems, Electronic Communications, and Electronic Storage shall be given a copy of this and all related technology policies and shall sign an acknowledgement of the policies recognizing the parameters for compliance.

**B. No Right of Privacy.**

The City respects the individual privacy of its employees. However, employee

privacy does not extend to the employee's work-related conduct or to the use of City-provided equipment or supplies. Employees should be aware that the terms of this Policy limit their privacy in the workplace.

The City's Electronic Communications Systems, Electronic Communications, and Electronic Storage are City property and are intended for City business. All Electronic Communications and Electronic Storage within these systems are the property of the City of Soledad, regardless of the content, including any personal communications. The City reserves the right to monitor the Electronic Communications Systems for any reason at anytime without notice to the user(s), including the right to review, audit, and disclose all matters and content sent over and/or stored on Electronic Communications Systems.

As a result, employees should be aware that no Electronic Communications transmitted on the Electronic Communications Systems, or Electronic Storage contained within the systems, is private or confidential. Employees should have no expectation of privacy with respect to any use, including storage, business or personal, of the City's Electronic Communications Systems.

Employees should be aware that Electronic Communications and/or Electronic Storage can be copied, modified, and/or forwarded to others without the express permission of the original author. Therefore, employees must use caution in the storage, transmission, and dissemination of Electronic Communications outside of the City and must comply with all state and federal laws. Electronic Communications and/or Electronic Storage of the City may be recognized as official records in need of protection/retention in accordance with state and federal laws. All electronic communications are subject to the Personnel Rules and all state and federal laws, including but not limited to the California Public Records Act, open meeting laws, and the federal Electronic Communications Privacy Act.

**C. Passwords.**

All passwords created by the user or issued to the user are for the purpose of communication and are not to be shared, given, or otherwise disclosed to any other person. Passwords must not be shared and may be changed periodically by the City to ensure security. All security features contained within the City's Electronic Communications Systems such as passwords, codes, or delete functions will not prevent the City from accessing employees' business or personal Electronic Communications, stored or otherwise, on the City's Electronic Storage Systems.

**D. Appropriate Use of Electronic Communications Systems.**

The City of Soledad's Electronic Communications Systems are designed to facilitate City business and communication through the appropriate use of the Electronic Communications Systems and Electronic Storage thereon. The City

values its Electronic Communications Systems and Electronic Storage, and takes measures to safeguard them from corruption and illegal use, and to protect the City from any possible liability due to illegal use of the Electronic Communications Systems and Electronic Storage.

1. No user shall access the City's Electronic Communications Systems without reading and complying with the procedures set forth in this Policy.
2. All users requesting authorization to access the City's Electronic Communications Systems, Electronic Communications, and/or Electronic Storage shall be given a copy of all related technology policies and shall sign an acknowledgement of the policies recognizing the parameters for compliance with those policies.

**E. Improper Use of Electronic Communications Systems.**

It is the responsibility of each City employee to use the City's Electronic Communications Systems in a professional and courteous manner. The City forbids the use of its Electronic Communications Systems in a manner that violates any law, regulation, ordinance, or policy or procedure of the City. Electronic Communications Systems should not be used in any way that is offensive, harmful, or insulting to any person. Examples of prohibited uses include, but are not limited to:

1. Illegal activities;
2. Solicitation of funds;
3. Political messages or transmissions;
4. Messages or transmissions that violate the City's Policy Against Harassment, Discrimination, Retaliation and Abusive Conduct based on gender, genetic characteristics or information, race, color, national origin, ancestry, religion, creed, sex, physical or mental disability, medical condition, marital status, sexual orientation, gender expression or identity, age, pregnancy, childbirth, or related medical condition, military or veteran's status, or any other basis protected by applicable federal, state or local law;
5. Messages or transmissions that violate the City's personnel rules, and/or another policy of the City, including, but not limited to, policy against workplace violence or drug-free workplace policies; or
6. Any other message or transmissions which are in any way inappropriate.

**F. Personal Use of Electronics Communications Systems.**

The City's Electronic Communications Systems are primarily for the conduct of

City business. Limited, occasional, or incidental use of the electronics communications systems (either furnished by the City or property of the employee) for personal, non-business purposes is permitted only under the following circumstances:

1. Personal use may not interfere with the productivity of the employee or his/her co-workers;
2. Personal use may not involve any prohibited activity described in this Policy;
3. Personal use may not involve conduct that is prohibited under other City Policy or Rule;
4. Personal use may not disrupt or delay the performance of City business;
5. Personal use may not consume City resources or otherwise deplete system resources available for City business purposes;
6. Personal use may not be used for personal employee gain or commercial ventures;
7. Personal use may not support or advocate non-City-related business purposes.

If an employee's personal use of the City's Electronic Communications Systems results in a cost to the City, the cost must be reimbursed to the City by the employee.

**G. Retention of Electronic Communication.**

No electronic communication shall be considered by the City to be retained in the ordinary course of business, with the exception of electronic communication containing content required to be retained by law.

It is the responsibility of the creator to determine if an electronic communication sent internally should be classified as a record that requires retention in accordance with the City Council approved Records Retention Schedule. It is the responsibility of the recipient of an electronic communication received from outside City sources to determine if an electronic communication should be classified as a record that requires retention in accordance with the City Council approved Records Retention Schedule. Once retention status is determined, transfer of the electronic communication to a printed hard copy is required prior to deletion or purge from the electronic communication system.

**H. Access of Another Person's Electronic Communications.**

Employees may not intentionally intercept, eavesdrop on, record, read, alter,

retrieve, receive, send, or use another person's Electronic Communications and/or Electronic Storage without proper authorization. Employees, including system administrators and Supervisors, may not, without proper authorization, peruse Electronic Communications and/or Electronic Storage of other employees. Proper authorization may be granted as set forth in Section III.I of this policy.

**I. Requests for Access to Employee's Data, Messages, and Phone Records.**

Requests for access into an employee's individual data, messages, and phone records will be made to the City Manager. The City Manager may grant such request and direct appropriate action.

**J. City-Wide Website Policies.**

The City of Soledad website, including all domains owned and maintained by the City, represent a fundamental communication tool for providing critical City information to the public. The goal of the website is to encourage increased participation in City government and to help create a more vibrant community for residents and visitors alike. Toward that end, the development and use of the City's sites are guided by the Web Site Policy:

1. The City Manager is responsible for the creation and implementation of the City website, ensuring compliance with the City's policies regarding the website, and maintaining and securing the City' servers and website.
2. To preserve the public nature of the City's website and to avoid any perception that the City endorses or provides favorable treatment to any private person or business enterprise (hereinafter collectively referred to as "vendor"), no corporate or commercial logos or links to vendor sites will be allowed on the City's external website, unless such link represents a mission critical partnership and is permitted by the City Manager.
3. Vendors that create or maintain a website for the City must follow all policies established for the City's website.
4. The City's website is for "official use" only. All information disseminated through the City's website must be related to the official duties and responsibilities of employees and City departments.
5. The California Public Records Act applies to information processed, sent and stored on the Internet. Confidential information should not be posted on the City's external website. The City Manager must approve all posted information.
6. No City employee or official may use any City website for campaign-related purposes. Such campaign-related purposes include, but are not limited to, the following: statements in support or opposition to any

candidate or ballot measure; requests for campaign funds or references to any solicitations of campaign funds; and references to the campaign schedule or activities of any candidate. No City official's website may be linked to any private website related to a candidate's campaign for elective office, but it may link directly to the home page of the Office of the City Clerk's election-related pages where general election and candidate information can be found.

**K. Internet Usage Policies.**

1. **Authorization for Internet Access.** Authorization for Internet access must be obtained through the employee's supervisor. Once authorization is approved the employee is responsible for the security of his/her account password and will be held responsible for all use or misuse of his/her account. Users must maintain secure passwords.
2. **General Provisions.** The City reserves the right to limit access to certain sites deemed inappropriate. Access may be monitored at the request of a Department Head. Should the need arise; you are obligated to cooperate with any investigation regarding the use of your computer equipment.

Questions regarding confidential or proprietary information should be directed to the City Manager. City management has the right to monitor and log all transactions in or out of the system. All security features contained within the City's Electronic Communication Systems such as passwords, codes, or delete functions will not prevent the City from accessing employees' Electronic Communications, stored or otherwise, on the systems.

3. **Appropriate Use of the Internet.** Employees who are granted access to the Internet are expected to use this access in a professional and courteous manner. The prohibited uses of Electronic Communications Systems described in this Policy apply to the use of the Internet. All users should be aware that appropriate use of the Internet includes, but is not limited to, the following rules:
  - (a) Never use an account assigned to another user.
  - (b) Never make an unauthorized attempt to enter any computer.
  - (c) Never post, send, or provide access to any confidential City materials or information, unless authorized.
  - (d) Never post, send or provide videos or still footage taken during working hours and/or during the course of employment to any social networking website.
4. **Improper Use of the Internet.** Employees should be aware that the

improper use of the Internet also includes, but is not limited to:

- (a) Disclosing confidential information obtained in the course of employment;
- (b) Accessing websites or online content that may degrade, hamper, or impede on the performance and/or capacity of the City's Electronic Communication Systems;
- (c) Accessing gross, indecent, obscene, harassing, pornographic, or sexually explicit materials;
- (d) Accessing gambling sites;
- (e) Accessing illegal drug-oriented sites; and
- (f) The representation of yourself as someone else, real or fictional.

**5. Social Networking Sites.**

- (a) **Personal Use of Social Networking Sites.** Except as is consistent with Section F of this Policy, the City does not condone the personal use of social networking sites during the workday or by using City-owned equipment. Employees are also reminded and cautioned that information posted on a social networking site may not be private or confidential. Employees are also reminded and cautioned that information posted on a social networking site may be used as evidence in administrative or legal proceedings. An employee's use of social networking sites in a manner that violates City Rules or Policies will not be tolerated by the City and may be grounds for disciplinary action, up to and including termination.
- (b) **Official City Use of Social Networking Sites.** The City may elect to use social networking sites to communicate with the public. Such official use of social networking sites is regulated by the City Manager. No department in the City may establish a presence on any social networking site without the advanced approval of the City Manager.

No employee is authorized to post information on behalf of the City on any social networking site without the express, written permission of the City Manager or, in the case of a department-specific site, the respective Department Head. Department Heads may also designate another employee to be responsible for the maintenance of the department's social networking site. Unauthorized posting on behalf of the City will not be tolerated.

## **L. Employee Terms of Use for City-Issued Phones**

City-issued phones are provided for the conduct of City business. All telephone equipment (land-line phones and cellular phones) shall be issued to personnel according to the needs defined in their job description.

The use of phones by employees for making personal calls may be permitted, subject to the provisions of this Policy, if it does not interfere with the conduct of City business. The use of City's phones must be in accordance with the following procedures and the procedures contained in the City's cell Phone Use Policy:

1. All calls should be limited to the shortest amount of time necessary to conduct City business.
2. All City employees must continuously strive to minimize costs.
3. Employees are not allowed to use City-issued phones in an illegal, illicit, or offensive manner.
4. Employees are not allowed to use City-issued phones to conduct personal for-profit business.
5. Safeguarding issued equipment is the responsibility of the individual employee. Misuse or abuse of equipment may be cause for disciplinary action and/or cost reimbursement.
6. Features on cellular phones such as directory assistance, busy signal confirmations, text messaging, and emergency interrupts should only be used for official City business and only when absolutely necessary. Misuse or negligent use of these features may be cause for disciplinary action and/or cost reimbursement.
7. Employees are not allowed to operate cellular telephones, tablets, PDAs, laptop computers, navigational devices or any other devices that may cause driver distraction when driving a City vehicle or when driving a private vehicle being used to conduct City business. Employees shall make every attempt to properly park their vehicle prior to using such devices. The only exception to this rule is if the employee uses a hands-free device.
8. Any personal calls made from a City-issued phone will be the responsibility of the employee. Employees are responsible for identifying minutes of personal use and then reimbursing the City for additional costs incurred by the City. The reimbursement amount should be a simple calculation of the per-minute rate charged for every minute of personal usage. This reimbursement should be made payable to the "City of Soledad" and should be submitted as payment to the City cashier within ten (10) days of receiving the bill.

9. The City may provide employees with a monthly cellular phone bill and quarterly desk phone usage report for the telephone numbers assigned to them. It is the responsibility of the employee to identify the minutes of personal use and reimburse the City. This reimbursement should be made payable to the "City of Soledad" and should be submitted as payment to the City cashier within ten days of receiving the bill or usage report.

**M. City-Issued Phone Monitoring**

Department Heads are responsible for reviewing and monitoring their staff's cell phone bills on a regularly, usually monthly, basis. Department Heads are also responsible for distributing the cell phone bills to their employees for review.

If cellular phone overage is due to increased City business use, the employee should tell his/her supervisor. The supervisor may then contact the Department Head and request that the employee's plan be altered.

On an annual basis, the Department Heads may review which employees have cell phones and whether or not they still need them.

Department Heads are responsible for documenting the issuance of a cell phone, its accessories, and ensuring that they are returned once the employee has exited the department.

**N. Violation of Policy**

Violations of this Policy shall be reported to the City Manager and/or the appropriate Department Head. Any employee who accesses the City's Electronic Communications Systems without complying with the procedures set forth in this Policy or otherwise violated this Policy may be subject to disciplinary action, up to and including termination, as provided for in the City's Human Resources Rules and Regulations. In addition, misuse of the Electronic Communications Systems may, in appropriate cases, be referred for criminal prosecution.