

City of Desert Hot Springs Employee Handbook of Rules and Regulations



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ABOUT THIS DOCUMENT

The City of Desert Hot Springs (“City”) Employee Handbook of Personnel Rules and Regulations provides details on the Human Resources policies, procedures and working conditions that will be followed by all employees of the City of Desert Hot Springs. These rules and regulations do not create any contract of employment expressed or implied, or any rights in the nature of a contract.

The policies and procedures outlined in this handbook apply to all employees, unless a specific section or provision excludes them, and are subject to change at any time, without notice. The City will make every effort to notify employees when an official change in policy or procedure has been made, but employees are responsible for their own up-to-date knowledge about City policies and procedures. The most current version of this document can be viewed on the City’s Intranet and is available from the Human Resources Department on request.

MANAGEMENT RIGHTS

The City shall retain, whether exercised or not, solely and exclusively, all express and inherent rights and authority pursuant to law with respect to determining the level of, and the manner in which, the City’s activities are conducted, managed, and administered. And, it is the exclusive right of the City to establish and maintain departmental rules and procedures for the administration of its departments. The City has the exclusive right and authority to schedule work and/or overtime work as required in the manner most advantageous to the City. Every incidental duty connected with operations enumerated in job descriptions is not always specifically described; nevertheless, it is intended that all such duties shall be performed by the employee.

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CHAPTER 1 GENERAL PROVISIONS

1.01 Adoption and Amendment

The following Personnel Rules and Regulations have been adopted by City Council Resolution. Certified resolutions of adoption are available from the Office of the City Clerk.

1.02 Purpose

These Personnel Rules and Regulations set forth, in detail, the policies and procedures for employees in City of Desert Hot Springs public service, and define the rights, obligations, privileges, benefits and prohibitions.

The Personnel Rules and Regulations are intended to promote the goals of a personnel program, which can be followed by all City operating departments under the direction of the City Manager, the designated Employee Relations Officer of the City. If a provision of these rules conflicts with any provision of an applicable collective bargaining agreement (Memorandum of Understanding), entered into between the City of Desert Hot Springs and a recognized employee organization, to the extent of such conflict, the provision of the collective bargaining agreement shall prevail.

1.03 Personnel Policy

The following is declared to be the Personnel Policy of the City of Desert Hot Springs. These Rules and Regulations shall be administered and interpreted in terms of this policy:

By law, it is the duty and obligation of the City Manager to supervise all personnel in public service at the City of Desert Hot Springs, including administration of these Rules and Regulations. Neither employees nor individual members of the City Council may interfere with that duty.

The California Fair Employment and Housing Act shall govern all City employment and employment practices in addition to applicable Federal and State Law. The City of Desert Hot Springs is an Equal Opportunity Employer and as such, provides equal employment opportunities to all qualified applicants and employees. The City prohibits discrimination against employees or applicants for employment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (over 40), sexual orientation, or military and veteran status or any other basis protected by law.

1.04 Administration and Interpretation of Rules and Regulations

The City Manager or designee, also referred to as the “appointing authority”, shall administer and interpret these Personnel Rules and Regulations.

1.05 Employment Constitutes Acceptance

In accepting employment with the City of Desert Hot Springs, each employee agrees to be governed by and to comply with these Personnel Rules and Regulations, established by the City Council, including any administrative regulations and directives of the department in which employed. All employees holding a position in public service on the effective date of these Rules and Regulations shall thereafter be subject to the provisions herein.

CHAPTER 2 DEFINITIONS

2.01 Definitions

Administrative Leave – Paid leave of absence, either voluntary or involuntary.

Allocation – The assignment of a position to its appropriate class in relation to duties performed.

Appeal – An application for review of an alleged grievance submitted or instituted by an employee to a higher authority, or the appeal of final action of suspension, demotion, reduction in pay or discharge.

Applicant – An individual who has completed and submitted an application for employment or promotion with the City.

Appointing Authority – The City Manager or designee.

Appointment – The acceptance by a person of an offer for employment to a position either on a full-time, part-time, temporary or seasonal basis.

At-Will Employee – An at-will employee is one who serves at the pleasure of the City, has no property right in continued employment, and has no right to any pre or post-disciplinary procedural due process or evidentiary appeal.

Certification – Endorsement as meeting required minimum standards for a vacant position.

Class – A group of positions which are sufficiently alike in general duties and responsibilities to warrant the use of the same title, job specification, and salary range.

Class Specification – A written description of a class consisting of a class title, a general statement of the level of work and distinguishing features of work, examples of duties and the desirable qualifications for the position.

Classification – The act of grouping positions in classes with regard to: 1) duties and responsibilities; 2) requirements such as education, knowledge, experience, and ability; 3) tests of fitness; and 4) salary range.

Classification Plan – The official or approved system of grouping positions into appropriate classes consisting of: 1) an index to the class specifications; 2) the class specifications; and 3) rules for administering the Classification Plan. The Classification Plan is adopted by resolution of the City Council.

Classified Service – All offices and positions in the service of the City which fall within the Classification Plan. Temporary employees are not in classified service.

Compensation – The standard rate of pay which has been established for the respective classes of work, as set forth in the Compensation Plan.

Compensation Plan – The official schedule of position classifications and pay rates assigned to these classifications, as approved by the City Council.

Compensatory Leave – Time off work in lieu of monetary payment for overtime worked.

Demotion – Assignment of an employee from one class to another class with a lower rate of pay than that received by the employee immediately prior to demotion. A demotion may be for disciplinary or non-disciplinary reasons.

Department – An organizational unit under the immediate charge of a department head who reports directly to the City Manager.

Department Head – An employee, designated by the City Manager, as the individual responsible for overseeing certain organizational functions, who may or may not be a management employee.

Designee– A person appointed by the City Manager as his/her representative.

Discharge – Separation from City employment

Drug-Free Workplace Policy – Policy that promotes a drug and alcohol-free workplace and the elimination of drug and alcohol-related inefficiencies and risks which could impair an employee's ability to perform effectively the functions of the job safely and effectively.

Eligible Person – Any person who has successfully met the required qualifications for a particular class.

Eligibility List – The ranking of eligible persons for a vacancy in order of overall qualifications.

Employee – An individual legally employed by the City and compensated through City payroll for services.

Examination – The process of testing, evaluating, or investigating the fitness and qualifications of applicants and employees.

Exempt Employee – An employee whose job classification is in a category under which an employee may be considered exempt from overtime under the Fair Labor Standards Act ("FLSA") and therefore whose position is not eligible for overtime.

For-Cause Employee – A for-cause employee is one who has satisfactorily completed the initial probationary period and cannot be disciplined except when the City has cause to do so. A for-cause employee has a property right in continued employment, and has the right to pre and post-disciplinary procedural due process and an evidentiary appeal for certain types of disciplinary actions that result in a significant deprivation of property.

Immediate Family – Includes, employee's spouse, children, parents, step-parents, brothers, sisters, grandparents, spouse's grandparents, grandchildren, parents-in-law, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, step child, domestic partner, or any relative, including a foster child, living in the immediate household.

Layoff – The involuntary, non disciplinary termination of an employee due to the elimination of the position.

Leave – An approved absence from work as provided by these Rules and/or Memorandum of Understanding ("MOU").

Limited Term Employee – An individual appointed to a position in order to prevent stoppage of public business or serious inconvenience to the public. Appointments may be made for a six (6) month duration and can be full or part time, exempt or non exempt.

Merit Date – The date in which an employee, who has passed probation, has completed one full year at any step on the salary range.

Merit Increase – An increase in compensation established in the Compensation Plan intended to furnish administrative flexibility in recognizing individual differences among positions allocated to the same class, in providing employees incentive, in rewarding employees for meritorious service and in meeting emergency conditions requiring pay adjustments. A Merit Increase may be granted to an employee for meritorious service and completion of the minimum prescribed period of employment in the class.

Miscellaneous Employee – Non-sworn personnel as defined by the California Public Employee's Retirement System ("CalPERS").

Non-Exempt Employee – An employee whose job classification is not in a category under which an employee may be considered exempt from overtime under the FLSA and therefore is required to be paid for overtime hours worked.

Position – Any office or employment, whether occupied or vacant, full time or part time, consisting of duties and responsibilities as assigned to an individual by the Compensation Plan of the City.

Probationary Period – The test or trial period of employment beginning with the date of an employee's appointment to a class, and or as defined within the employee's MOU, and ending at a specified date. During the initial Probationary Period, termination of employment can occur without cause and without any right to any pre or post disciplinary procedural due process or appeal.

Promotion – Movement of an employee through a competitive process from one class to another class which has a higher maximum rate of pay.

Public Safety Employee – A sworn member of the Police Department as defined by CalPERS.

Regular Employee – An individual who has successfully completed the appropriate initial probationary period.

Suspension – The temporary removal of an employee from his or her duties, with or without pay, for disciplinary or pre-disciplinary investigation purposes.

Termination – The separation from City service with the action initiated by the employee voluntarily or by the City within the provisions of these Rules.

Transfer – The movement of an employee within a department or between departments from one position to another position in the same class or another class having the same maximum salary, involving the performance of similar duties, and requiring substantially the same basic qualifications.

Variable Hour Employee – An individual appointed to a position budgeted for less than (30) hours per week during each fiscal year.

Work Day – Scheduled number of hours that an employee is required to work within a 24 hour period.

CHAPTER 3 EMPLOYMENT

3.01 Employment Policy

The stated employment policy of the City shall be to hire, train, promote, and retain the best qualified personnel available. The best qualified personnel shall mean those persons who can most effectively perform in the position as determined by the City Manager or designee.

3.02 Equal Employment Opportunity

The City of Desert Hot Springs affords equal employment opportunity for all qualified employees and applicants as to all terms of employment, including compensation, hiring, training, promotion, transfer, discipline and termination. The City prohibits discrimination against employees or applicants for employment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (over 40), sexual orientation, or military and veteran status or any other basis protected by law. The City of Desert Hot Springs will afford equal employment opportunity to all qualified employees and applicants as to all terms and conditions of employment, including compensation, hiring, training, promotion, transfer, discipline, and termination. Employees, applicants, officers, officials or contractors who believe they have experienced any form of employment discrimination are encouraged to report this immediately to the Administrative Services Department pursuant to the complaint procedures provided in these Rules, or by contacting the U.S. Equal Employment Opportunity Commission, or the California Department of Fair Employment and Housing.

3.03 Employment Eligibility/Citizenship

It is the policy of the City to employ a diverse workforce. Employment is open to qualified applicants who are citizens of the United States, and to non-citizens lawfully permitted by the U.S. Citizenship and Immigration Services to work in the United States.

3.04 Recruitment

Individuals shall be recruited from a geographic area sufficient in size to ensure obtaining well-qualified candidates for the various types of positions. The City shall prepare recruitment notices to publicize vacancies and to provide candidates for vacant positions. Any such publicity and public advertisement shall be used as may bring notice of City vacancies to as many qualified persons as possible. The City reserves the right to recruit internally and appoint without a recruitment process.

3.05 Application

All candidates for employment shall file an application with the City on an official City Employment Application form. An applicant's failure to provide complete and accurate information on all application materials shall be grounds for immediate disqualification in the application process, and may result in dismissal from resulting employment. Once submitted to the City, applications shall not be returned.

Applicants must submit applications on or before the filing deadline stated in the job announcement. When necessary to meet continued requirements for filling positions due to non-availability of applicants for a class or position, or due to a high turnover rate, the closing date for any selection process may be indefinite and applicants may be tested continuously in such manner and at such times and places as may be provided by the City. The City may exclude applicants for any open position from further testing for any open position at its discretion.

3.06 Selection Process

Selection techniques shall relate to those areas which, in the opinion of the City Manager or designee, adequately and fairly indicate the relative ability and quality of candidates under consideration for the position.

The selection process will vary depending on the requirements of the position and may or may not include one or more of the following:

Review of applications; individual interviews, panel interviews, or assessment centers; achievement tests; aptitude tests; performance tests; oral boards; evaluation of previous work performance and experience; review of work samples; and employment references; or any combination of the aforementioned deemed by the City Manager or designee to be necessary to evaluate an applicant's qualifications and competency for a specific position.

Upon completion of the selection process, the City Manager or designee shall make a conditional appointment from those candidate(s) who appear most qualified for the position. The appointment shall become effective when the selected candidate has passed the pre-employment background screening and signed all personnel documents required by the City, and those papers bear all the appropriate signatures confirming the appointment.

Vacancies may be filled by re-employment, promotion, transfer, demotion, appointment of hourly employees, or from the appropriate eligible list, if available. No specific list has priority over other lists. The City Manager or designee will decide in what manner the vacancy is to be filled.

3.07 Pre-Employment Background Screening

The City conducts background checks on all job candidates pre- and post-offer (conditional offer) as appropriate. Specific background checks administered during the hiring process will be job related and may vary depending on the essential functions of the job and work location. The City may also use a third-party vendor to administer part or all of the background screening.

The Administrative Services Department will ensure that all background screening is completed in accordance with applicable laws and regulations.

Background screening may include but is not limited to: prior employment verification, medical examination, drug screening, criminal background check, education verification, social security verification, motor vehicle records check; and for Public Safety (Sworn) positions may include psychological and/or psychiatric examinations or other background screening related to the position. The City shall assume the costs of such screening.

Refusal to undertake the required pre-employment background screening and examinations may result in termination of the applicant's candidacy.

If an applicant is disqualified from appointment to a position for failing to meet the medical and psychological standards for the job class, the applicant may file a written request to review the disqualification. Such request must be submitted to the Administrative Services Department no later than five (5) working days after the postmarked date of the notification of disqualification. The applicant may submit appropriate documentation or other evidence supporting his/her claim that he/she should not have been disqualified. The City may require the applicant to submit to a fitness for duty examination that is job-related to be conducted by a physician or medical evaluator of the City's choice. Such examination shall be paid by the City. The City may make the final determination based on this examination. If the disqualification is upheld, the applicant has no further right to appeal.

Protection of Confidential Information

All background screening information is considered confidential and will be filed separately from other employment related documentation. Access will be strictly on a "need to know" basis as determined by the City Manager or designee.

3.08 Reasons for Application Disqualification

The City Manager or designee may disqualify any candidate from consideration whose appointment may be deemed contrary to the best interests of the City. Reasons for ineligibility may include, but shall not be limited to, the following:

- Is found to lack any of the requirements, certifications, or qualifications for the position involved.
- Failure to participate in the selection process.
- Criminal conviction after having considered the nature, date and circumstances of the offense, evidence of rehabilitation and whether the offense is relevant to the duties of the position.
- Is physically or mentally unable to perform the essential functions of the job, with or without reasonable accommodation, if disabled.
- Is a current user of illegal drugs.
- Is a relative of an employee, and is subject to the Employment of Relatives Policy in Section 3.09.
- Request by applicant that his/her name be withdrawn from consideration.
- Failure to reply within reasonable time to communication concerning availability for employment.
- Has made false statements of any material fact, or practiced any deception or fraud on the application or declarations.
- Failure to meet citizenship requirements as set forth in these Rules and Regulations.
- Has had his or her privilege to operate a motor vehicle in the State of California suspended or revoked, if driving is an essential function of the position.
- Failure to pass background check as required for the position.
- Directly or indirectly obtained information regarding examinations.
- Used or attempted to use political pressure or bribery to secure an advantage in the process.
- Disqualification or unsuitability for employment as specified in these Personnel Rules and Regulations.
- For any material cause which in the judgment of the Administrative Services Director or designee would render the applicant unsuitable for the position, including a prior resignation from the City, termination from the City, or a significant disciplinary action.
- Does not meet the requirements under Ordinance 565 chapter 2.22.

3.09 Employment of Relatives

No immediate family member shall work in a position where one is directly and immediately subordinate to the other or within the same department. Immediate family is defined in Chapter 2.

3.10 Categories for Appointment

Regular Employees

A regular, full time employee, who works an average of 30 hours or more per week shall be subject to, and shall receive all benefits and rights as provided by these Personnel Rules and Regulations.

Part Time / Variable Hour Employees

Part time and variable hour employees, who work less than 30 hours per week, shall be subject to these Personnel Rules and Regulations and shall receive all benefits and rights as provided by these Personnel Rules and Regulations. However, part time and variable hour employees shall not be entitled to City benefits such as holiday, sick or vacation accruals, health or life insurance, or any other benefits accruing to full time employees unless approved by the City Manager or designee, except as required by law.

Temporary, Provisional or Seasonal Employees

An employee who is assigned to work on a particular project or on a job of limited or definite duration is a temporary, provisional or seasonal employee. A temporary, provisional or seasonal employee: (1) does not hold regular status, (2) does not serve a probationary period, (3) can be dismissed from City employment at any time without cause, right to appeal, grievance or hearing, and (4) is not entitled to earn, accrue, or participate in any City employee benefit plans, or paid or unpaid leaves, except as required by law.

3.11 Probationary Period

All appointments to regular City service positions shall be tentative and subject to a probationary period as determined by the City Manager at the time of appointment. Probationary periods shall be twelve (12) months unless otherwise stated in the employee's respective MOU. The probationary period may be extended beyond the length of time initially established, if deemed necessary by the City Manager or designee. The maximum extension of probation shall be six (6) months. Release from probation occurs at the expiration of the probationary period or applicable extension. The City Manager and Department Head positions are "at will" and not subject to a probationary period.

3.12 Objective of Probationary Period

A probationary employee is one who is serving a probationary period. The probationary period is part of the selection process, a time during which the City determines whether work performance or work-related behavior meets the required standards of the position.

3.13 Probationary Employee Performance Reports

The supervisor shall complete a performance report for each probationary employee, according to the procedures established by the City Manager.

In those cases where the probationary period is extended, an employee performance evaluation report shall be required from the department head at the conclusion of each three (3) month interval, or as often as deemed necessary, with the final report completed at the end of the probationary period, prior to official release of probation or termination.

3.14 Rejection of Probationer

Probationary employees may be dismissed at any time from their probationary appointment with or without cause, and without notice. In addition, at any time during the probationary period the Department Head or designee may dismiss an employee from his/her probationary appointment if, in the discretion of the department head and the City Manager or designee, the review of work performed and general qualifications indicate such employee is unable or unwilling to perform the duties satisfactorily or habits and dependability do not merit continuance in the service. Probationary employees have no right of appeal or grievance as to their rejection from probationary employment.

Employees serving in their initial probationary period with the City are considered 'at-will' employees. Therefore, their dismissal from probationary appointment shall be dismissal from City employment. Employees who are serving in their promotional probationary period, and are dismissed from their promotional probationary appointment, may return to the position held prior to promotion at the range and step held prior to promotion, if there is a vacancy in the prior position, unless he or she is terminated for cause.

3.15 Separation from Service

The separation of an employee from a City service shall be accomplished in the manner indicated below:

Resignation. An employee who wishes to resign his/her employment in good standing must submit the resignation to his/her supervisor two weeks prior to the planned separation date. A resignation becomes final when accepted by the appointing authority and a copy is provided to the Administrative Services department. Once a resignation has been accepted it cannot be withdrawn without City Manager approval.

Reduction in Force (RIF). The City Council may implement a Reduction in Force (RIF) due to a material change in the organization, shortage of work or financial constraints. RIF's shall be implemented in accordance with terms and conditions of an employee's respective MOU.

Disability. After having exhausted the interactive process in good faith, if it is determined that the City cannot provide a reasonable accommodation to an employee who cannot perform the essential functions of the position because of a disability, the employee may be terminated due to an inability to reasonably accommodate. No person shall be separated for disability until a determination has been made that it is an undue hardship to make a reasonable accommodation so as to permit the incumbent to continue in City employment.

Death. All compensation due an employee shall become effective as of the official date of death. All compensation due in accordance with these Rules shall be paid to the estate of the employee, except for those sums by law which must be paid to the surviving spouse, surviving dependent or designated beneficiary.

Retirement. When an employee meets the conditions set forth in the retirement plan regulations, that employee may elect to retire and receive all benefits earned under the applicable retirement plan.

Lay-Off. Whenever, in the judgment of the City Council, it becomes necessary to abolish any position, the employee holding such position or employment may be laid off or demoted without disciplinary action and without right of appeal. Notification and Order of Layoff shall be implemented in accordance with the terms and conditions of an employee's respective MOU.

Discharge. Any employee in City service may be discharged at any time by the City Manager, or designee. A for-cause employee subject to discharge is entitled to the discipline and discipline appeal rights and procedures in conformance with the employee's MOU.

Unauthorized Absence. See Section 6.04.

3.16 Re-Employment

An employee, subject to lay off through a Reduction in Force (RIF), shall be entitled to reinstatement in accordance with the terms and conditions of the employee's respective Memorandum of Understanding. Entitlement to reinstatement under this Section shall not apply to the re-employment of an employee who has been discharged, or whose employment was terminated by reason of job abandonment. Re-appointments after termination shall be considered as new employment subject to the established requirements for the position's probationary period.

3.17 Performance Evaluation

Frequency. Supervisors are authorized to evaluate a subordinate's performance as often as the supervisor deems appropriate. A formal written performance evaluation should be prepared for a subordinate at least one time each year.

Process. The evaluation of an employee's performance is an ongoing process. Evaluations must be documented in writing. The supervisor(s) will review the evaluation in a private meeting with the employee. The employee shall sign the performance evaluation to acknowledge that the employee is aware of its contents and has discussed the evaluation with his or her supervisor. The employee's signature on the evaluation does not indicate agreement with its contents. The employee will receive a copy of the evaluation after the meeting with the supervisor(s) and a copy of the evaluation will be placed in the employee's personnel file.

No Appeal. An employee does not have the right to appeal any matter relating to a performance evaluation. Instead, the employee may comment on the evaluation in a written statement which will then be placed with the evaluation in the employee's personnel file. The written statement must be submitted within 10 calendar days after the employee receives the evaluation.

CHAPTER 4 CLASSIFICATION PLAN

4.01 Job Descriptions

Each position shall be assigned an appropriate classification and for each classification a general description of duties and responsibilities which shall be prepared by the City Manager or designee.

4.02 General Classification Policy

The policy under which the Classification Plan is to be administered is one which promotes understanding by supervisors and employees of assigned job duties and responsibilities, and, provides a basis of compensation for work performed. Classifications are deemed to be descriptive and explanatory of the kind of work performed, not inclusive of all duties performed.

4.03 Review Implementation

The Classification Plan shall be administered by the City Manager upon approval by members of the City Council. The Classification Plan shall be the basis upon which the City Compensation Plan is considered and approved by the City Council. Changes or amendments to the Classification Plan, including a change in the Compensation Plan shall be prepared by the City Manager and administered upon approval by City Council Resolution.

4.04 Reclassification

Positions, of which the duties have changed so materially as to necessitate reclassification, shall be assigned by the City Manager or designee to a more appropriate class, whether new or already established, upon completion of a position (job) audit. Reclassification shall not be used for the purpose of avoiding restrictions concerning demotions and promotions.

4.05 Position Allocation

Allocation of the number of positions to each classification shall be administered by the City Manager, or designee according to the Compensation Plan upon budget appropriation approval by the City Council.

If an employee believes he/she is performing work outside the scope of the classification description for his/her position, supporting information should be provided in writing to the City Manager or designee. If deemed appropriate by the City Manager or designee, a review of the employee's duties may be conducted, in consultation with the employee and the employee's department head. The City Manager or designee shall notify the employee and

department head of the final determination. If appropriate, the employee's position may be reallocated to a different classification. The City Manager or designee, in his/her discretion, may require the employee to complete a promotional examination before being reallocated to a higher classification, and shall require the employee to serve a promotional probationary period in the new classification.

CHAPTER 5 COMPENSATION, HOURS, AND BENEFITS

5.01 City Classification and Compensation Plan

A City Classification and Compensation Plan shall be established. Each class in the Classification Plan shall be assigned a salary range at rates set forth in the Compensation Plan. The Compensation Plan shall provide salary schedules, salary rates, salary ranges, including steps and time intervals for merit increases. All persons employed by the City shall be compensated in accordance with the Compensation Plan then in effect.

5.02 Administration and Review of Compensation Plan

Annually, during the budget adoption process, or more frequently if deemed necessary, the City Manager or designee shall recommend to the City Council an appropriate salary range for each class. All employees whose positions are allocated to this class shall be adjusted to a step in the new range, in accordance with the revised Classification and Compensation Plan

5.03 Application and Use of Salary Ranges and Rates

All initial appointments to classes assigned a pay range in the City Classification and Compensation Plan shall be at the first step (A) of the salary range. The City Manager or designee may make an appointment to a position at a higher salary step when, if in his/her opinion it is deemed necessary to obtain qualified personnel at a higher starting salary, or when it appears that the education and experience of a proposed employee is substantially superior to that required of the class and thereby justifies a beginning salary in excess of the first step.

An employee shall be considered for salary advancement in accordance with the time intervals established in the City Classification and Compensation Plan.

5.04 Step Increases for Full-time, Part-Time, and Variable Hour Regular Employees

Advancements in the salary range shall be granted for continued improvement and efficient service by the employee in the performance of his/her duties. Advancement shall not be automatic. Merit advancement shall be made upon the recommendation of the employee's department head, with approval by the City Manager or designee.

An employee who has completed the probationary period and has completed one (1) full year of service at any step may be considered for advancement to the next higher step. Each employee eligible for advancement shall be annually evaluated and notified, in writing, by his/her department head. The employee shall participate with his/her supervisor in such evaluation and shall be afforded the opportunity for self-evaluation with respect to work performance and job improvement goals. If a department head has not submitted a signed

performance evaluation by the employee's merit date, a step increase may automatically be processed by the Administrative Services Department with approval by the department head.

For outstanding job performance, an employee may be granted a merit advancement by the City Manager or designee, upon recommendation of the employee's department head, prior to the merit increase date outlined in the foregoing provisions of this Section.

5.05 Standard Workweek / Work Period

The standard workweek or work period begins at 12:00 a.m. on Saturday and ends at 11:59 p.m. on Friday, except as otherwise designated by an applicable MOU, or as otherwise designated for employees on a flexible schedule, or as designated in FLSA 29 USC § 207(k) schedule for safety employees.

5.06 Exceptions to Standard Work Periods

The City Manager or designee may designate the work period and working hours for employees when, in his/her opinion, the best interest of the City may be served by such adjustment of the standard work periods and hours. The procedures for making adjustments in the standard work periods and hours shall be consistent with prevailing laws, MOU's, and the City Manager and City Council policy direction.

5.07 Pay Periods

City Council Members and Planning Commissioners shall be paid monthly. The pay period for all other employees shall be biweekly. The City Manager or designee may alter the payroll calendar, when deemed necessary, to facilitate City operations. The method of distribution of payroll checks shall be established by the City Manager or designee.

Except for employees being terminated, salaries shall be paid only on regular pay dates. Employees leaving City service shall be issued a final check on the date of termination, or within a reasonable amount of time. Written approval of the department head which provides that said employee has returned all City tools, clothing, keys, equipment, and any other property related to employment, shall be required prior to the release of final check.

5.08 Computation of Salary

Salary rates for all authorized City positions are set forth in the City's Classification and Compensation Plan. In the conversion of monthly salaries, hourly rates shall be computed as follows: 12 times the monthly salary divided by 2,080 hours per year.

5.09 Overtime Policy

It is the policy of the City that overtime work shall be maintained at a minimum, without risk to protection of life, property, and the efficient operation of the departments, programs and activities of the City.

5.10 Overtime Procedures

No overtime may be worked by any employee unless approved in advance by the employee's department head. In the case of unusual circumstances, when prior approval of overtime is impractical, authorization for overtime credit shall be sought no later than the end of the following workday. In the absence of advanced approval by the department head, all requests for overtime shall be directed to the employee's immediate supervisor. If the employee's immediate supervisor is an absent department head, the request shall be directed to the City Manager.

Unless otherwise stated in a memorandum of understanding, "overtime" is all hours an overtime-eligible employee actually works over 40 in his or her work period. Overtime is compensated at 1.5 times the employee's Fair Labor Standards Act regular rate of pay. Only actual hours worked will be counted toward the 40-hour threshold for purposes of calculating FLSA overtime pay. All time spent for the benefit of the City must be reported as hours worked on time records so that the employee is paid for all work performed. Overtime-eligible employees may not "volunteer" work time to perform duties that are the same or similar as their stated or regular job duties.

Failure to follow these overtime procedures may subject the employee to disciplinary action, up to and including termination.

5.11 Rate of Pay

When an employee is promoted, demoted or transferred, that employee's rate of pay shall be established in accordance with the following:

Promotion. When an employee is promoted, that employee's salary shall be advanced to the step in the new pay range which provides at least a 5% increase in the range from which the employee was promoted

Demotion. When an employee is demoted voluntarily, that employee's salary shall be set at the step in the new pay range which provides the least decrease in pay. When an employee is demoted for cause, that employee's salary shall be set at a step in the new pay range as recommended by the department head and approved by the City Manager or designee.

Transfer. When an employee transfers, or moves, from one position to another position in the same class or another class having the same maximum salary, involving the performance of similar duties and requiring substantially the same basic qualifications that employee's salary shall remain the same.

All actions involving changes in the rate of pay shall be subject to the written approval of the City Manager or designee on a Personnel Action Form. Written approval shall be retained in the employee's personnel file.

5.12 Meal and Rest Periods

The section of The State of California Wages and Hours Order regarding meal and rest periods does not apply to any employee directly employed by any city. However, every attempt will be made to provide meal and rest periods in accordance with The State of California Wages and Hours Order. You may view The State of California Wages and Hours Order at <https://www.dir.ca.gov/IWC/IWCArticle4.pdf>.

5.13 Deductions

Deductions from employees' pay shall be made in accordance with prevailing law, MOU's, and Administrative Rules and Procedures as established by the City Manager and or City Council.

5.14 Uniform & Equipment Allowance

Clothing and/or equipment allowances, as prescribed, shall be payable to employees who are required to wear uniforms or carry certain equipment as set forth in the appropriate MOU.

5.15 Bilingual Pay

On recommendation of the appointing authority and in accordance with the terms and conditions of an employee's respective MOU, the City may approve bilingual pay for an employee whose abilities have been determined by the Administrative Services Director as qualifying to fill positions requiring bilingual speaking and/or writing ability. The Administrative Services Director shall consider the following criteria for granting bilingual pay:

1. Public contact requires the frequent eliciting and explaining of information in a language other than English; or
2. Where translation of written material in another language is a continuous assignment; or
3. The position is in a work location where there is a demonstrated need for frequent language translation in providing services to the public. The City shall review positions

covered by this criterion not less than annually to determine the number and location of positions to be designated as requiring bilingual abilities.

Bilingual pay may be removed at any time when the criteria cease to be met as determined by the appointing authority.

5.16 Acting Pay

Employees who are assigned to and actually perform the duties of a position with a higher salary classification than that in which they are regularly employed will receive the compensation specified for the position to which assigned, in accordance with the terms and conditions of an employee's respective MOU. The increased compensation will be at such step within the higher classification as will accord such employee an increase of at least five percent over his or her current regular compensation.

5.17 Health Insurance

Regular and probationary full time employees are eligible to participate in the City health insurance plan. Coverage shall commence upon the first day of the month following hire date. The Human Resources Department is responsible for administering the plan and will provide employees with enrollment and coverage information at the time of employment and during each open enrollment period.

In accordance with COBRA requirements, retired or terminated regular employees shall be given the opportunity to continue participation in the City's current health insurance plan, if available through the existing program.

5.18 Group Term Life Insurance

Each regular and probationary full time employee shall be a participant in the City's Group Term Life Insurance Plan. Premiums for this plan shall be paid by the City and coverage shall commence upon the first day of the month following hire date. The limits and terms of coverage shall be established by the City and may, from time to time, be adjusted as the City may deem advisable or as determined by the applicable MOU. Group Term Life Insurance shall terminate when an employee terminates employment.

5.19 City Retirement Plan

All regular and probationary employees shall participate in the City retirement plan under the State of California Public Employees Retirement System (CalPERS) provisions for public safety and miscellaneous employees as approved by the City Council. Temporary employees shall be excluded from CalPERS until such time as the employee works 1000 hours in a twelve month

period. Full details of the California Public Employees Retirement System are available at <http://www.calpers.ca.gov> and are subject to change at any time.

CHAPTER 6 ABSENCE CONTROL

6.01 Statement of Policy

Arriving late to work or leaving early in connection with scheduled work times, breaks, or meal periods is prohibited. An employee is required to seek advance permission from his or her supervisor for any foreseeable absence or deviation from regular working hours.

6.02 Employee's Duty to Notify Late Arrival or Absence

An employee who is unexpectedly unable to report for work as scheduled must notify his or her immediate supervisor no later than the scheduled work time and report the expected time of arrival or absence. If the employee's immediate supervisor is not available, the employee must notify the department head. An employee who fails to timely notify the supervisor of absences, or who is not present and ready to work during all scheduled work times may be deemed to have an unauthorized tardy or absence and may not receive compensation for the period of absence.

6.03 Excessive Tardiness/Absenteeism

Excessive tardiness occurs when an employee, without authorization, is late to work or late to return from breaks more than three times during any 30-day period. Excessive absenteeism occurs when the number of absences exceeds four (4) days in any three-month period. Excessive tardiness or absenteeism may be grounds for discipline, up to and including termination. Abuse of, or misrepresentation of any form of accrued or unpaid leave time will be grounds for discipline, up to and including termination.

6.04 Unauthorized Absence

An employee who is absent from his/her assigned work location or schedule without official leave approval from supervisory personnel for four or more consecutive scheduled work days shall be considered absent without authorized leave. In such cases, the City shall deem the job "abandoned" and the employee will be given written notice, at his or her address of record, of the circumstances of the job abandonment, and an opportunity to provide an explanation for the employee's unauthorized absence.

Employees who are absent for non-sick leave related reasons without notice or authorization for less than three days, and who subsequently report to work, shall provide a detailed written explanation for such absence and, regardless of stated reasons, may be subject to disciplinary action up to and including termination.

Unauthorized leave or unexcused absence shall not be compensated in any form by the City, including City sponsored employment benefits.

CHAPTER 7 VACATION LEAVE

7.01 Statement of Policy

The purpose of annual vacation leave is to enable each regular employee to rest from work and return mentally refreshed.

7.02 Vacation Accrual

Vacation shall be accrued and credited on a biweekly basis when an employee is in active pay status. Regular full time employees accrue 80 hours of vacation leave for the first five years; after five years, employees accrue 120 hours of vacation leave.

However, at no time may an employee accrue vacation in excess of 300 hours. When the employee reaches the maximum accrual he/she shall cease earning vacation leave until the balance falls below the maximum accrual.

Vacation leave will not accrue during leaves of absence without pay unless required by law. An employee, who is on an unpaid leave of absence for any portion of a pay period, shall not be eligible to earn vacation leave accruals for that portion of the pay period.

Vacation accrual begins on the first day of employment and ends on the last day of employment. Accruals will be pro-rated for any part of the pay period prior to the first day of employment or past the date of termination.

7.03 Use of Vacation

The time in which an employee may use accrued vacation leave, and the amount to be taken at any one time, shall be determined by the department head with particular regard for the needs of the City, but also insofar as possible considering the wishes of the employee. Employees shall not work for another City department during their vacation in order to earn double compensation.

7.04 Holidays Falling During Vacation

In the event a City holiday falls within an employee's vacation period, said holiday shall not be charged as a vacation day.

7.05 Final Vacation Payout

Employees leaving City service and who have accumulated vacation leave shall be paid the cash equivalent amount of accrued vacation through the date of termination.

CHAPTER 8 SICK, DISABILITY, AND WORKERS COMPENSATION LEAVE

8.01 Statement of Policy

Sick leave is leave from duty which may be granted by the City for the following purposes: (1) diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or any of the following of the employee's immediate family members, as defined in Chapter 2, to the extent that such diagnosis, care, or treatment cannot be scheduled outside the work day; and (2) for an employee who is a victim of domestic violence, sexual assault, or stalking to: i) obtain or attempt to obtain a temporary restraining order or other court assistance to help ensure the health safety or welfare of the employee or his or her child; or ii) obtain medical attention or psychological counseling; services from a shelter; program or crisis center; or participate in safety planning or other actions to increase safety.

8.02 Eligibility

An employee may use accrued sick leave for the purposes stated above. In the event that the purpose for use of sick leave no longer applies to the employee or the employee's immediate family member, then such employee shall notify the appropriate immediate supervisor and be available to return to duty.

In order to request use of sick leave, an employee must give the immediate supervisor reasonable advance written or oral notice. If possible, the employee shall give the immediate supervisor notice within one (1) hour before the time established as the beginning of the employee's work day, unless the City determines that the employee's duties require more restrictive reporting. Failure to provide reasonable advance notice may result in that day of absence being treated as leave of absence without pay.

If the employee is absent on sick leave for more than one (1) day the employee must keep the immediate supervisor informed as to the date the employee expects to return to work.

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

Sick leave will not be granted to any employee to permit an extension of the employee's vacation.

The City may require a physician's certification for any sick leave absence that occurs after the employee has used 24 hours, or three days, whichever is greater, that involves the illness of the employee or family member, and the date of the employee's intended return to work.

Employees will not be permitted to use vacation in lieu of sick leave unless approved by the Department Director. Supervisors have the discretion to place employees on sick leave when, in the judgment of the supervisor, the presence of the employee at work would endanger the health and welfare of other employees or where the illness or injury of the employee interferes with the performance of such employee's duties.

Prior to resumption of normal duties the employee may be required by his/her department head to file a physician's certificate or personal affidavit attesting to the employee's ability to resume work.

8.03 Sick Leave for Full-Time Employees – Accrual

Regular full time employees accrue 80 hours of sick leave per year. Sick leave will not accrue during leaves of absence without pay unless required by law.

An employee who is on an unpaid leave of absence for any portion of a pay period, shall not be eligible to earn sick leave accruals for that portion of the pay period.

Employees leaving City service and who have accumulated sick leave shall not be paid the cash equivalent amount of accrued sick leave.

8.04 Sick Leave for Part-Time, Variable Hour, and Seasonal Employees

All employees who work for 30 or more days within a year from the beginning of employment are entitled to paid sick leave.

Beginning on July 1, 2015, the City will provide each part-time, variable hour, and seasonal employee with three (3) days or twenty-four (24) hours of paid sick leave at the beginning of employment and again each 12-month period. An employee is not eligible to begin using any accrued paid sick leave until after 90 days of employment with the City. Unused paid sick leave may be carried over into the following year while continuously employed, however, paid sick leave is capped at forty-eight (48) hours or six (6) days, whichever is greater.

Part-time, variable hour, and seasonal employees must use sick leave in accordance with this Policy except for Section 8.03.

8.05 Abuse of Sick Leave

An employee is subject to disciplinary action for abuse of sick leave which is defined as a claim of entitlement to sick leave when the employee does not meet the requirements of sick leave as defined in Section 8.02.

8.06 Excessive Use of Sick Leave

Excessive use of unprotected sick leave may be considered in establishing your job performance rating. Unprotected sick leave is leave which is not used in connection with FMLA/CFRA leave, leave due to a reasonable accommodation for a disability, or any other leave that is protected under the law. Excessive use of sick leave, tardiness, and failing to use the call-in procedures when absent or tardy, can negatively impact the performance of your job or affect others in the performance of their job. Factors that will be considered in determining whether use of sick leave is excessive include, but are not limited to, whether the employee has exhausted his/her sick leave, whether the leave taken is protected under the law, whether they employee has a disability, whether absenteeism is limited to a finite time period or whether it continues over time, the basis for the absenteeism and the significance of the impact on the performance of your job or of others.

8.07 Sick Leave without Pay

In the event paid sick leave balances are exhausted, employees may be placed on sick leave without pay if circumstances so warrant in the City's discretion. Employees in such status do not accrue vacation or other benefits, or receive service credit and may be required to pay for all fringe benefits, such as health plan premiums, during the period of their leave without pay (unless the leave qualifies for Family and Medical Leave as set forth in these Rules). When the employee seeks to return to work from such leave, the City may require that the employee provide medical certification of his/her fitness to perform his/her duties. The City may require the employee to undergo a fitness for duty examination before returning to work. If the employee is not fit to perform his/her duties, the City may consider placing the employee in another position, seek the employee's retirement, or separate the employee in accordance with applicable law.

8.08 Return to Work After engaging in the interactive process, employees unable to perform the essential functions of their position, with or without reasonable accommodation, as a result of a physical or psychological illness or injury may:

- i) Be terminated from employment. Employees who are separated pursuant to this section shall be accorded procedural due process (i.e., notice and an opportunity to respond to the intended separation) in accordance with the appeal procedures for disciplinary actions outlined in these rules and procedures. or,
- ii) If disabled, be retired under the Public Employees Retirement System, or
- iii) Be offered the opportunity to resign from the position and be placed on a rehire list for a period not to exceed one (1) year.

Any employee returning to work pursuant to this section shall provide to the Administrative Services department verification from a medical practitioner of his/her ability to return to work and perform the essential functions of his/her position, with or without accommodation. If during the period in which the employee is on the rehire list, the employee is physically and/or psychologically able to resume the duties of his/her previous position and there is a vacant position in the employee's classification, the employee will be entitled to return to that position with all the rights, benefits, and responsibilities of a regular employee. However, an employee on a rehire list shall not accrue seniority. Thus, the employee will return to work with the same amount of seniority held prior to being placed on the rehire list. Placement on the rehire list does not preclude an employee from applying for a disability retirement.

Exceptions: Employees on family and medical care leave, pregnancy disability leave or other statutory leaves will not be terminated or offered the rehire list option in lieu of separation during such leave if separation during such leave would be precluded by law.

Whenever an employee has been given a permanent and stationary rating by the Industrial Accident Commission of the State of California, return to the job must be based on the same medical information that the employee used in order to obtain the award. Unless these medical facts are very carefully considered, subsequent injuries or aggravations of the original injury can occur. It is the policy of the City that an employee can return to duties he/she can perform safely without undue risk or further injury to other employees.

It is, likewise, the policy of the City that if the employee cannot do so or if he/she is unable or unwilling to accept some other vacant position which the employee is psychologically and/or physically and otherwise qualified to perform, his/her employment will be terminated. The medical criteria presented to the Industrial Accident Commission by the employee and his/her doctor shall be obtained and utilized by the City and interpreted in terms of specific job restrictions and limitations. The department director, or his/her designee, will then interpret and apply such job restrictions and limitations to the specific physical and/or psychological requirements of the employee's position and make a recommendation to the Administrative Services Director. A determination shall be made by the Administrative Services Director as to whether or not the employee shall:

- Return to the job.
- Transfer to some other vacant position for which he/she is qualified based upon physical or psychological ability and experience.
- Separate from the City's employment.

8.09 Workers' Compensation

Public Safety Employees

A sworn employee of the Police Department, who is entitled to benefits of Labor Code Section 4850, and is absent from work by reason of an injury or illness covered by Worker's Compensation, shall be allowed a maximum one year leave of absence, as required by his/her condition. Sworn employees are entitled to regular pay for temporary disability caused by an injury or disease arising out of or during the course of employment pursuant to state law. If the disability is determined to be permanent and stationary, the City may file an application for disability retirement.

Regular Employees

Any employee, other than sworn Police Department personnel, who is absent from work by reason of an injury or illness covered by Worker's Compensation, shall be paid in accordance with the status and nature of the injury and applicable state requirements. If the disability is determined to be permanent and stationary, the City may file an application for disability retirement.

CHAPTER 9 OTHER LEAVES OF ABSENCE

9.01 Holiday Leave

The recognized City holidays for pay purposes are as follows or as contained in the employee's applicable MOU:

- January 1 (New Year's Day)
- The third Monday in January (Dr. Martin Luther King, Jr.)
- The third Monday in February (President's Day)
- The last Monday in May (Memorial Day)
- July 4 (Independence Day)
- The first Monday in September (Labor Day)
- November 11 (Veteran's Day)
- The fourth Thursday in November (Thanksgiving Day)
- December 24 (Christmas Eve)
- December 25 (Christmas)
- (1) Floating Holiday

Any other days declared by the President, Governor or Mayor of the City shall be deemed a recognized City holiday. When any day granted as a holiday falls on a Friday, the preceding Thursday shall be considered the holiday; if the holiday falls on a Saturday or Sunday, the following Monday shall be considered the holiday. When consecutive holidays fall on Thursday and Friday, the City may either: recognize the holidays on Wednesday and Thursday; or may recognize the holidays by providing a holiday on Thursday and adding a day of Vacation Leave to the employee's leave balance.

Compensation for Work on Paid Holidays:

Regular full time employees assigned to work on holidays shall receive payment for time worked as provided in the employee's MOU.

9.02 Leave of Absence Without Pay

Unless authorized by law, leave of absence without pay may be granted in cases of emergency or where such absence would not be in contrast to the best interests of the City. Unless authorized by law, such leave is not a right but a privilege.

Leave of absence without pay for one week or less may be granted by the department head, depending upon the merit of the individual case. Leave of absence without pay in excess of one week duration may be granted by the City Manager or designee based upon the merit of the

case, but unless such leave is authorized by law, such leave requested shall not exceed twelve months. Employees on authorized unpaid leave of absence may not extend such leave without the written approval of the City Manager, or designee. Each request shall be evaluated on a case by case basis.

Leave of absence without pay is not a break in service or employment, and rights accrued at the time the leave is granted are retained by the employee. Unless required by law, vacation credits, sick leave credits, increases in salary, all other paid leaves, holidays and fringe benefits and other similar benefits shall not accrue to a person granted such leave during the period of absence. Unless required by law, the City will not maintain contributions toward group insurance or retirement coverage. During the period of such leaves, all service and leave credits shall be retained at the levels existing as of the effective date of the leave. If the employee is able to perform the essential job duties of his or her former position with or without reasonable accommodation, the employee may be reinstated to his or her former position or to a comparable, available one if the former position is abolished during the period of leave.

CalPERS contributions shall not be made by the City for an employee on an unpaid leave of absence. An employee shall file a Leave of Absence form with CalPERS (Form ACC-167) at the time such leave commences. Upon return from leave of absence, employee shall file a Return from Leave form with CalPERS.

9.03 Leave of Absence for Death Within Immediate Family

Leave of absence with pay for a period not to exceed five (5) days may be granted to a regular employee by the department head in the event of death to an employee's immediate family member, as defined in Chapter 2. An employee may use accumulated sick or vacation leave if additional time is needed upon approval of the employee's department head.

9.04 Leave of Absence for Death Outside of Immediate Family

Leave without pay may be granted a regular employee by the department head in the event of death to family members, other than those defined as immediate family in Chapter 2, in accordance with Section 9.03.

9.05 Military Leave of Absence

Military leave shall be granted in accordance with the provisions of state and federal law. An employee requesting leave for this purpose shall provide the department head, whenever possible, with a copy of the military orders specifying the dates, site and purpose of the activity or mission. Within the limits of such orders, the department head may determine when the

leave is to be taken and may modify the employee's work schedule to accommodate the request for leave.

9.06 Voting Leave

If a non-exempt employee does not have sufficient time outside of working hours to vote in a statewide election, the employee may take up to two hours off without loss of pay at the beginning or end of the employee's work day. Prior approval by the employee's supervisor 48 hours before the leave for this time off is required.

9.07 School Related Leave

Any City employee who is a parent, guardian or grandparent having custody of one or more children in kindergarten or grades 1 through 12 or attending a licensed day care facility shall be allowed up to forty (40) hours each school year, not to exceed ten (10) hours in any calendar month of the school year, without pay, to participate in activities of the school of their child. The employee must provide reasonable advance notice of the planned absence. The employee may be required to use vacation and/or compensating time off to cover the absence. The City may require the employee to provide documentation from the school as verification that the employee participated in school activities on a specific date and at a particular time. If both parents, guardians or grandparents having custody work for the agency at the same work site, only the first parent requesting will be entitled to leave under this provision.

9.08 Jury Duty

Employees summoned to court to perform jury service shall be granted a leave of absence with pay from their assigned duties. Pay for jury duty shall be limited to twenty (20) working days in any one calendar year; any extensions of such service must be approved by the City Manager, or designee, whose approval shall not be unreasonably withheld.

Such employees shall notify his/her supervisor or department head as soon as possible of the jury duty. Any employee who is released from jury service prior to the end of his or her scheduled work hours must report to work unless otherwise authorized by his or her supervisor.

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

All exempt employees will continue to receive their normal salary while on jury duty or as serving as a witness only for any work week in which they perform any work duties. The City will offset from pay the amount the employee receives from the Court for jury fees.

9.9 Subpoenas

Employees who are subpoenaed to appear as witnesses in criminal or civil cases, may be granted a leave of absence with pay from assigned duties until released by the Court. The time spent appearing as a witness is not work time for purposes of calculating overtime compensation.

9.10 Worker's Compensation Hearings

Employees who have been injured in the course and scope of their employment with the City and who are required, as a result of such injury, to be absent from duty to take physical examinations required by the City's Worker's Compensation Insurer or the Worker's Compensation Appeals Board to attend hearings, may be granted leave with pay for such absences by the City Manager or designee when such absences are in the best interest of the City and only if the employee is in pay status at the time of the scheduled examination or hearing.

9.11 Time Off For Victims of Violent Crimes, Sexual Assault, Stalking or Domestic Abuse

An employee who has been a victim of a violent crime, sexual assault, stalking or domestic violence may take time off to:

- appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding;
- seek medical or psychological assistance or counseling;
- obtain services from a shelter, program or crisis center or
- participate in safety planning to protect against further assaults.

An affected employee must give the City reasonable advance notice that he or she is required to be absent for a purpose stated above. In cases of unscheduled or emergency court appearances or other emergency circumstances, the affected employee must, within a reasonable time after the appearance, provide the City with written proof that the absence was required for any of the above reasons. Leave under this section is unpaid unless the employee uses vacation or accrued time off.

9.12 Pregnancy Disability Leave

An employee who is disabled because of pregnancy, childbirth, or a related medical condition is entitled to an unpaid pregnancy disability leave for up to four (4) calendar months (one-third of

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

Notice & Certification Requirements

Requests for pregnancy disability leave must be submitted in writing with reasonable advance notice, and must be approved by the employee's supervisor or department director before the leave begins. The request must be supported by a written certification from the attending physician stating that the employee is disabled from working by pregnancy, childbirth or a related medical condition. The certification must state the expected duration of the disability and the expected date of return to work.

All leaves must be confirmed in writing, have an agreed-upon specific date of return, and be submitted to the department director prior to being taken. Requests for an extension of leave must be submitted in writing to the department director prior to the agreed date of return and must be supported by a written certification of the attending physician that the employee continues to be disabled by pregnancy, childbirth, or a related medical condition.

Compensation During Leave

Pregnancy disability leaves are without pay. However, the employee may first use accrued sick leave, vacation leave, and then any other accrued paid time off during the leave.

Benefits During Leave

1. The City will continue to maintain and pay for health insurance coverage for up to four months in a 12-month period beginning on the date the pregnancy disability leave begins while the employee is out on pregnancy disability leave. If the employee does not return to work following pregnancy disability leave, the City may recover premiums it paid to maintain health insurance coverage during the leave unless (a) The employee is taking leave under the California Family Rights Act and the employee chooses not to return to work following the CFRA leave; (b) The employee's inability to return to work is due to the continuation, recurrence, or onset of a health condition that entitles the employee to pregnancy disability leave, unless the employee chooses not to return to work following the leave; (c) The employee has non-pregnancy related medical conditions requiring further leave, unless the employee chooses not to return to work following the leave; or (d) There are other circumstance beyond the control of the employee, including, but not limited to, circumstances where the employer is responsible for the employee's failure to return to work (e.g. the employer does not return the employee to her same position or reinstate the employee to a comparable position), or circumstances where the employee must care for a family member (e.g., the employee gives birth to a child with a serious health condition).

2. Sick and Vacation Leave Accrual: Sick leave and vacation leave do not accrue while an employee is on unpaid pregnancy disability leave.

Reinstatement

1. Upon the expiration of pregnancy leave and the City's receipt of a written statement from the health care provider that the employee is fit to return to duty, the employee will be reinstated to her original or an equivalent position, so long as it was not eliminated for a legitimate business reason during the leave.

2. If the employee's original position is no longer available, the employee will be assigned to an open position that is substantially similar in job content, status, pay, promotional opportunities, and geographic location as the employee's original position.

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

4. An employee who fails to return to work after the termination of her leave loses her reinstatement rights.

9.13 Family Care and Medical Leave

Family-related medical leave shall be granted in accordance with Federal and State law, and resulting administrative provisions developed by the City. The City's current Family Care and Medical Leave policy is attached to this document and adopted as Attachment 1.

CHAPTER 10 TRANSFER, PROMOTION, VOLUNTARY DEMOTION

10.01 Transfer

No person shall be transferred to a position for which such person does not possess the minimum qualifications. Upon approval of the City Manager or designee, an employee may be transferred at any time from one position to another position in the same class.

If the transfer involves a change from one department to another, both department heads must consent to such a transfer unless the City Manager or designee orders the transfer for purposes of economy, efficiency, or if such transfer is in the best interest of the City. Transfers shall not be used to effectuate a promotion or demotion, each of which may be accomplished only as provided in these Rules.

10.02 Promotion

Insofar as consistent with the best interests of the City, vacancies in the classified service may be filled first by promotion from within the organization. If an existing employee is promoted, he/she shall serve a probationary period as set forth in Section 3.11 through 3.14 of these Rules.

If, in the opinion of the City Manager or designee, a position can be better filled by an open competitive examination, the City shall arrange for an open competitive examination and for the preparation and certification of an open competitive employment list.

10.03 Voluntary Demotion

Upon request of the employee, and with the consent of the City Manager or designee, a voluntary demotion may be made to a vacant position. No employee shall be demoted to a position for which he/she does not possess minimum qualifications.

CHAPTER 11 DISCIPLINE

11.01 Disciplinary Policy Statement

Whenever an employee's performance, behavior, work habits, or conduct at any time falls below a desirable level, the supervisor should immediately counsel the employee regarding the deficiency. If appropriate, a reasonable period of time for improvement may be allowed for the employee to improve before initiating formal disciplinary action. In some instances, however, depending on the severity of the conduct, a single incident without any prior history may justify severe disciplinary action. Disciplinary actions shall be documented in the employee's personnel file. If a provision of the disciplinary rules conflicts with the Public Safety Officers' Bill of Rights, the Public Safety Officers' Bill of Rights shall prevail.

11.02 Employee to Give City Notice – Employee Alleged Violation of the Law

It is the responsibility of employees to provide notice to the City when they are convicted of criminal violations of law and/or when they receive any citation that may affect the status of their driver's license if driving is an essential function of their position. Such notice shall be provided in writing within the next business day after the conviction or citation.

11.03 Types of Reprimands and Disciplinary Action

The following reprimands and disciplinary action may be taken against any employee by the City Manager, authorized management, or supervisory personnel. In all cases, disciplinary action may be taken only after reviewed by the Administrative Services Director and with approval of the City Manager or designee.

Reprimand – An oral or written notice of substandard performance or misconduct. The purpose of a reprimand is to provide a direct means of employee performance improvement. A reprimand may be extended to the employee by his/her supervisor at any time. Unless required by law, a reprimand is not subject to the grievance or pre or post discipline procedures described below. The employee should however, have the opportunity to review the reprimand with his/her supervisor. The employee may submit a written response to the reprimand within 10 days of receipt.

Suspension – An involuntary absence without pay for cause. Documents related to a suspension shall become part of the employee's personnel file when the discipline is final. A suspension of more than five days without pay of a for-cause employee is subject to the pre and post discipline procedures described below. Employees who are exempt from Fair Labor Standards Act (FLSA) overtime will only be suspended as authorized by the FLSA.

Salary Reduction – A reduction in pay from the employee’s current step within a pay range to a lower step within that same range, as designated in the City’s compensation plan, for cause. Documents related to a reduction in pay shall become part of the employee’s personnel file when the reduction in pay is final and documented in the performance evaluation. A salary reduction of a for-cause employee is subject to the pre and post discipline procedures described below. Employees who are exempt from the Fair Labor Standards Act (FLSA) overtime requirements are not subject to pay reduction, except loss of accrued vacation, floating holiday, or administrative leave.

Demotion – Reduction from a position in one classification to a position in another classification having a lower salary range for disciplinary purposes, or, from one step to a lower step in the salary range for the same position, for cause. Documents related to a demotion shall become part of the employee’s personnel file when the demotion is final and documented in the performance evaluation. A demotion of a for-cause employee is subject to the pre and post discipline procedures described below.

Dismissal – Discharge from City service for cause. Documents related to the dismissal shall become a part of an employee’s personnel file when the dismissal is final. A dismissal of a for-cause employee is subject to the pre and post discipline procedures described below.

11.04 Causes for Disciplinary Action

Good cause to discipline exists, not only when there has been an improper act or omission by an employee in the employee’s official capacity, but when any conduct by an employee brings discredit to the City, affects the employee’s ability to perform his or her duties, causes other employees to not be able to perform their duties, or involves any improper use of their position for personal advantage or the advantage of others. The type of disciplinary action shall depend upon the seriousness of the offense and the relevant employment history of the employee. Employees may be discipline for, including but not limited to, any of the following causes for disciplinary action:

- Misstatements or omissions of fact in completion of the employment application or to secure appointment to a position with the City;
- Misstatements or omissions of fact during the course of an internal/administrative investigation;
- Furnishing false information in the course of the employee’s duties and responsibilities;
- Inefficiency, incompetence, carelessness or negligence in the performance of duties;
- Violation of safety rules, or reckless or unsafe conduct;
- Violation of any of the provisions of these personnel rules and regulations, department rules and regulations, City policies, ordinances or resolutions;

- Inattention to duty;
- Tardiness or overstaying lunch periods;
- Being under the influence of an intoxicating beverage or non-prescription drug, or prescription drugs not authorized by the employee's physician, while on duty or on City property;
- 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 an authorized supervisor;
- Any violation of the City's Harassment, Discrimination and Retaliation Prevention Policy;
- Unauthorized soliciting on City property;
- Unauthorized absence without leave; failure to report after leave of absence has expired or after a requested leave of absence has been disapproved, revoked or canceled; or any other unauthorized absence from work;
- Conviction of any felony, or a misdemeanor involving moral turpitude, or a violation of a federal, state or local law of which has a nexus to the employee's job duties or brings discredit to the City;
- Discourteous or offensive treatment of the public or other employees;
- Falsifying any City document or record;
- Misuse of City property, improper or unauthorized use of City equipment or supplies; damage or negligence in the care and handling of City property;
- Fighting, assault and/or battery;
- Theft or sabotage of City property;
- Sleeping on the job, except as specifically authorized for twenty-four (24) hour duty personnel;
- Accepting bribes or kickbacks;
- Using your position for financial gain;
- Violation of the City's or a department's confidentiality policies, or disclosure of confidential City information to any unauthorized person or entity;
- Abusive conduct, including malicious verbal, visual or physical actions, or the gratuitous sabotage or undermining of a person's work performance, in person or online;
- Engaging in outside employment which conflicts with an employee's responsibilities or creates a conflict of interest with City work, which causes discredit to the City, negatively impacts the effective performance of City functions, or is not compatible with good public service or interests of the City service;
- Intimidation or interference with the rights of any employee;
- Failure to obtain and/or maintain minimum qualifications for a position, including required licenses or certificates;

- Working overtime without prior authorization or refusing to work assigned overtime;
- Carrying or bringing firearms or other dangerous weapons to the workplace when not required by job duties;
- Any other conduct of similar gravity to the causes for discipline enumerated above as determined by the City.

11.05 Administration of Disciplinary Action

A department head may propose and subsequently take disciplinary action against an employee for cause. For-cause employees shall be served with a notice of proposed discipline outlining the proposed discipline and the employee's right to a Skelly Meeting prior to the imposition of discipline. The notice of proposed discipline will include the following:

- A statement of the proposed disciplinary action.
- The effective date of the proposed discipline
- Summary of the causes upon which the proposed discipline is based.
- A factual summary supporting the causes of proposed discipline.
- A copy of all materials upon which the charges are based.
- A statement advising the employee of his/her right to a Skelly hearing to respond to the notice within 10 working days prior to the imposition of the proposed discipline.
- A statement advising the employee that failure to respond by the time specified constitutes a waiver of the right to respond prior to final discipline being imposed.
- A statement advising the employee of his/her employee's right to have a representative of his or her choice at the Skelly hearing.
- Any other information pertinent to the proposed discipline.

11.06 Pre-Disciplinary "Skelly" Meeting

When the City determines the need to suspend without pay for more than five working days, reduce in salary, demote or to dismiss a for-cause classified regular employee pursuant to these rules, the City shall provide the opportunity for a pre-disciplinary meeting, commonly referred to as a "Skelly Meeting," pursuant to the employee's timely request. All employees other than for-cause employees may be disciplined at will, with or without cause, and without the pre-disciplinary procedures stated below. Prior to the meeting, the employee shall receive notice of the proposed action, as set forth in 12.05.

The employee shall have 10 working days to request a pre-discipline meeting with his/her department head. Failure to request the meeting within 10 working days shall result in the employee's waiver of his/her procedural rights. The meeting is not intended to be a full

evidentiary hearing. The meeting is to be an informal opportunity for the employee to tell his/her side of the story.

Upon the completion of the Skelly meeting, the department head or designee, in conjunction with the Human Resources Department, shall then notify the employee of the decision and discipline to be imposed, if any, in a Notice of Disciplinary Action. This notice shall inform the employee of the following: (a) the discipline action taken; (b) the effective date; (c) the specific charges on which the action is based; (d) a factual summary of the facts upon which the charges are based; (e) the materials upon which the charges are based; and (f) a reference to the employee's right and deadline to appeal. The Notice of Disciplinary Action will be sent by mail method that verifies delivery to the last known address of the employee, or delivered to the employee in person. If the notice is not deliverable because the employee has moved without notifying the City or the employee refuses to accept delivery, the effective date of discipline will be the date the post office or delivery service attempted delivery.

11.07 Appeal of Disciplinary Actions

For a suspension of more than five working days, reduction in salary, demotion or dismissal of a for-cause classified regular employee pursuant to these rules, the employee shall have the right to appeal the discipline. All employees other than for-cause employees may be disciplined at will, with or without cause, and without the disciplinary appeal procedures stated below. The notice of appeal must be received within seven (7) calendar days from the date of the final notice of discipline, or the right to an appeal under these Rules shall be forfeited and the discipline shall become final.

The appeal shall be heard by an independent hearing officer to be selected by the City. The costs of the hearing officer shall be borne by the City. Either party may request that the matter be transcribed, and the requesting party shall bear the expense of the transcript and court reporter's fees. If the transcript is jointly requested by both parties, both parties will share equally in the expense of the transcript and court reporter's fees.

The hearing officer shall have the authority to convene the hearing, receive evidence through testimony and documents and to make findings of fact and conclusions about the discipline. Within two (2) months of the close of the hearing, the hearing officer shall serve a recommended decision to the City Manager and the employee. The hearing officer's decisions must contain detailed findings of fact relating to the disciplinary charges. The decision may include a recommendation regarding outcome, but the final decision regarding discipline rests with the City Manager or designee.

After consideration of the hearing officer's recommended decision, the City Manager or designee shall issue a final decision in writing. The City will mail a copy of the final decision,

along with a proof of service of mailing that confirms that each of the parties and each of the parties' representatives were mailed the final written findings and decision. It shall be the responsibility of the employee to inform the City of his/her address. The City Manager or designee's decision is reviewable by administrative writ of mandamus within the timeframes established by law.

Private or Public Hearings

All appeal hearings shall be private, provided that the employee may request a hearing open to the public. Any request for an open hearing shall be submitted at least five (5) working days prior to the hearing date or the hearing shall be closed.

Pre-Hearing Procedure

1. Subpoenas

The hearing officer may issue subpoenas at the request of either party prior to the commencement of the hearing, upon showing good cause. Each party is responsible for serving his/her/its own subpoenas. The employee shall serve subpoenas of City employees with the City Manager's office. It shall be the responsibility of the employee and the City to serve subpoenas on individuals who are not currently employed by the City. It shall be the responsibility of the employee and the City to submit the names of current City employees to be subpoenaed at least ten (10) working days before the date of the hearing in which they are requesting witnesses to appear.

2. Exhibits and Witness Lists

At least five (5) working days prior to the date set for the hearing, each party shall serve upon the other party and submit to the hearing officer, a list of all witnesses and a list and copy of all exhibits. An original and three (3) copies of the exhibits shall be presented to the Administrative Services Department in three hole notebooks, tabbed down the side with the exhibit numbers. The City's exhibits shall be designated by number. The employee's exhibits shall be designated by alphabetical letter. Neither party shall be permitted to call, during the hearing, a witness not identified pursuant to this Section, nor use any exhibit not provided pursuant to this Section, unless that party can show that they could not reasonably have anticipated the prior need for such witness or such exhibit.

Record of Proceedings and Costs

1. Court Reporter

All disciplinary appeal hearings may, at the discretion of either party, be recorded by a court reporter. Any hearing which does not utilize a court reporter shall be recorded by audiotapes. If a court reporter is requested by either party, that party shall pay the cost of the court reporter. If both parties request a court reporter, the cost shall be divided equally and paid for by both parties. If the City requests the court reporter, the City shall pay the cost of the reporter.

2. Employee Witness Compensation

Employees of the City, subpoenaed to testify during working hours, shall be released with pay to appear at the hearing. The City may direct that these employees remain on call until called to testify. Employees subpoenaed to testify during non-working hours shall be compensated for the time actually testifying, unless the City agrees to a different arrangement.

Conduct of the Hearing

1. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner most conducive to determination of the truth.
2. Any relevant evidence may be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper admission of such evidence over objection in civil actions.
3. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence that shall not be sufficient in itself to support a finding unless it would be admissible despite objection in civil actions.
4. The rules dealing with privileges shall be effective to the same extent that they are now or hereafter recognized in civil actions.
5. Irrelevant and unduly repetitious evidence may be excluded.
6. The hearing officer shall determine relevancy, weight and credibility of testimony and evidence. Decisions made by the hearing officer shall not be invalidated by any informality in the proceedings.
7. During examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon motion of either party.

Burden of Proof

In a disciplinary appeal, the City has the burden of proof by preponderance of the evidence.

Presentation of the Case

The hearing shall proceed in the following order, unless the hearing officer for special reason directs otherwise:

- The City shall be permitted to make an opening statement.
- The appealing party (employee) shall be permitted to make an opening statement, or reserve an opening statement until presentation of their case.
- The City shall produce its evidence.
- The party appealing from such disciplinary action (employee) may then offer his/her evidence.
- The City followed by the appealing party (employee) may offer rebutting evidence.
- Closing arguments shall be permitted at the discretion of the hearing officer. The City shall have the right to argue first, and to reserve a portion of its time for rebuttal. The hearing officer may place a time limit on closing arguments. The hearing officer or the parties may request the submission of written briefs. After the request for submittal of written briefs, the hearing officer shall determine whether to allow the parties to submit written briefs and determine the number of pages of said briefs.

Procedure for the Parties

The parties shall address their remarks, including objections, to the hearing officer. Objections may be ruled upon summarily or argument may be permitted. The hearing officer may terminate argument at any time and issue a ruling regarding an objection or any other matter, and thereafter the party shall continue with the presentation of his/her case.

Right to Control Proceedings

While the parties are generally free to present their case in the order that they prefer, the hearing officer has the right to control the proceedings including, but not limited to, altering the order of witnesses, limiting redundant or irrelevant testimony, or by the direct questioning of witnesses. The hearing officer may obtain the assistance of legal counsel during the hearing, the cost of which shall be borne by the City.

Hearing Demeanor and Behavior

All parties and their attorneys or representatives shall not, by written submission or oral presentation, disparage the intelligence, ethics, morals, integrity or personal behavior of their adversaries.

Deliberation Upon the Case

The hearing officer shall consider all oral and documentary evidence, the credibility of the witnesses, and other appropriate factors in reaching his/her decision.

Written Findings and Decision

The hearing officer shall render his/her findings and recommendations as soon after the conclusion of the hearing as possible, and in no event, later than fifteen (15) working days after concluding the hearing, unless otherwise stipulated to by the parties. A finding must be made by the hearing officer on each material issue.

The City Manager or designee shall review the findings and recommendations of the hearing officer, and may sustain, reject or modify any or all of the charges and disciplinary action filed against the employee. If the City Manager or designee rejects or modifies the discipline, the employee may be entitled to back pay minus the sum the employee earned during the period of absence. If a dismissal is not sustained, the decision shall set forth an effective date the employee is to be reinstated.

Judicial Review

1. Petition for Writ of Mandate.

The decision of the City Manager or designee shall be final for all purposes within the City's administrative procedures. Judicial review of the decision of the City Manager or designee may be made pursuant to requirements set forth in California Code of Civil Procedure section 1094.5.

2. Pursuant to Code of Civil Procedure section 1094.6 any such petition shall be filed not later than the ninetieth (90) day following the date of the proof of service of mailing of the decision by the City Manager or designee.

11.08 Failure of Employee to Appear at Hearing

Failure of the appellant or his/her representative to appear at the time and place set for the hearing shall be deemed a withdrawal of his/her appeal and the discipline shall be final.

11.09 Effect of Certain Reprimands and Disciplinary Actions

1. Oral Reprimand – Employees receiving an oral reprimand may have it noted in their departmental record by the department head.
2. Written Reprimand – employees receiving a written reprimand shall have a copy of their reprimand filed in his/her permanent record. Each employee’s permanent record is included in his/her personnel file maintained by the City.
3. Suspension – Employees suspended from the municipal service shall forfeit all rights, privileges, and salary while on such suspension with the exception of group health and life insurance benefits.
4. Discharge – Employees who are terminated shall receive payment for accumulated leave in accordance with their applicable MOU. Terminated employees shall be given the right to extended health benefits through COBRA according to Section 5.15 of these Rules.

11.10 Confidential Information

Personnel actions and issues shall be handled in a confidential manner to the extent permitted by law. The following shall prevail regarding the release of information to the news media or other outside entities/persons on personnel actions unless the law requires otherwise.

1. No information shall be released without prior approval of the City Manager, or designee.
2. No information shall be released until final action has been determined and taken.
3. Even after final disposition of the matter, no details shall be released other than the exact nature of the action taken.
4. The City Manager or designee shall be custodian of all background investigation material. Such information shall be released as authorized by the City Manager or designee.

CHAPTER 12 GRIEVANCE

12.01 Purpose

The purposes of the grievance procedures are set forth as follows:

1. To promote improved employer-employee relations by providing a prompt and effective means of resolving employee grievances at the lowest possible level in the organization, and in order to provide a means of communication through which an employee may express a complaint or dissatisfaction as to matters subject to the grievance procedures.
2. To afford employees, individually or through qualified employee organizations, a systematic means of obtaining further consideration of problems after every other reasonable effort has failed to resolve them through discussions.
3. To provide that grievance shall be heard and settled as informally as possible.

This grievance procedure shall be available to every employee without fear of reprisal and regardless of his/her membership or non-membership in an employee organization.

12.02 Matters Subject to Grievance Procedures

Employees shall have the right to grieve an alleged violation, misinterpretation or inequitable application of the Personnel Rules and Regulations, applicable portions of a Memorandum of Understanding under which his/her classification is represented.

Matters not subject to grievance include those for which an alternate dispute resolution procedure applies, a procedure defined in these Rules and/or City rights and responsibilities as afforded by law applies, and the following:

1. Content of employee evaluations;
2. Challenge to a reclassification, reduction in force, transfer or denial of a merit increase;
3. Challenge to tests/examinations or appointment to positions; and
4. Disciplinary action pursuant to Chapter 12.

A concern is not a grievance unless the affected employee is able to state each of the following: the date of the alleged violation; the specific provision(s) of the rule, policy or provision that were allegedly violated; a description of all facts regarding how the alleged violation occurred; and a list of all persons who are witnesses or are involved. The grievant may use a City form to make the Statement of the Grievance. The grievance form must be signed by the employee filing the grievance to certify that it is filed in good faith.

12.03 Grievance Procedure

1. Step I Informal Resolution – An employee who has a grievance shall first discuss the matter informally with his/her immediate supervisor or department head no later than 14 calendar days after the grievant first becomes aware of the facts or circumstances resulting in the filing of the grievance.

2. Step II Department Head – If, after such discussion, the employee believes that the grievance has not been resolved to the employee’s satisfaction, the employee may file his/her grievance in writing to his/her department head within 28 calendar days after the grievant first becomes aware of the facts or circumstances resulting in the filing of the grievance. The department head shall render his/her decision and comments in writing and furnish them to the employee within fifteen (15) calendar days after receiving the written statement of grievance.

3. Step III City Manager – If the employee does not agree with the written decision of his/her department head, or if no written decision has been rendered within fifteen (15) calendar days after the filing of the grievance report with the department head, the employee may file a written appeal with the City Manager or designee. The failure of the employee to file such appeal within ten (10) calendar days after receipt of the decision rendered, or after fifteen (15) calendar days from the filing of the grievance if no decision has been rendered, will constitute a withdrawal of the grievance. Upon receiving the appeal, the City Manager or designee shall review it, discuss it with the employee and with the employee’s department head, and make such other investigation as he/she shall deem necessary. Within fifteen (15) calendar days after receiving the appeal he/she shall render his/her decision and comments in writing and deliver a copy of the same to the employee. The City Manager or designee’s decision shall be final.

12.04 Conduct of Grievance Procedure

Failure of the City to comply with the time limits of the grievance procedures allows the grievant to appeal to the next level of review. Failure of the grievant to comply with the time limits of the grievance procedures constitutes settlement and resolution of the grievance on the basis of the last disposition. The time limit specified above may be extended to a definite date by mutual agreement of the employee and reviewer concerned. The employee may request the assistance of another person of the employee’s choosing in preparing and presenting the grievance at any level of review. The employee and the employee’s representative, if any, may use a reasonable amount of work time as determined by the appropriate department head in conferring about and presenting the appeal.

CHAPTER 13 HARASSMENT, DISCRIMINATION AND RETALIATION PREVENTION POLICY

13.01 Purpose

The City has a strong commitment to prohibit and prevent discrimination, harassment, and retaliation in the workplace. This Policy sets forth the City's policy and procedure for investigating and resolving internal complaints. The employer encourages all covered individuals to report—as soon as possible—any conduct that is believed to violate this Policy.

13.02 Policy

The City has zero tolerance for any conduct that violates this Policy. Conduct need not arise to the level of a violation of law to violate this Policy. Instead a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions.

Harassment or discrimination against an applicant or employee by a supervisor, management employee, elected or appointed official, co-worker, member of the public, or contractor on the basis of race, religion, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, disability, medical condition, genetic characteristics or information, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), or any other protected classification as defined below, will not be tolerated.

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

Disciplinary action or other appropriate sanction up to and including termination will be instituted for prohibited behavior as defined below.

Any retaliation against a person for filing a complaint or participating in the complaint resolution process set forth in this Policy is prohibited. Individuals found to be retaliating in violation of this Policy will be subject to appropriate sanction or disciplinary action up to and including termination.

13.03 Definitions

Protected Classification:

This Policy prohibits harassment or discrimination because of an individual's protected classification. "Protected Classification" includes race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breast feeding), national

origin; ancestry, citizenship status, marital status, age, medical condition, genetic characteristics or information, marital status, age, sexual orientation, and military or veteran status.

Covered Individuals:

The individuals covered by this policy are: applicants, employees regardless of rank or title, elected or appointed officials, interns, volunteers, and contractors.

Policy Coverage:

This Policy prohibits the harassment and discrimination of a covered individual because of: 1) an individual's protected classification; 2) the perception that an individual has a protected classification; or 3) the individual association with a person who is an actual or perceived member of a protected classification.

Discrimination:

This policy prohibits treating individuals differently because of the individual's protected classification as defined in this Policy.

Harassment:

This Policy prohibits harassment, which may include, but is not limited to, the following types of unwelcome or offensive behavior that is based on or related to a person's protected classification. Note that harassment is not limited to conduct that City employees take. Under certain circumstances, harassment can also include conduct taken by those who are not employees, such as elected officials, appointed officials, persons providing services under contracts, or even members of the public.

Speech, such as epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This might include inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, or race oriented stories and jokes.

Physical acts, such as assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied job threats or promises in return for submission to physical acts.

Visual acts, such as derogatory posters, cartoons, emails, pictures or drawings related to a protected classification.

Unwanted sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment.

13.04 Guidelines for Identifying Harassment

To help clarify what constitutes harassment in violation of this Policy, the following guidelines may be relied upon:

1. Harassment includes any conduct which would be "unwelcome" to an individual of the recipient's same protected classification and which is taken because of the recipient's protected classification.
2. It is no defense that the recipient appears to have voluntarily "consented" to the conduct at issue. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized.
3. Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. Small, isolated incidents might be tolerated up to a point. The fact that no one is complaining now does not preclude anyone from complaining if the conduct is repeated in the future.
4. Even visual, verbal, or physical conduct between two employees who appear to welcome the conduct can constitute harassment of a third applicant, officer, official, employee, or contractor who observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at an individual.
5. Conduct can constitute harassment in violation of this Policy even if the individual engaging in the conduct has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual of the recipient's same protected classification would find it offensive (e.g., gifts, over attention, endearing nicknames).

13.05 Retaliation

The Policy prohibits retaliation, which is any adverse conduct taken against a covered individual because of the individual's protected activity. "Protected activity" includes: making a request for an accommodation for a disability; making a request for accommodation for religious

beliefs; making a complaint under this Policy; opposing violations of this Policy; or participating in an investigation under this Policy. "Adverse conduct" includes but is not limited to: taking sides because an individual has reported harassment or discrimination, spreading rumors about a complaint, shunning and avoiding an individual who reports harassment or discrimination, or real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination.

13.06 Complaint Procedure

1. A covered individual who believes he or she has been harassed may make a complaint verbally or in writing with any of the following:
 - Immediate supervisor;
 - Any supervisor or manager within or outside of the department;
 - Department head; or
 - Administrative Services Director.

There is no need to follow the chain of command.

2. Any supervisor or department head who receives a harassment complaint should notify the Administrative Services Director immediately.
3. Upon receiving notification of a harassment complaint, the Administrative Services Director shall:
 - Authorize and supervise the investigation of the complaint and/or investigate the complaint. The investigation will include interviews with: 1) the complainant; 2) the accused harasser; and 3) other persons who have relevant knowledge concerning the allegations in the complaint.
 - Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, discrimination, or retaliation giving consideration to all factual information, the totality of the circumstances, including the nature of the conduct, and the context in which the alleged incidents occurred.
 - Report a summary of the determination as to whether a violation of this Policy has occurred to appropriate persons. If discipline or remedial actions are imposed, the level of discipline or remedial actions will not be communicated to the complainant.

- If conduct in violation of this Policy occurred, take or recommend to the appointing authority prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.
 - Take reasonable steps to protect the complainant from further harassment, discrimination, or retaliation.
 - Take reasonable steps to protect the complainant from retaliation as a result of communicating the complaint.
4. The employer takes a proactive approach to potential Policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination, or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation.
 5. Option to Report to Outside Administrative Agencies: An individual has the option to report harassment, discrimination, or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These administrative agencies offer legal remedies and a complaint process. The nearest offices are listed in the government section of the telephone book or employees can check the posters that are located on employer bulletin boards for office locations and telephone numbers.

13.07 Confidentiality

Every possible effort will be made to assure the confidentiality of complaints made under this Policy. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. As a result, confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Administrative Services Director. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction. An employee may discuss his or her interview with a designated representative. The City will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.

13.08 Responsibilities

Managers and Supervisors are responsible for:

- Informing employees of this Policy.

- Modeling appropriate behavior.
- Taking all steps necessary to prevent harassment, discrimination, and retaliation from occurring.
- Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
- Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.
- Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
- Informing those who complain of harassment or discrimination of his or her option to contact the EEOC or DFEH regarding alleged Policy violations.
- Assisting, advising, or consulting with employees and the Human Resources Director regarding this Policy and Complaint Procedure.
- Assisting in the investigation of complaints involving employee(s) in their departments and, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with employer Personnel Rules, up to and including discharge.
- Implementing appropriate disciplinary and remedial actions.
- Reporting potential violations of this Policy of which he or she becomes aware, regardless of whether a complaint has been submitted, to the Human Resources Department or the department head.
- Participating in periodic training and scheduling employees for training.

Each employee or contractor is responsible for:

- Treating all employees and contractors with respect and consideration.
- Modeling appropriate behavior.
- Participating in periodic training.
- Fully cooperating with the employer's investigations by responding fully and truthfully to all questions posed during the investigation.
- Maintaining the confidentiality of any investigation that the employer conducts by not disclosing the substance of any investigatory interview, except with a designated representative or as directed by the department head or Administrative Services Director.

- Reporting any act he or she believes in good faith constitutes harassment, discrimination, or retaliation as defined in this Policy, to his or her immediate supervisor, or department head, or Administrative Services Director.

13.09 Dissemination of Policy

All employees shall receive a copy of this Policy when they are hired. The Policy may be updated from time to time and redistributed. Disciplinary action taken shall be in accordance with City rules and the employee's applicable MOU.

CHAPTER 14 REASONABLE ACCOMMODATION POLICY

14.01 Policy

The City provides employment-related reasonable accommodations to:

- Qualified individuals with disabilities within the meaning of the California Fair Employment and Housing Act and the Americans with Disabilities Act;
- Employees with conditions related to pregnancy, childbirth, or a related medical condition, if she so requests, and with the advice of her health care provider;
- Employee victims of domestic violence, sexual assault, or stalking to promote the safety of the employee victim while at work; and
- Employees who request reasonable accommodation to address a conflict between religious belief or observance and any employment requirement.

14.02 Procedure

Request for Accommodation

An employee who desires a reasonable accommodation in order to perform essential job functions should make such a request, preferably in writing, to the Human Resources Department. The request must identify: a) the job-related functions at issue; and b) the desired accommodation(s).

Reasonable Documentation of Disability

Following receipt of the request for a reasonable accommodation for a disability, the Human Resources Department may require additional information, such as reasonable documentation of the existence of a disability and the need for reasonable accommodation, along with the name and credentials of the individual's health care provider. If the individual provides insufficient documentation, the City will: 1) explain the insufficiency; 2) allow the employee or applicant to supplement the documentation; and 3) pursue the interactive process only to the extent that the request for reasonable accommodation is supported by the medical documentation provided.

Fitness for Duty Examination

The City may require an applicant or employee to undergo a fitness for duty examination at the City's expense. The City may also require that a City-approved physician conduct the examination. The examination will be limited to determining whether the applicant or

employee can perform the essential functions of his/her position and any work restrictions and/or functional limitations that apply to the applicant or employee. The health care provider will examine the employee and provide the City with non-confidential information regarding whether: (a) the applicant or employee has a disability within the meaning of the California Fair Employment and Housing Act; (b) the applicant or employee is fit to perform essential job functions; (c) workplace restrictions or functional limitations apply to the applicant or employee, and the duration of the work restrictions or functional limitations; (d) there are any reasonable accommodations that would enable the employee to perform essential job functions; and (e) the employee's continued employment poses a threat to the health and safety of him or herself or others.

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

Interactive Process

The City will initiate the interactive process when:

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

- An employee requests an accommodation to address a conflict between religious belief, observance, or practice and any employment requirement; or
- An employer is aware of the need for a reasonable accommodation for an employee's or applicant's religious beliefs, observance or practices.

The City will arrange for a discussion, in person or via telephone conference call, with the applicant or employee, and his or her representative(s), if any. The purpose of the discussion is to work in good faith to fully consider all feasible potential reasonable accommodations.

Case-by-Case Determination

The City will consider accommodations that the applicant or employee suggests, but shall determine, in its sole discretion, whether reasonable accommodation(s) can be made, and the type of accommodation(s) to provide. In determining whether reasonable accommodation(s) may be provided, the City will consider whether the accommodation(s) would pose an undue hardship upon City finances or operations, or would endanger the health or safety of the employee or others. The City will inform the employee of its decision as to reasonable accommodation(s) in writing.

CHAPER 15 WHISTLEBLOWER POLICY

15.01 Definitions

For purposes of this policy, “Whistleblowing” refers to an person’s disclosure of information to any government or law enforcement agency, including to the City, that the employee has reasonable cause to believe discloses a violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation. “Whistleblower” refers to the person who discloses said information.

15.02 Reporting Process

Any person having information that he/she has reasonable cause to believe discloses a violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation must report such information to the City Manager, Administrative Services Director, or to Human Resources, who shall investigate and report their findings to the City Attorney.

Such information may include, but is not limited to a matter involving: corruption; unethical practices; violation of City, County, State or Federal laws or regulations; fiscal irregularities; economic waste; or any action involving, but not limited to, mismanagement, waste of funds, abuse of authority, danger to the public safety or health, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, malicious prosecution, misuse of government property, or willful omission to perform duty; or gross misconduct, incompetency, or inefficiency occurring in any City department or agency or any contractor (in the course of performing City business).

If an employee has information that he/she has reasonable cause to believe discloses a violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation, the employee should use the following guideline for reporting:

- If the matter does not involve an immediate supervisor then an employee can report the concern to him/her.
- If the matter does involve an immediate supervisor or, if an employee prefers, he/she may report the concern to the next person in the chain of command up to and including the Department Head.
- If an employee believes that multiple levels in the chain of command may be involved or, if the employee prefers, an employee may go to the level with which he/she feels most comfortable including the Administrative Services Director, the City Manager or the City Attorney.
- The employee may also make a report to the appropriate County, State, or Federal Agency, or the Attorney General’s Whistleblower Hotline number, (800)952-5225.

A whistleblower who reports information above may be interviewed as part of an investigation by those to whom he/she reports the information. An employee who knowingly makes a false report may be subject to disciplinary action, up to and including termination.

The City may elect to refer the information from a whistleblower to an appropriate public agency for potential investigation before any internal investigation is undertaken by the City relevant to employee misconduct.

15.03 Confidentiality

Insofar as possible, the confidentiality of the whistleblower will be maintained. However, an employee's identity may have to be disclosed to conduct a thorough investigation, to comply with the law and to provide accused individuals their legal rights of defense.

15.04 Retaliation Prohibition

The City prohibits the following:

- Taking any retaliatory adverse employment action against a whistleblower or an employee, official or applicant whose family member has, or is perceived to have engaged, in whistleblowing;
- Preventing an employee official or applicant from engaging in whistleblowing; and
- Taking any retaliatory adverse employment action against an employee official or applicant for refusing to participate in any activity that would result in violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation.

An "adverse employment action" as used in this Policy may include, but is not limited to any of the following:

- Real or implied threats of intimidation to attempt or prevent an individual from reporting alleged wrongdoing.
- Refusing to hire an individual.
- Denying promotion to an individual.
- Taking any form of disciplinary action.
- Extending a probationary period.
- Altering work schedules or work assignments.
- Condoning hostility and criticism of co-workers and third parties.
- Spreading rumors about a person.
- Shunning or unreasonably avoiding a person.

An employee, official or applicant who feels he or she has been retaliated against in violation of this Policy should immediately report the conduct according to the complaint procedure in the City's Harassment, Discrimination and Retaliation Prevention Policy so that the complaint can

be resolved fairly and quickly. Supervisors and Managers have the same responsibilities as defined in the Harassment, Discrimination and Retaliation Prevention Policy.

For any questions regarding this Policy please contact the Administrative Services Director.

CHAPTER 16 TRAVEL POLICY

16.01 Background

The City of Desert Hot Springs acknowledges that City staff and officials may attend meetings, seminars, conferences and training sessions to promote the opportunity to discuss the community's concerns with state and federal officials; participate in regional, state and national organizations whose activities affect the City; to improve staff and officials' technical & professional skill and information levels; and promote public service and morale. To conserve City resources and keep expenses within community standards for staff and officials, expenditures for City-related business should adhere to the guidelines set forth in this policy. The policy will supplement the definition of actual and necessary expenses for purposes of state laws relating to the use of public resources and federal and state income tax laws. Accordingly, the City will reimburse authorized costs associated with official travel and expenses incurred in conjunction with such offsite/"out of City" events pursuant to this policy and the law.

16.02 Policy

City employees shall not incur any cost relating to traveling to, or attendance of, a meeting, seminar, conference, training course, workshop, or similar meeting for City-related business without first obtaining Department Director and/or City Manager approval. Likewise, no expenditures will be authorized in excess of approved amounts.

Travel Expense Reports, which are available on the City's Intranet and in the Administrative Services Department, must be submitted to the Administrative Services Department with all required approval signatures within ten days of returning from travel. Failure to submit travel expense reports in a timely manner may result in the employee not being reimbursed for expenses incurred.

Personal and other non-work related expenses that the City will not reimburse include, but are not limited to the following examples;

1. Personal expenses of any trip;
2. Political or charitable contributions or events;
3. Family expenses, including partner's expenses when accompanying employee, as well as children or pet related expenses;
4. Entertainment expenses (theater, movies, sporting events, or cultural events);
5. Non-mileage personal automobile expenses; and

6. Personal losses incurred while on City business.

NOTE: Receipts or other substantiating documentation must accompany all requests for reimbursements in the Travel Expense Report. Failure to provide receipts or other substantiating documentation may result in the denial of the request for reimbursement.

16.03 Transportation

Authorized travel shall be by the most cost effective, appropriate means of transportation available. When the use of a personal vehicle is authorized, reimbursement for mileage shall be at the current IRS rate.

NOTE: Reimbursable mileage for personal vehicle use includes only that mileage in excess of an employee's normal commute to and from his or her regular workplace.

All air travel shall be at the coach class or equivalent service. Every effort should be made to take advantage of special fares, group rates, etc. If the employee wants to upgrade they will be responsible for any increase in cost above coach class.

Private automobile use to and from the airport may be submitted for reimbursement in accordance with the provisions herein. Employees or officials that receive an auto allowance will not be reimbursed for mileage under 70 miles from Desert Hot Springs City Limits.

Use of a rental vehicle at an employee's travel destination must be approved in advance, and should only be approved if alternate transportation is determined to be more expensive or impractical. Failure to obtain prior approval may result in this expense not being reimbursed. When practical, courtesy shuttle services or buses should be used to travel from the airport to meeting or hotel locations.

If advance approval has been obtained, a traveler may use surface transportation for personal reasons even though air travel is the appropriate mode of transportation. Such costs shall not exceed the cost of airfare, based on the lower of the regular coach fare available for the location of travel from a standard commercial air carrier, plus transportation costs to and from the terminals.

16.04 Lodging

Lodging costs will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. Reservations for lodging should be made by the employee in advance to ensure safe, clean, and quality accommodations at the most economical rate. Lodging costs should not exceed the group rate published by the conference sponsor for the meeting in question. Lavish or oversized accommodations cannot be justified. Accommodations should be identified at the earliest opportunity to allow the City to pay for these expenses directly. When available, conference headquarter hotels are encouraged, as they eliminate transportation costs to and from meeting sites. Lodging expenses for non-authorized personnel are strictly prohibited, and may not be submitted for reimbursement. Reimbursement for lodging shall be based on receipts submitted for the actual cost of the lodging, including taxes and service charges.

16.05 Meals

Meal expenses and gratuities should be moderate. When meals are offered as part of a "conference package," reimbursement will not be provided for meals taken in place of conference meals. When using a credit card for meals, names of guests must be written on the receipt. Likewise, reimbursement to the City from the employee for non-business guests must be made at the time the credit card receipts and reimbursement forms are submitted (before payment is made). Alcohol is not a reimbursable expense. If alcohol is consumed, a separate bar bill should be requested. This bill should not be part of reimbursement requested on the travel expense report.

Itemized receipts must be submitted with the expense report.

16.06 Telephone / Fax / Wiring

City staff and officials' will be reimbursed for actual telephone and fax expenses incurred on City business. Official business telephone charges and two (2) personal telephone calls per full day of travel (not to exceed \$10.00 per day), which are included in the lodging bill, may also be submitted for reimbursement.

Employees with City issued wireless phones are to use their City phone instead of the hotel's phone whenever possible.

16.07 Spouse Travel

All expenses incurred by spouses (or other non-employees) who accompany staff or officials on City-related business travel are personal expenses and shall not be reimbursed by the City. City staff and officials must keep all spouse expenses incurred separate from City expenses.

16.08 Lobby Expenses

City officials and staff only shall be reimbursed expenses associated with lobbying the legislature or members of Congress and the Senate.

16.09 Other Expenses

Registration

Whenever practical, pre-registration should be used and costs paid directly by the City in advance of the scheduled event. If pre-registration is not practicable and the City official or employee must pay registration costs, the actual cost of registration will be reimbursed upon submittal of a receipt from the conference sponsor.

Reimbursement Limit

The "reimbursement limit" amount for each full day involved in travel on City business for distances over 70 miles from City limits shall be \$75 per day. A "full day" is defined as travel and training involving more than twelve (12) consecutive hours of travel and conference time. Less than twelve (12) consecutive hours is defined as a half day and the reimbursement limit will then be computed at half rate. Receipts for expenses are always required. The reimbursement limit is intended to cover all expenses other than registration, transportation, and lodging.

Advance Per Diem

For purposes of this policy, advance per diem is that amount advanced to a City official or employee to cover all reimbursable expenses other than registration, transportation, and lodging incurred when traveling more than 70 miles from the City on City business. The per diem limit to be advanced is the same as the reimbursement limit defined above, and will generally be authorized only for multiple-day conferences. The maximum advance authorized shall not exceed \$400 and shall be approved by the appropriate Department Director as well as the Administrative Services Director prior to a disbursement of funds. Failure to provide receipts within ten days of returning may result in the employee reimbursing the City for all funds advanced. Any unused advance must be returned to the Senior Accountant within two

business days of returning along with an expense report and receipts documenting how the advance was used in compliance with the expense policy.

Airport Parking

Long-term (economical) parking should be used for travel exceeding 24-hours.

Other

Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed.

16.10 General Guidelines

The City Credit Card is maintained in the Administrative Services Department and locked in the vault for safekeeping. It is available for use for City business expenses only. The card is generally used to secure City expenses for registration for conferences/meetings, travel expenses, and lodging. Receipts for credit cards must be submitted with the employee's travel expense report within ten days of returning from travel. Failure to do so may jeopardize that employee's future travel reimbursements until the outstanding travel report is reconciled by the Administrative Services Department.

If an employee desires to remain at a conference/meeting location for personal business or pleasure, reimbursement is not eligible for those extra days.

Local car rentals are not permissible, unless approved in writing in advance by the City Manager or designee.

A written report is required to accompany the request for reimbursement on skills learned, information gathered or actions taken at the conferences/meetings.

Any exceptions to this policy may be approved in writing by the City Manager or designee.

16.11 Travel Authorization

Business or conference travel requests estimated to exceed \$100 should be submitted in advance with department annual budget request, when these expenses can be anticipated for the upcoming fiscal year. Authorization for expense reimbursement shall be of actual and necessary expenses incurred in the performance of official duty. If approval for travel expenses is not obtained prior to an employee's traveling, then the employee may not receive reimbursement for expenses incurred.

Expenses incurred when traveling to high cost areas that exceed limits set by this policy may be reimbursed when approved in writing by the City Manager or designee. The City will follow the IRS guidelines governing high cost areas.

16.12 Fair Labor Standards Act (FLSA)

Employees shall be compensated for time spent attending lectures, meetings, training programs, or similar activities when the training is directly related to an employee's job. Training is directly related to the employee's job if it is designed to make the employee handle his/her job more effectively, as distinguished from training for another job, or for a new or additional skill. Employees shall not attend lectures, meetings, training programs, or similar activities that are directly related to the employee's job when the activity is scheduled outside of the employee's regular working hours unless directed by the employee's department director. In such cases, non-exempt employees may be entitled to overtime compensation in accordance with these Rules and Regulations with respect to overtime. Employees must receive advanced authorization to attend any lectures, meetings, training programs, or similar activities when the training is directly related to an employee's job and must notify the City of any such training he/she attends.

A non-exempt employee's time spent attending lectures, meetings, training programs, or similar activities is not compensable work time if all of the following criteria have been met: attendance must be outside of the employee's regular working hours; attendance must be voluntary; the training is not directly related to the employee's job; and the employee must not perform any productive work during the training.

16.13 Travel Time

Ordinary commute time is not compensable work time. Accordingly, time spent by an employee traveling between the employee's residence and regular work place is not work time and shall not be treated as hours worked. In the event that a non-exempt employee must travel outside the City for City-related business, time spent traveling between the employee's home and assigned destination outside of the employee's work hours shall be treated as time worked only to the extent that it exceeds the amount of time normally taken by the employee to travel between his/her residence and regular City work place.

16.14 Compliance with Laws

City staff and officials should be aware that expenditures may be subject to reporting under the Political Reform Act and other laws, including disclosure under the Public Records Act. In addition, AB1234 requires that the City establish expense reimbursement policies for staff and officials and provide mandatory ethics training for City staff and officials.

To provide greater transparency in demonstrating compliance with the guidelines set forth by this policy, all expenses incurred by the Mayor and City Council will be reported monthly by the Administrative Services Department as an agenda item via the Consent Calendar on the City Council Agenda packet within a reasonable period of time following close-out of the expense report.

16.15 Violation of this Policy

Violation of this policy may result in any or all of the following: 1) loss of reimbursement privileges, 2) a demand for immediate restitution to the City, 3) the agency's reporting the expenses as income to the City staff or officials to state and federal tax authorities, 4) discipline of the employee, up to and including termination, and 5) prosecution for misuse of public resources.

16.16 Definitions

Business Travel: Travel at which attendance of the participant is required to conduct specific City business.

City Employee: Any person regularly employed by the City on a full-time basis, elected officials, and members of advisory commissions or boards.

Commissioner: Any person appointed by the City Council to an officially established advisory board, commission, committee, or task force of the City.

Conference Travel: Travel to attend meetings or conferences that are primarily for the educational or professional enrichment of the participant and not to transact specific business of the City, but for which the City will receive an indirect benefit.

Staff or Official: A member of the City staff or City Council.

Actual and Necessary Expense: The costs incurred involving a practical need based upon prevailing business practices.

CHAPTER 17 FRAUD POLICY

17.01 Purpose and Scope

The purpose of this Fraud/Fraud Protection, Reporting and Investigation Policy (“Policy”) is to establish policy and procedures to address acts that are considered fraudulent; to describe the steps to be taken when fraud or other related dishonest activities are suspected; to provide procedures to follow in accounting for missing funds, restitution and recoveries; and to establish procedures for fraud protection.

This Policy applies to any fraud, or suspected fraud, involving City of Desert Hot Springs officials, all City employees, vendors, consultants, contractors, outside agencies, and/or any other parties with a business relationship with the City.

17.02 Policy

The City is committed to protecting its revenue, property and other assets against the risk of loss or misuse. Accordingly, it is the policy of the City to identify and promptly investigate suspected fraudulent or related dishonest activities against the City and to take appropriate action, including legal remedies available under the law.

17.03 Definitions

All definitions below are for the purposes of this Policy and in the context of issues addressed by this Policy.

Fraud - Fraud is defined as misuse or attempt to misuse a City asset, to which the individual or person is not entitled, for personal gain or purposes unrelated to City business. Under Government Code section 53087.6, fraud involves any activity undertaken in the performance of official duties, including activities deemed outside the scope of employment, that is in violation of any local, state or federal law or regulation relating to: corruption, malfeasance, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty; is economically wasteful; or involves gross misconduct.

Examples of fraud include, but are not limited to:

- Claim for reimbursement of expenses that are not related to City business;
- Forgery or unauthorized alteration of documents (e.g. checks, time sheets, independent contractor agreements, purchase orders, budgets);
- Misappropriation of City assets (e.g. funds, securities, supplies, furniture, equipment, or other assets);

- Improprieties in the handling or reporting of money or financial transactions;
- Obtaining City funds or compensation through dishonesty;
- Stealing or removing City assets;
- Using City equipment, facilities, supplies or funds for purposes unrelated to City business;
- Authorizing or receiving payment for goods not received or services not performed;
- Computer-related activity involving unauthorized alteration, destruction, forgery, or manipulation of data or misappropriation of City-owned software;
- Failing to maintain confidentiality regarding information when confidentiality is required;
- Misrepresentation of information on documents; and
- Any violation of Federal, State, or Local laws related to dishonest activities or fraud.

Employee - Refers to any individual or group of individuals who receive compensation, either full or part-time, from the City. The term also includes any volunteer who provides services to the City through an official arrangement with the City or a City organization.

Management - Refers to any administrator, manager, department director, supervisor, or other individual who manages or supervises funds or other resources, including human resources.

Investigating Authority - Refers to the City Manager and/or any person or persons assigned by the City Manager to investigate any fraud or similar activity. If the City Manager is the subject of the investigation, the City Attorney will assign the person or persons to investigate any fraud or similar activities.

External Auditor - Refers to independent audit professionals who perform annual audits of the City's financial statements.

17.04 Guidelines

Any fraud that is detected or suspected must be reported immediately to the City Manager, who coordinates all investigations with the City Attorney and department/division Management as appropriate. If, however, the City Manager is the subject of the investigation, the City Attorney will perform the obligations of the City Manager discussed herein.

It is the City's policy to fully investigate any suspected acts of fraud.. An objective and impartial investigation will be conducted regardless of the position, title, length of service or relationship with the City of any party who might become involved in or becomes the subject of such investigation.

Each department of the City is responsible for instituting and maintaining a system of internal control to provide reasonable assurance for the prevention and detection of fraud, misappropriations, and other irregularities. Management will be familiar with and trained on the types of improprieties that might occur within their area of responsibility and be alert for any indications of such conduct.

The Investigating Authority, in conjunction with the City Attorney, has the primary responsibility for the investigation of all activity as defined in this policy. Great care must be taken in an investigation of suspected fraud. Decisions to refer a report to the City's Police Department and/or the District Attorney's Office and/or other appropriate investigative agency for initial investigation will be made by the City Attorney.

Individuals who report suspected fraud shall be covered by the whistleblower protection policy as provided under these Rules and Regulations (see Chapter 15 Whistleblower Policy). Violations of the whistleblower protection policy may result in discipline up to and including termination.

City departments and other entities are expected to cooperate with the Investigating Authority when requested to do so.

If the investigation substantiates that fraudulent activities have occurred, the Investigating Authority shall notify the City Attorney. Decisions to prosecute or refer the investigation results to the appropriate law enforcement and/or regulatory agencies for independent investigation will be made in conjunction with the City Attorney and City Manager, as will final decisions on disposition of the case.

The City will pursue every reasonable effort, including court ordered restitution, to obtain recovery of City losses from the offender, or other appropriate sources.

If the investigation finds no fraudulent activities have occurred, the Investigating Authority shall retain the confidential complaint and investigation documents according to the City's record retention policy. The identity of an individual(s) alleging fraud and the identity of an individual alleged to have committed fraud shall be kept confidential. The individual alleged to have committed fraud will be notified of the outcome of the investigation.

17.05 Procedures

The procedures set forth below shall apply to the extent permitted by law.

Mayor, City Council and Commissioner Responsibilities

If the Mayor, a City Councilmember or a Commissioner has reason to suspect that a fraud has occurred, he or she shall immediately contact the City Manager. If the City Manager is suspected of fraud, the Mayor, Councilmember or Commissioner shall immediately contact the City Attorney.

The Mayor, City Councilmember or Commissioner shall not attempt to investigate the suspected fraud or discuss the matter with anyone other than the City Manager or the City Attorney; provided, however, in the event the City Manager is the subject of such fraud claim, all communications shall be addressed to the City Attorney alone.

The alleged fraud or investigation shall not be discussed with the media by any person other than through the City Manager in consultation with the City Attorney and the Investigating Authority. If the City Manager is suspected of fraud, the alleged fraud or investigation shall not be discussed with any person other than the City Attorney. If the City Attorney is suspected of fraud, the alleged fraud or investigation shall not be discussed with any person other than the City Manager. If the City Manager and the City Attorney are both suspected of fraud, the alleged fraud or investigation shall not be discussed with any person other than the District Attorney.

Management Responsibilities

Management is responsible for being alert to, and for reporting fraudulent or related dishonest activities.

Each manager should be familiar with the types of improprieties that might occur in his or her area and be alert for any indication that improper activity, misappropriation, or dishonest activity is or was in existence in his or her department.

When an improper activity is detected or suspected, Management should immediately look into the matter and determine whether an error or mistake has occurred or if there may be dishonest or fraudulent activity.

If Management determines a suspected activity may involve dishonest or fraudulent activity, they should immediately contact the City Manager.

Department directors should immediately inform the City Manager if they suspect that dishonest or fraudulent activity has occurred. If they suspect that the City Manager has engaged fraud, they should immediately inform the City Attorney.

Management should not attempt to conduct formal individual investigations, interviews, or interrogations in regards to an allegation of suspected fraud. However, Management is

responsible for taking appropriate corrective actions to ensure adequate controls exist to prevent reoccurrence of improper actions.

Management should support the City's responsibilities and cooperate fully with the Investigating Authority, other involved departments, the District Attorney's Office, and law enforcement agencies in the detection, reporting and investigation of fraud, including the prosecution of offenders.

Management must give full and unrestricted access to all necessary records and personnel to the extent permitted by law. For example, City furniture and contents, including desks and computers may be subject to inspection at any time to the extent permitted by law. Employees have no expectation of privacy in their use of City equipment or resources.

In dealing with suspected dishonest or fraudulent activities, great care must be taken. Therefore, Management should avoid the following:

- Conduct that may alert suspected individuals that an investigation of suspected fraud is underway; and
- Making statements that could lead to claims of false accusations or other offenses.

In handling dishonest or fraudulent activities, Management has the responsibility to:

- Not make contact, unless requested, with the suspected individual to determine facts or demand restitution. Under no circumstances should there be any reference to "what you did", "the crime", "the fraud", "the misappropriation", etc.;
- Not discuss the case, facts, suspicions, or allegations with anyone outside the City, unless specifically directed to do so by the City Attorney or the City Manager;
- Not discuss the case with anyone inside the City other than Employees who have a need to know, such as the City Manager, City Attorney or law enforcement personnel. If the City Manager is suspected of fraud, the case must only be discussed with the City Attorney;
- Direct all inquiries from the suspected individual, or his or her representative, to the City Manager and/or City Attorney. All inquiries by an attorney of the suspected individual should be directed to the City Attorney. All inquiries from the media should be directed to the City Manager. If the City Manager is suspected of fraud, all inquiries from the media should be directed to the City Attorney.

Employee Responsibilities

A suspected fraudulent incident or practice observed by, or made known to an Employee must be reported to the Employee's supervisor for reporting to the proper Management official.

When an Employee believes a supervisor or Management may be involved in the suspected fraudulent incident or practice, the Employee shall make the report directly to the next higher level of Management, the City Manager and/or the City Attorney.

The reporting Employees shall refrain from further investigation of the incident, confrontation with the alleged violator, or further discussion of the incident with anyone unless requested by the City Manager, Investigating Authority or City Attorney.

Investigating Authority Responsibilities

- Upon assignment by the City Manager, the Investigating Authority will promptly investigate the fraud. If the City Manager is suspected of fraud, the City Attorney will assign the Investigating Authority. Upon conclusion of the investigation, the Investigating Authority will inform the City Manager and the City Attorney of all findings. If the City Manager is the subject of the investigation, the Investigating Authority will only inform the City Attorney of all findings.
- The Investigating Authority shall be available and receptive to receiving relevant, confidential information to the extent allowed by law.
- If evidence is uncovered showing possible dishonest or fraudulent activities, the Investigating Authority will proceed as follows:
 - Discuss the findings with Management and the department director as needed.
 - Advise Management as needed, and meet with the Administrative Services Director (or his/her designated representative) to determine if disciplinary action should be taken.
 - Report to the External Auditor such activities in order to assess the effect of the illegal activity on the City's financial statements.
 - Coordinate with the City's Administrative Services Director as needed regarding notification to insurers and filing of insurance claims.
 - Take immediate action, in consultation with the City Attorney, to prevent the theft, alteration, or destruction of evidentiary records. Such action shall include, but is not limited to:
 1. Removing the records and placing them in a secure location, or limiting access to the location where the records currently exist; and
 2. Preventing the individual suspected of committing the fraud from having access to the records.

In consultation with the City Attorney, the Investigating Authority may disclose particulars of the investigation with potential witnesses if such disclosure would further the investigation.

If the Investigating Authority is contacted by the media regarding an alleged fraud or investigation, the Investigating Authority will consult with the City Manager and the City Attorney, as appropriate, before responding to a media request for information or interview.

At the conclusion of the investigation, the Investigating Authority will document the results in a confidential memorandum report to the City Manager, City Attorney and City Council. If the report concludes that the allegations are founded, the report will be forwarded to the City of Desert Hot Springs Police Department and/or the District Attorney's Office and/or other appropriate investigative agency determined by the City Attorney. If the City Manager is the subject of the investigation, the results will be documented in a confidential memorandum report to the City Attorney only.

The Investigating Authority will be required to make recommendations to the appropriate department for assistance in the prevention of future similar occurrences.

Upon completion of the investigation, all records, documents, and other evidentiary material, including all legal and personnel actions obtained from the department under investigation, will be returned by the Investigating Authority to that department.

City Attorney Responsibilities

Decisions to refer a matter for independent investigation, or to refer investigation results to the City of Desert Hot Springs Police Department or other regulatory agencies for independent investigation, shall be made by the City Attorney.

17.06 Disciplinary Action

The City Manager, following review of investigation results, and after consultation with the City Attorney, is solely responsible for taking appropriate corrective and disciplinary action regarding employee misconduct. Disciplinary action can include, but is not limited to, termination, and referral of the case to the District Attorney's Office and/or other appropriate investigative agency for possible prosecution. If the City Manager is the subject of investigation, the City Attorney will take the above actions. If the City Attorney is the subject of investigation, the City Manager will take the above actions.

17.07 Confidentiality

The Investigating Authority, Management, Employees and all participants in a fraud investigation shall treat all information received confidentially. Information regarding any fraud investigation may not be disclosed except as necessary to conduct investigations or as required by law. Notwithstanding the confidential nature of the fraud investigations, subject to the prior approval of the City Attorney, the Investigating Authority shall release relevant information as necessary to carry out referrals to other agencies for appropriate action, and may release aggregated or summary information for reporting purposes.

17.08 Exceptions

There will be no exceptions to this Policy unless provided and approved by the City Manager, and the City Attorney.

17.09 Fraud Protection

Following recommendation of the Government Finance Officers Association, the City has instituted the following procedures for check fraud protection. These procedures are listed below:

1. All check stock has security features including watermarks and “void” pantographs (which display the word “void” when the check is photocopied).
2. All check stock is tested to validate the security features when it is received by checking the back of the stock for watermarks and making photocopies to ensure that the word “void” appears.
3. Check stock is secured in the Finance Department vault at all times when not in use.
4. Accounts payable check printing access is limited to the Senior Accountant, Management Analyst, and the Administrative Services Director. Payroll check printing access is limited to the Senior Accountant, Management Analyst, and the Administrative Services Director. Signatures are imbedded in the New World software program and must be changed by the software vendor. The Director of Administrative Services must request a signature change to effect any signature change.
5. Two signatures are required on all accounts payable checks.
6. Signature cards are updated immediately upon change of personnel.
7. Bank statements are reconciled as soon as they are received from the bank each month. The bank is notified immediately of any discrepancies.
8. Cancelled checks from May 2009 until present are stored on CDs in the Finance Department vault. Hard copies of checks prior to May 2009 no longer exist. Checks prior to March 2007 have been destroyed. Checks from March 2007 through April 2009 were received as photocopies on our monthly statements.
9. The payment process duties are segregated as follows:
 - Each department’s assigned personnel process invoices for payment;
 - The Administrative Services Director reviews all invoices processed for payment;

- The Senior Accountant prints checks, creates the positive pay file (electronic fraud protection) for transmission to the bank and the Management Analyst mails checks to vendors; any checks to be picked up by individuals are recorded in a “Check Pick Up” log by the Senior Accountant;
- The Senior Accountant reconciles the bank account;
- The Administrative Services Director reviews the bank reconciliation;
- All payroll changes are reviewed by an assigned Finance Department employee;
- The Administrative Services Director reviews all payroll registers;
- The Human Resources Analyst sorts all checks and direct deposit advice forms by department and counts them; and
- The Senior Accountant reconciles the payroll bank account.

10. The City does not use electronic fund transfers (EFTs) for any payments. The City occasionally uses outgoing wires for some debt service payments and for high dollar transactions as needed.

11. The City has been using positive pay procedures for accounts payable since May 2009. Payroll checks are not issued on the City’s bank account so no positive pay file is needed for them. A positive pay file is sent to the bank when accounts payable checks are generated. This file contains information regarding the check number, date of issue and dollar amount. The bank is able to then provide an exception list of differences for the City to review. If there are discrepancies on any incoming checks in regards to number, date or dollar of the check, then the City has the option to release or reject the check. The positive pay file is created by the Senior Accountant immediately after each check run. The Senior Accountant then reviews and submits the file to the bank.

CHAPTER 18 AFFORDABLE CARE ACT SAFE HARBOR POLICY

18.01 Purpose

The City of Desert Hot Springs is committed to ensuring compliance with the Shared Responsibility Provisions (Section 4980H to Title 26 of the United States Code, the Internal Revenue Code) of the Patient Protection and Affordable Care Act (“ACA”) enacted on March 23, 2010. The City is considered a “large employer” for the purposes of the Shared Responsibility Provisions of the ACA. The City is also considered a “large employer” for the purposes of Section 6056 to Title 26 of the United States Code and therefore, subject to the reporting requirements referenced therein.

The Internal Revenue Service (“IRS”) will assess a penalty on the City if: (1) it fails to offer “substantially all” of its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage or offers coverage to “substantially all” of its full-time employees (and their dependents) that is either “unaffordable” or does not provide “minimum value;” and (2) any full-time employee receives a subsidy for coverage through the exchange (“Employer Mandate”).

This Affordable Care Act Safe Harbor Policy establishes the Look Back Measurement Method Safe Harbor (“Look Back Safe Harbor”) provision of the ACA in order to determine the full-time status of employees for purposes of identifying “full-time” employees for reporting to the IRS regarding the Employer Mandate. The City also establishes this Look Back Safe Harbor for the purpose of determining eligibility for an offer of coverage for all employees.

18.02 Policy

The City establishes the Look Back Safe Harbor in order to determine the Hours of Service of all employees. Hours of Service are measured during the specified measurement period, subject to the rules set forth hereunder. If the employee averages 30 or more Hours of Service per week over the course of the specified measurement period, the City will report to the IRS the employee’s status as full-time under the ACA for months during the stability period associated with that measurement period, subject to the following rules. If the City reports an employee to the IRS as full-time for this purpose, the employee does not become full-time for any other purpose.

18.02.1 Hours of Service Calculation: “Hours of Service” means each hour for which an employee is paid or entitled to payment for the performance of duties for the City and each hour for which an employee is paid or entitled to payment for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

For Hourly Employees: The City will calculate actual Hours of Service from records of hours and hours for which payment is made or due.

For Non-Hourly Employees: The City will apply one of the following three methods on a reasonable and consistent basis:

- a. Calculate actual Hours of Service from records of hours worked and hours for which payment is made or due;
- b. Calculate Hours of Service using a days-worked equivalency (eight hours per day for each day employee is credited with an Hour of Service); or
- c. Calculate Hours of Service using a weeks-worked equivalency (40 hours per week for each week employee is credited with an Hour of Service).

Bona Fide Volunteer: The City is not required to determine Hours of Service for a bona fide volunteer. A bona fide volunteer is an individual whose only compensation from the City is in the form of: (a) reimbursement (or reasonable allowance) for reasonable expenses incurred in the performance of volunteer service; or (b) reasonable benefits and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers.

18.02.2 **Ongoing Employees:** An ongoing employee is an employee who has been employed for at least one complete standard measurement period. The City establishes the Look Back Safe Harbor with regard to all ongoing employees as follows:

Standard measurement period:	July 1 through June 30 th (starting July 1, 2014, and continuing each year thereafter)
Administrative period:	July 1 through July 31 (starting July 1, 2015, and continuing each year thereafter)
Stability period:	August 1 through July 31 (starting August 1, 2015, and continuing each year thereafter)

The City will use these periods only for reporting purposes or, if necessary, determining potential penalties. The City will not use these periods to determine whether a represented employee qualifies for an offer of coverage, as that determination is made in the applicable collective bargaining agreement.

If an ongoing employee's employment status changes (from full time to part time or vice versa) before the end of a stability period, the change in status will not affect the classification of that employee's status for the remaining portion of the stability period.

18.02.3 **New Employees:** When the City hires a new employee, the City will determine which of the following applies:

- a. **New Seasonal Employees:** An employee who is hired into a position for which the customary annual employment is six months or less is a seasonal employee. The City will measure a new seasonal employee's Hours of Service using the initial measurement period indicated in Section 18.02.5.
- b. **New Non-Seasonal Employees:** On the start date of a new non-seasonal employee, the City will determine (based on the facts and circumstances at the employee's start date) whether the employee is reasonably expected to be a full-time employee. The City will look at the following factors to determine whether an employee is reasonably expected to be a full-time employee (no single factor is determinative):
 - Whether the employee is replacing a full-time employee;
 - Extent to which Hours of Service of ongoing employees in the same or comparable positions have varied above and below an average of 30 Hours of Service per week during recent measurement periods;
 - Whether the job was advertised or communicated to the employee as requiring an average of 30 or more Hours of Service per week;
 - Whether the job was documented (through a contract or job description) as requiring an average of 30 or more Hours of Service per week.
- c. **New Full Time Employees:** If the City reasonably expects (pursuant to Section 18.02.3.b.) that the employee will average at least 30 Hours of Service per week, then the employee will be a full-time employee. The City will measure a new full-time employee's Hours of Service under monthly measurement periods pursuant to Section 18.02.4 until the employee becomes an ongoing employee. The City will offer represented employees coverage, if any, as set forth in their applicable collective bargaining agreement.
- d. **New Part-Time Employee:** If the City reasonably expects (pursuant to Section 18.02.3.b.) that the employee will average less than 30 Hours of Service per week during the initial measurement period, then the employee will be a part-time employee. The City will measure a new part-time employee's

Hours of Service using the initial measurement period indicated in Section 18.02.5.

- e. **New Variable Hour Employees:** If the City cannot determine (pursuant to Section 18.02.3.b.) whether the employee is reasonably expected to be employed on average at least 30 Hours of Service per week during the initial measurement period because the employee's hours are variable or uncertain, then the employee will be a variable hour employee. The City may not take into account the likelihood that the employee may terminate employment before the end of the initial measurement period in determining whether the employee will be a variable hour employee. The City will measure a new variable hour employee's Hours of Service using the initial measurement period indicated in Section 18.02.5.

18.02.4 New Full-Time Employees: New full-time employees are measured monthly until they become ongoing employees (i.e. until they are employed from July 1 through June 30 of the following year). The City must calculate actual Hours of Service for each calendar day of the month. If the employee accrues at least 130 Hours of Service in any given month, the employee will be considered full-time for that month, and the City will report the employee as full-time for that month. If the employee does not accrue 130 Hours of Service during a month, the employee is not full-time for that month.

18.02.5 New Variable Hour, New Seasonal, and New Part-Time Employees: If a variable hour, seasonal or part-time employee works more than 1560 hours, the City will offer medical coverage to the employee and the employee's qualified dependents during the administrative period for the term of the stability period. However, it is the City's policy that new variable hour, new seasonal, and new part-time employees shall not work more than 1560 hours during an initial measurement period or a standard measurement period. The City establishes the following periods for new variable hour, new seasonal, and new part-time employees:

Initial measurement period: Twelve months (beginning on the first of the month following the new employee's start date unless the employee starts on the first day of the month, in which case it begins on the start date).

Administrative period: One month following the initial measurement period.

Stability period: Twelve months following the end of the administrative period unless the new variable hour, part-time or seasonal employee does not measure as a full-time employee during the initial measurement period, then the stability period associated with the initial measurement period must not exceed the remainder of the standard measurement period (plus any associated administrative period).

With regard to represented employees, the City will use these periods for IRS reporting purposes only or, if necessary, determining potential penalties. The City will not use these periods to determine whether a represented employee qualifies for an offer of coverage, as that determination is made in the collective bargaining agreement.]

18.02.6 New Variable Hour, Part-Time or Seasonal Employee's Change in Status During Initial Measurement Period: If a new variable hour, part-time or seasonal employee's position changes during the initial measurement period, and the City would have reasonably expected that employee to be full-time had the employee started his or her employment in that new position, the City will consider the employee to be a full-time employee for reporting purposes. Such an employee will be considered a full-time employee on the earlier of: (1) the first day of the fourth full calendar month following the change in employment status; or (2) the first day of the first month following the end of that employee's initial measurement period (including any associated administrative period) if the employee averaged 30 or more Hours of Service per week during the initial measurement period or earlier if required by law, an applicable collective bargaining agreement, policy or procedure.

18.02.7 Transitioning from New to Ongoing Employee: The City will measure the hours of a new variable hour, seasonal or part-time employee during the first complete standard measurement period for which he or she is employed. This means that a new variable hour, new seasonal or new part-time employee's Hours of Service will be measured both under an initial measurement period and, at the same time, be measured under the overlapping standard measurement period.

- a. If an employee's Hours of Service measure as full-time during the initial measurement period, he/she will retain full-time status for the entire associated stability period (even if the employee does not qualify as full-time during the standard measurement period).
- b. If an employee's Hours of Service do not measure as full-time during the initial measurement period, but measures as full-time during the standard

measurement period, the employee must be treated as full-time during the stability period associated with the standard measurement period (even if that stability period starts before the end of the stability period associated with the initial measurement period).

18.02.8 Breaks In Service: When an employee experiences a break in service without providing at least one Hour of Service, the employee will retain the status the employee had previously with respect to any stability period, except that an employee will be treated as a new employee:

- a. If the employee resumes employment after a period of at least 13 consecutive weeks with less than an Hour of Service; or
- b. If the employee's period of no service (measured in weeks) is at least four consecutive weeks long and exceeds the number of weeks of that employee's period of employment immediately preceding the period of no service (after application of averaging Special Unpaid Leave as set forth in Section 18.02.9).

18.02.9 Special Unpaid Leave: Special Unpaid Leave is defined only as unpaid leave under the Family and Medical Leave Act of 1993, unpaid leave under the Uniformed Services Employment and Reemployment Rights Act of 1994, or unpaid leave on account of jury duty. When an employee takes Special Unpaid Leave, the City will determine the weekly average of Hours of Service by the employee for that portion of the measurement period that is not part of the Special Unpaid Leave ("Average Weekly Hours of Service"). The City will then determine, the average Hours of Service for the entire measurement period using one of the following two methods on a consistent basis:

- a. Exclude the period of Special Unpaid Leave and apply the Average Weekly Hours of Service over the entire measurement period; or
- b. Credit the Average Weekly Hours of Service to the period of Special Unpaid Leave.

If the employee is expected to be a full-time employee, and not a seasonal employee, the City will offer health coverage to begin the first day of the month following the date of hire. If the City is unable to determine that the new employee is expected to be full-time, the employee will be considered a variable hour employee.

18.03 Affordability Safe Harbors

The City intends to apply the Rate of Pay Safe Harbor to determine the affordability of the minimum essential coverage that it offers its full-time employees. The City in its sole discretion may also apply the Form W-2 Safe Harbor or Federal Poverty Line Safe Harbor. These affordability safe harbors will be applied on a uniform and consistent basis for all employees in a reasonable category. The 9.66% determination under the affordability safe harbors applies for calendar year 2016 and shall be adjusted to reflect any adjustments under 26 U.S.C. § 36B(c)(2)(C)(iv).

18.03.1 Rate of Pay Safe Harbor

- a. The City measures whether the employee's required premium contribution for the calendar month for the lowest cost self-only coverage that provides minimum value exceeds 9.66 percent of the monthly wage.
- b. For hourly employees, the monthly wage is equal to 130 hours multiplied by the lower of the employee's hourly rate of pay as of the first day of the coverage period or the employee's lowest hourly rate of pay during the calendar month.
- c. For salaried employees, the monthly wage is the monthly salary as of the first day of the coverage period. However, if the monthly salary is reduced, for example, due to a reduction in work hours, the safe harbor is not available.
- d. The coverage offered by the City will be deemed affordable if the employee's monthly premium contribution is equal to or less than 9.66 percent of the monthly wage.

18.03.2 Form W-2 Safe Harbor

- a. The City measures whether the employee's required premium contribution for the full calendar year for the lowest cost self-only coverage that provides minimum value exceeds 9.66 percent of the Form W-2 wages (as reported in Box 1) for the employee for the calendar year in which coverage is offered.
- b. For an employee who is not offered coverage for an entire calendar year, the City must adjust that employee's Form W-2 wages to reflect the period for which coverage was offered. To adjust wages, the Form W-2 wages are multiplied by a fraction equal to the number of calendar months the City offered coverage over the number of calendar months in the period of employment during the calendar year.
- c. The coverage offered by the City will be deemed affordable if the employee's annual premium contribution is equal to or less than 9.66% of the employee's Form W-2 wages as reported in Box 1 (or as adjusted, for an employee who is not offered coverage for an entire calendar year).

18.03.3 Federal Poverty Line Safe Harbor

- a. The City measures whether the employee's required premium contribution for the calendar month for the lowest cost self-only coverage that provides minimum value exceeds 9.66 percent of an amount determined by dividing the Federal Poverty Line ("FPL") for a single individual for the applicable calendar year by twelve.
- b. The City will use the FPL in effect within six months before the first day of the plan year.
- c. The coverage offered by the City will be deemed affordable if the employee's monthly premium contribution is equal to or less than 9.66 percent of the monthly FPL for a single individual for the applicable calendar year.

18.04 Procedures and Guidelines

The City is responsible for providing a copy of the 1095-C reporting forms to all full-time employees. Each full-time employee will receive a copy of the form by the statutorily-provided deadline.

Supervisors are responsible for ensuring part-time, seasonal, and variable hour employees do not exceed the allowable number of hours worked. Human Resources will provide supervisors with automated reports summarizing hours worked of part-time, seasonal, and variable hour employees upon the supervisor's request.

This Policy is subject to change as regulations and guidance are issued relating to the ACA. The City may amend this Policy including, but not limited to, the measurement periods, administrative period and the stability period.

18.05 Retaliation Prohibited

Pursuant to the Patient Protection and Affordable Care Act (ACA), employers are prohibited from retaliating against any employee who: (1) receives health insurance premium tax credits or a subsidy in the health benefits exchange; (2) reports potential violations of protections afforded under Title I of the ACA; (3) testifies, assists or participates in a proceeding concerning such violation; or (4) objects to, or refuses to participate in any activity, policy, practice or assigned task that the employee reasonable believes to be a violation of any provision of the title I of the ACA.

CHAPTER 19 OTHER POLICIES

19.01 Personnel Files and Reference Requests

The City maintains a personnel file on each employee. An employee's personnel file will contain only material that the City deems necessary and relevant to the administration of the City's personnel program and required by law. Personnel files are the property of the City, and access to the information they contain is restricted to protect employee privacy interests.

Notifying City of Changes in Personal Information

Each employee is responsible to promptly notify the City of any changes in relevant personal information, including:

- Mailing address
- Telephone number
- Persons to contact in emergency
- Number and names of dependents

Location of Personnel Files

Personnel files are located in the Human Resources office.

Medical Information

Separate Confidential Files. All medical information about an employee or applicant is kept separately and is treated as confidential, in accordance with applicable state or federal law.

Information in Medical Files. The City will not obtain medical information about an employee or applicant except in compliance with the California Confidentiality of Medical Information Act. To enable the City to obtain certain medical information, the employee or applicant may need to sign an AUTHORIZATION FOR RELEASE OF EMPLOYEE MEDICAL INFORMATION.

Access to Medical Information. Access to employee or applicant medical information shall be strictly limited to only those with a legitimate need to have such information for City business reasons, or if access is required by law, subpoena or court order. In the case of an employee with a disability, managers and supervisors may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

Employee Access to Personnel File

Inspection of File. An employee may inspect his or her own personnel file, at reasonable times and at reasonable intervals. An employee who wishes to review his or her file should contact Human Resources to arrange an appointment. The review must be done in the presence of an employee of the Administrative Services Department. All employee medical and drug screening exam results, reference checking and background investigations are considered confidential written records. As such, these records are not available for release without the prior written approval of the Administrative Services Director.

Copies. On request, an employee is entitled to receive a copy of his/her personnel records that the City maintains relating to the employee's performance or to any grievance concerning the employee. An employee who wishes to receive such a copy should contact the Administrative Services Department.

In the event the employee wishes to have another person/representative inspect his or her personnel file, the employee must provide the person/representative with written authorization.

Under no circumstances is the employee and/or the employee's designee permitted to add or remove any document or other item from the employee's personnel file during the inspection.

External Information Requests

From time to time, outside organizations or individuals file information requests with the City seeking information about current or former employees. To ensure consistency and fairness, protect individuals' privacy rights, and maintain the security and confidentiality of all employment and personal information in its record systems, the City adheres to the following policy, standards, and procedures in dealing with all external requests for employment information:

Reference Checks and Employment Verification:

All requests for employment references and verifications of employment must be forwarded to Human Resources. The City discloses the following information when responding to requests from other employers regarding current and former employees:

- The individual's start and end date of employment;
- Title of current or last position held;
- Wage and salary information of current or last position held.

No other information is provided without a signed consent form authorizing the City to release additional information from the individual's personnel records to the specifically named organization/individual. To be acceptable, this consent form must indicate the general and specific types of information that can be released and release the City from all potential liability related to the authorized disclosure. External requests for the release of an employee's record require prior written approval of the employee and/or a subpoena issued by a court/other official body.

2. Disclosure or Release of Employee Information to Government Agencies

On occasion, the City must provide information and data from its personnel records and files to federal, state, and local government agencies in accordance with record keeping and reporting requirements imposed by such agencies. In instances where a government agency requests information beyond that which it normally requires, the City ordinarily advises the affected employees of the agency's information request.

If, however, an agency's information request occurs in the course of an agency investigation or if an agency asks the City to keep such a request confidential, the City, at its discretion, can comply with the agency's request. The City ordinarily honors subpoenas demanding production of information with respect to any employee, but usually advises an employee of the subpoena and nature of the information requested, unless otherwise prohibited by law.

3. Disclosure or Release of Employee Information to Non-Governmental Entities

In response to an information request from an outside organization, individual, or other nongovernmental entity, the City normally verifies only the employment status and dates of employment and salary for former or present employees. The City does not provide any other information unless it has received from the worker or former employee a written request that it disclose or confirm additional specific information. Even with a consent form, the only information normally released is the individual's employment dates, most recent job title, permanency of employment, and salary information. To obtain disclosure of any other information, a former or current employee must submit a request to Human Resources, specifying the type of disclosure they are seeking and the identity of the organization/individual authorized to receive the information. The Department of Human Resources reviews and handles these requests on a case-by-case basis.

4. Disclosure Pursuant to Freedom of Information Requests

Any portion of a personnel record deemed public information pursuant to applicable law shall be open for public inspection during office hours and at reasonable times in accordance with established administrative procedures.

Requests for information under the California Public Records Act shall be made to the City Clerk's Office.

19.02 Property, Equipment and Resources

City property, equipment and resources are to be used only for conducting City business unless otherwise authorized. City property, equipment and resources include, but is not limited to: intellectual property (e.g., photographs, plans, drawings, formulas, customer lists, designs, formulas), telephones, cell phones, office equipment, desks, computers (including hardware and software), file cabinets, lockers, communications stored or transmitted on City property (such as emails and voicemails), Wi-Fi, internet, intranet, network, data systems, routers, vehicles and any other City property used by City employees in their work.

City property, equipment and resources may be periodically monitored, reviewed, accessed, retrieved or searched without prior notice. Messages sent or received on City equipment, including cell phones, may be saved and reviewed by others. The existence of passwords or delete functions does not restrict the City's access. Employees must provide the City with the employee's username or password for any City issued equipment or resource. City employees do not have a reasonable expectation of privacy in City property, equipment or resources; or in the data and messages sent or received using City property, equipment or resources.

19.03 Use of City Property, Equipment and Resources

Every City employee is required to adhere to all City rules and policies, including this policy, while on City property or using City property, equipment or resources. Violators will be subject to disciplinary action up to and including termination. The City has discretion to restrict or rescind employee access to City property, equipment or resources.

Examples of inappropriate and prohibited uses of the City's property, equipment and resources include, but are not limited to the following:

- Exposing others, either intentionally or unintentionally, to material which is offensive, obscene or in poor taste;
- Any use that would be offensive or unwelcome because it involves an individual's race, color, religion, sex, gender, gender expression, gender identity, national origin, ancestry, citizenship, age, marital status, physical or mental disability, medical condition, genetic information, sexual orientation, veteran status or any other basis protected by law;
- Communication of confidential City information to unauthorized individuals within or outside the City;

- Any use that violates any City policies, rules or applicable laws;
- Unauthorized attempts to access City data or systems;
- Theft or unauthorized copying of electronic files or data;
- Initiating or sustaining chain/spam letters, e-mail or other unauthorized mass communication;
- Intentionally misrepresenting one's identity for improper or illegal acts;
- Personal, commercial or business activities;
- Transmitting/accessing obscene material and/or pornography;
- E-Commerce;
- Online gambling;
- Installing or downloading unauthorized software or equipment;
- Violating terms of software licensing agreements;
- Accessing and/or using dating web resources, personal social media, or games of any type;
- Any unauthorized access to City property, equipment or resources, including: using keys or key cards; using or disclosing the username or password of another person or employee to gain access to his or her email or other electronic resources; or making City property, equipment or resources available to others who would otherwise have no authorized access; and
- Using City property, equipment or resources to speak on the City's behalf without authorization.

19.04 Conflicts of Interest

No employee or official shall engage in any business transaction or shall have a financial interest, direct or indirect, which is incompatible with the proper discharge of his/her official duties in the public interest or would tend to impair his/her independence of judgment or action in the performance of his/her official duties. In addition, employees and officials shall perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.

19.05 Dress Standards

Employees are expected, during working hours, to present a clean, neat and professional appearance and to dress according to the requirements of their positions. Individual departments may have more specific dress code policies which employees are required to follow.

Dress, grooming and personal cleanliness standards contribute to the professional image of the City of Desert Hot Springs to the general public. Department Heads are responsible for determining and enforcing the dress code for their respective areas of responsibility.

Field personnel are expected to be neat, clean, and to give full attention to safety and appearance of clothing at all times.

Uniformed personnel shall wear City uniforms while on duty, and must present a clean and professional image at all times.

The City reserves the right to inform any employee at any time that his or her grooming, attire or appearance is unacceptable and what change must be made. After having been so informed, the employee must comply with the required change. Failure to comply with these standards may result in disciplinary action up to and including termination. If an employee has questions about how these standards apply to him or her, the matter should be immediately raised with his/her supervisor for consideration and determination.

19.06 Drug and Alcohol Free Workplace Policy

The City of Desert Hot Springs is concerned about employees being under the influence of alcohol, drugs and/or controlled substances at work. The purpose of this policy is to promote a drug and alcohol-free workplace and to eliminate substance abuse and its effects in the workplace.

The manufacture, distribution, dispensation, possession, or use of alcohol or any controlled substance is prohibited in both City workplaces and wherever City business is performed.

A City employee is prohibited from working or being subject to call in if impaired by alcohol or any controlled substance.

An employee must notify his/her supervisor before beginning work when taking medications or drugs which could interfere with the safe and effective performance of duties or operation of City equipment. If there is a question regarding an employee's ability to perform assigned duties safely and effectively while using prescribed medications, the City may require medical clearance.

Compliance with this policy is a condition of City employment. Disciplinary action up to and including dismissal may be taken against those who violate this policy. Employees who are required to participate in the City's "Federally Mandated Commercial Drivers License Holders Drug/Alcohol Testing Education Program" are subject to requirements contained in this policy as well as the mandated policy.

This policy applies to all City employees when they are on City property or when performing City-related business elsewhere.

Searches

In order to promote a safe, productive and efficient workplace, the City has the right to search and inspect all City property, including but not limited to lockers, storage areas, furniture, City vehicles, and other places under the common control of the City, or joint control of the City and employees. No employee has any expectation of privacy in any City building, property, equipment, resources, or communications system.

Drug and Alcohol Testing

Except as provided otherwise in a memorandum of understanding, or as modified for employees who are required to participate in the City's "Federally Mandated Commercial Drivers License Holders Drug/Alcohol Testing Education Program," the City has discretion to test a current employee for alcohol or drugs in the following instances.

1. Reasonable Suspicion Testing

The City may require a blood test, urinalysis, or other drug and/or alcohol screening of those persons reasonably suspected of using or being under the influence of a drug or alcohol at work. Testing must be approved by the Administrative Services Director, the department director, or a designee. "Reasonable suspicion" is based on objective factors, such as behavior, speech, body odor, appearance, or other evidence of recent drug or alcohol use which would lead a reasonable person to believe that the employee is under the influence of drugs or alcohol at work. Examples of objective factors, include, but are not limited to: unusual behavior, slurred or altered speech, body odor, red or watery eyes, unkempt appearance, unsteady gait, lack of coordination, sleeping on the job, a pattern of abnormal or erratic behavior, a verbal or physical altercation, puncture marks or sores on skin, runny nose, dry mouth, dilated or constricted pupils, agitation, hostility, confused or incoherent behavior, paranoia, euphoria, disorientation, inappropriate wearing of sunglasses, tremors, an accident involving agency property or equipment, or other evidence of recent drug or alcohol use. In order to receive authority to test, the supervisor must record the factors that support reasonable suspicion and discuss the matter with the Administrative Services Director or department director. If there is

a reasonable suspicion of drug or alcohol abuse at work, the employee will be relieved from duty and placed on sick leave until the test results are received.

2. Post-Accident Testing

The City may require alcohol or drug screening following any work-related accident or any violation of safety precautions or standards, whether or not an injury resulted from the accident or violation, provided that the “reasonable suspicion” factors described above are present.

3. Pre-Employment Testing

Those external applicants who apply for certain jobs where a special need for pre-employment drug and alcohol testing exists must take and pass a drug and alcohol test following a conditional offer of employment. The categories of jobs subject to pre-employment drug and alcohol testing include, but is not limited to: safety sensitive jobs that have public safety implications, such as operating heavy trucks to transport hazardous material, protecting national security, enforcing drug laws, and/or operating natural gas pipelines; and jobs that involve the direct influence over children.

Employee Responsibilities

A City employee must:

1. Not report to work or be on standby or on-call status while his or her ability to perform job duties is impaired due to on or off duty alcohol or drug use;
2. Not possess or use controlled substances (illegal drugs or prescription drugs without a prescription) alcohol at any time while on City property or while on duty for the City at any location;
3. Not directly or indirectly through a third party manufacture, sell, distribute, dispense, or provide controlled substances to any person, including any employee, at any time; or manufacture, sell, distribute, dispense or provide alcohol to any employee while either or both are on duty;
4. Notify his or her supervisor, before beginning work, when taking any medications or drugs, prescription or nonprescription, which may interfere with the safe and effective performance of duties or operation of City equipment;
5. Notify the department director of any criminal conviction for a drug violation that occurred in the workplace within no more than five days after such conviction;

6. Notify the supervisor immediately of facts or reasonable suspicions when he or she observes behavior or other evidence that a fellow employee poses a risk to the health and safety of the employee or others;
7. Consent to drug or alcohol testing and searches pursuant to this policy; and
8. Follow the City's drug and alcohol-free workplace policy.

Management Responsibilities

The City of Desert Hot Springs management employees must:

1. Notify the state or federal granting agency which has funded the work or program, if any, of any criminal drug statute convictions for a violation that occurred at a site where work is/was being done with a specific grant or contract;
2. Record factors supporting "reasonable suspicion" as defined above and consult with other management staff in order to determine whether there is reasonable suspicion to test an employee as described by this policy;
3. Take appropriate disciplinary action up to and including termination for any criminal drug statute conviction that has a nexus to the employee's employment, or require that the convicted employee participate satisfactorily in a drug abuse assistance or rehabilitation program as a condition for returning to duty;
4. Take appropriate disciplinary action up to and including termination for any violation of this policy consistent with existing discipline procedures;
5. Enforce this policy;
6. Report any suspected violation of this policy to the Administrative Services Director; and
7. Any manager or supervisor who knowingly permits a violation of this policy by any employee shall be subject to disciplinary action.

19.07 Ethics Policy

It is the policy of the City of Desert Hot Springs to uphold, promote and demand the highest standards of ethics from all of its employees and officials, whether elected, appointed or hired. Accordingly, all City employees should maintain the highest standards of personal integrity, truthfulness, honesty and fairness in carrying out their public duties, avoid any improprieties in their roles as public servants, and never use their City position or powers for improper personal gain.

19.08 Information Technology

The City provides employees with Information Technology (IT) resources as a tool to achieve City goals and improve operational efficiency. IT resources include computers, telephones, voicemail, e-mail, software, applications, and Internet access. IT resources allow access to data and allow employees to create, change, store, share and disseminate information. In providing use of IT resources, the City must establish policies to protect the security of the entire IT system.

19.09 Outside Employment

Any regular employee desiring to engage in outside employment shall first obtain non-City conflict job approval from his/her department head. The employee shall submit a statement to his/her department head naming the prospective employer (inclusive of self-employment), address and telephone number, and outlining the proposed duties and the hours of work. Approval may be denied or rescinded if, in the opinion of the department head, such as outside employment is in conflict or incompatible with the proper discharge of the employee's official duties. All such approvals shall be subject to review and approval by the City Manager, or designee, and shall be re-submitted annually. The employee must promptly report in writing to his/her department head any of the following changes that may occur during the year of an authorized outside employment: the outside employment ends; or the authorized employment changes as to the number of work hours, location, or types of duties.

An employee's outside employment, activity, or enterprise may, but is not limited to being prohibited if it: 1) involves the use of private gain or advantage of his or her City time, equipment and supplies; or the badge, uniform, prestige, or influence of his or her City officer, 2) involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his or her City for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his or her City employment or as a part of his or her duties as a City officer or employee, or 3) involves the performance of an act in other than his or her capacity as a City officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee or the City, or 4) involves the time demands as would render performance of his or her duties as a City officer or employee less efficient.

19.10 Social Media Policy and Off Duty Statements

Policy Statement

Social Media (SM) is a technology enabled social interaction, which allows rapid and often real time sharing of information. The use of social media also presents certain risks and carries with it certain responsibilities. To assist employees in making responsible decisions on use of social media, the City has established these guidelines for appropriate use of social media.

Scope

This policy applies to all City employees. Managers and supervisors are responsible for administering the policy.

Guidelines

In the rapidly expanding world of electronic communication, social media can mean many things. Social media includes all means of communicating or posting information or content of any sort on the Internet, including to your own or someone else's web log or blog, journal or diary, personal web site, social networking or affinity web site, web bulletin board or a chat room, whether or not associated or affiliated with the City, as well as any other form of electronic communication. The same values, principles and guidelines for behavior found in the City's personnel policies apply to your activities online. Ultimately, you are solely responsible for what you post online. Before creating online content, consider some of the risks and rewards that are involved. Keep in mind that any of your conduct that adversely affects your job performance, the performance of fellow associates or otherwise adversely affects members, customers, suppliers, people who work on behalf of the City or the City's legitimate business interests may result in disciplinary action up to and including termination.

A. Know and follow the rules

Employees must ensure postings on social media are consistent with City policies. Inappropriate postings that may include discriminatory remarks, harassment, and threats of violence or similar inappropriate or unlawful conduct will not be tolerated and may subject the employee to disciplinary action up to and including termination.

B. Be respectful

Employees are to be fair and courteous to fellow associates, customers, suppliers or people who work for or on behalf of the City.

C. Post only appropriate and respectful content

- Maintain the confidentiality of any private or confidential information. Do not post internal reports, policies, procedures or other internal business-related confidential communications.
- Do not create a link from your blog, website or other social networking site to the City website without identifying yourself as a City employee.
- Express only your personal opinions. Never represent yourself as a spokesperson for the City unless authorized to do so. If the City is a subject of the content you are creating, be clear and open about the fact that your views do not represent those of the City, fellow employees, customers, suppliers or people working on behalf of City. If you do publish a blog or post online related to the work you do or subjects associated with City, make it clear that you are not speaking on behalf of City. It is best to include a disclaimer such as “The postings on this site are my own and do not necessarily reflect the views of City.”

Using social media at work

Employees shall refrain from using social media while on work time or on City equipment, unless it is work-related as authorized by the employee’s manager or consistent with Rules and Regulations. Employees shall not use City email addresses to register on social networks, blogs or other online tools utilized for personal use.

19.11 Off Duty Statements

The City has an important interest in carrying out its various functions as a government agency, in the efficiency of those operations, in promoting safe and harmonious workplace relationships, and in promoting excellence in municipal government generally including adequate job performance by its staff. The City has a legitimate interest in the professionalism of its employees and the appropriate conduct of City business by its staff as part of the efficient and successful operation of municipal government functions including successful working relationships. For purposes of this policy, the term "off-duty statements" means verbal, written and electronic communications made by City employees off-duty including, but not limited to, social networking.

The following standards and procedures shall apply with respect to off-duty statements made by City employees outside of their employment duties:

- This policy shall not be applied to violate employees’ right to freedom of expression under the law.

- This Policy shall not be applied to violate employees' right to engage in protected concerted activities to the extent protected by law.
- City employees should exercise care to designate that their off-duty personal statements relating to City matters are their own statements as citizens and that their views do not represent official communications authorized by the City.
- Insubordinate, offensive or inappropriate speech or statements made by an employee off-duty may have the potential to adversely affect the workplace and may subject the employee to discipline up to and including dismissal.
- Speech or other communications by City employees may carry a risk of disrupting or interfering with workplace operations or detracting from the effective operation of City business, undermining workplace relationships, or creating substantial or material interference with bona fide job performance. When such conduct is reported, the City Manager or designee, in consultation with the City Attorney, shall investigate or cause to investigate the alleged conduct. In the course of such investigation, the City Manager may review statements reported or submitted, other relevant publicly available statements, and may consider other related evidence as appropriate.
- With respect to Police officers the Police Department Manual and departmental procedures shall control with respect to internal affairs investigations and discipline in regards to statements made by Police officers outside the course of employment duties. In such circumstances, the Police Chief shall inform the Administrative Services Director regarding any proposed discipline.
- Statements made by City employees may be protected in accordance with the Chapter 15 Whistleblower Policy.
- In accordance with the Chapter 15 Whistleblower Policy, the City shall not retaliate against an employee on account of statements protected under the Whistleblower Policy. The foregoing applies to all City employees including, but not limited to Police officers and applies whether the report is made inside or outside the workplace.

The City retains the right to report suspected unlawful conduct by any City employee to appropriate law enforcement authorities.

19.12 Media Contacts

Employees should not speak to the media on the City's behalf without contacting the City Manager's department, and receiving authorization from the City Manager or designee. All media inquiries should be directed to The City Manager.

19.13 Employee Political Activities

The City prohibits:

- Employees and officers from engaging in political activities during work hours;
- Political campaigning in City buildings or on premises adjacent to City buildings; and
- An employee or officer from using his or her office to coerce or intimidate employees to promote, propose, oppose, or contribute to any political cause or candidate.

Examples of prohibited conduct include, but are not limited to the following:

- Participate in political activities of any kind while in a City uniform;
- Participate in political activities during working hours;
- Participate in political activities on City worksites;
- Place or distribute political communications on City property;
- Use equipment to make political communications;
- Solicit a political contribution from an officer or employee of the City, or from a person on a City employment list, with knowledge that the person from whom the contribution is solicited is a City officer or employee;
- Favor or discriminate against any employee because of political opinions or affiliations;
- Interfere with any election; or
- Attempt to trade job benefits for votes.

Examples of permitted conduct include, but are not limited to the following:

- Express opinions on political subjects or candidates;
- Become a candidate for any local, state, or national election;
- Contribute to political campaigns;
- Join and participate in the activities of political organizations;
- Request, during off-duty time, political contributions, through the mail or other means, from City officers or employees if the solicitation is part of a solicitation made to a significant segment of the public which may include City officers or employees;
- Solicit or receive, during off-duty time, political contributions from a City employee organization if the funds, when collected, were not earmarked for a clearly identifiable candidate for a federal, state or local office; or

- Solicit or receive, during off-duty time, political funds or contributions to promote the passage or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of City officers or employees.

19.14 Fitness For Duty

Conditional Offer of Employment Examinations

After a conditional offer of employment has been extended to an applicant, the City may, in compliance with all applicable laws, require the applicant to submit to a fitness for duty examination prior to conferring appointment.

Current Employee Examinations

The Administrative Services Director or designee may require an employee to submit to a fitness for duty examination to determine if the employee is able to perform the essential functions of his or her job when there is significant evidence that:

- The employee appears to be unable to perform or has difficulty performing one or more essential functions of his or her job; and/or
- There is reason to question the employee's ability to safely or efficiently complete work duties.

Role of Health Care Provider

The City may require that a City-selected health care provider will examine the employee at City expense. The City will provide the health care provider with a letter requesting a fitness for duty examination and a written description of the essential functions of the employee's job. The health care provider will examine the employee and provide the City with non-confidential information regarding whether:

- The employee has a disability within the meaning of the law;
- The employee is fit to perform essential job functions;
- There are any reasonable accommodations or workplace restrictions that would enable the employee to perform essential job functions; and
- The employee's continued employment poses a threat to the health and safety of him or herself or others.

Should the health care provider exceed the scope of the City's request and provide confidential health information, the City will return the report to the health care provider and request

another report that includes only the non-confidential fitness for duty information that the City has requested.

Medical Information

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

Medical Information from the Employee's Health Care Provider

An employee may submit confidential medical information to the City from his or her personal health care provider. If the employee provides written authorization, the Administrative Services Director will submit the information that the employee provides to the City-paid health care provider who conducted the examination. The Administrative Services Director will request the City-paid health care provider to determine whether the information alters the original fitness for duty assessment.

19.15 Interactive Process

Initiating the Interactive Process

The City, through the Administrative Services Director or designee, will initiate the interactive process when:

- An applicant or employee with a known physical or mental disability or medical condition requests reasonable accommodation(s);
- The City otherwise becomes aware of the need for an accommodation through a third party (e.g. a doctor's note requesting an accommodation), or by observation of the employee's work;
- The City becomes aware of the possible need for an accommodation because the employee with a disability has exhausted workers' compensation leave, Family and Medical Act leave, or other leave rights, but the employee and/or the employee's health care provider indicate that further accommodation is still necessary for recuperative leave or other accommodation;
- An employee disabled by pregnancy, childbirth or related medical conditions requests a reasonable accommodation or transfer based on the advice of her health care provider;

- An employee with a physical or mental disability, regardless of cause, fails to return to work following pregnancy disability leave;
- An employee-victim of domestic violence, sexual assault, or stalking requests a reasonable accommodation(s) for his or her safety at work;
- An employee requests an accommodation to address a conflict between religious belief, observance, or practice and any employment requirement;
- An employer is aware of the need for a reasonable accommodation for an employee's or applicant's religious beliefs, observance or practices.

Interactive Process Communication

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

Determination and Potential Reasonable Accommodations

After the discussions, the Administrative Services Director or designee will review the information received, and determine if there is a reasonable accommodation that would enable the applicant or employee to perform essential job functions, or if the accommodations would pose an undue hardship on City finances or operations. The Administrative Services Director will inform the applicant or employee of his or her determination. The Administrative Services Director will use his or her discretion based upon the particular facts of each case. The City will consider accommodations that the applicant or employee suggests, but has the right to select and implement any reasonable accommodation that it deems effective. The range of potential reasonable accommodations includes, but is not limited to:

- Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities, including: acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, and/or the provision of qualified readers or interpreters;
- Job restructuring;
- Part-time or modified work schedules;

- Paid or unpaid leave of absence of a finite duration that is likely to enable the employee to return to work at the end of the leave;
- Preferential consideration to reassignment to a vacant, comparable position, except when such preference would violate a bona fide seniority system;
- Reassignment to a vacant lower-paid position if there is no funded, vacant comparable position for which the individual is qualified for; or
- Reassignment to a temporary position, if the individual agrees.

CHAPTER 20 WORKPLACE VIOLENCE PREVENTION PROGRAM

20.01 Policy

The City is committed to providing a safe and secure workplace for employees and the public. The City has established a policy that provides a zero tolerance for acts or threats of violence in the workplace. The workplace includes any location where City business is conducted, including vehicles and parking lots. Any violation of this policy may lead to criminal prosecution, and/or disciplinary action, up to and including termination.

20.02 Prohibited Behavior

Employees are prohibited from engaging in or promoting acts of intimidation, violence, threats, coercion, assault and/or abusive behavior toward any person while in the course of City employment. The City has zero tolerance for any conduct that violates this policy, including but not limited to references to workplace violence that are intended to be harmless, humorous, a prank, blowing off steam, or venting.

20.03 Definitions

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

- Threats or acts of physical harm directed toward an individual or his/her family, friends, associates, or property.
- The destruction of, or threat of destruction of City property or another employee's property.
- Harassing or threatening phone calls.
- Surveillance.
- Stalking.
- Possession of offensive or defensive weapons (firearms, illegal knives, clubs, mace, pepper spray, tear gas, etc.) at work unless specifically required for the performance of job duties, or authorized and approved by the Administrative Services Director. Weapons are defined as firearms, chemical sprays, clubs or batons, and knives, and any other device, tool, chemical agent or implement that can cause bodily harm if used as a weapon or displayed in such a manner to cause harm or threaten a person with harm.

20.04 Incident Reporting Procedures

Employees must immediately report workplace violence to their supervisor or department director. The supervisor or department director shall immediately report the matter to the Administrative Services Director.

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

The Administrative Services Director or designee will take appropriate steps to provide security, such as:

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

20.05 Investigation

The Administrative Services Director will see that reported violations of this policy are investigated as necessary.

20.06 Management Responsibility

Each department director has authority to enforce this policy by:

- Training supervisors and subordinates about their responsibilities under this policy;
- Assuring that reports of workplace violence are documented accurately and timely;
- Notifying the Administrative Services Director and/or law enforcement authorities of any incidents;
- Making all reasonable efforts to maintain a safe and secure workplace; and
- Maintaining records and follow up actions as to workplace violence reports.

20.07 Follow up and disciplinary Procedures

An employee found in violation of this policy may be subject to disciplinary action, up to and including termination. In addition, employees found in violation of this policy may be subject to criminal prosecution.

ATTACHMENT 1

Family Care and Medical Leave Policy

I. Statement of Policy

The City of Desert Hot Springs will provide family and medical care leave for eligible employees as required by state and federal law. The following provisions set forth rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (“FMLA”), and the regulations of the California Family Rights Act (“CFRA”). Unless otherwise provided by this policy, “leave” under this policy shall mean leave pursuant to the FMLA and CFRA.

II. Definitions

- A. “12-Month Period” means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
- B. “Single 12-month period” means a 12-month period which begins on the first day the eligible employee takes FMLA leave to take care of a covered servicemember and ends 12 months after that date.
- C. “Child” means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self care because of a mental or physical disability. An employee’s child is one for whom the employee has actual day-to-day responsibility for care and includes, a biological, adopted, foster or step-child. A child is “incapable of self care” if he/she requires active assistance or supervision to provide daily self care in three or more of the activities of daily living or instrumental activities of daily living — such as, caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.
- D. “Parent” means the biological, adoptive, step or foster parent of an employee, or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.
- E. “Spouse” means a husband or wife as defined or recognized under California State law for purposes of marriage.

- F. “Domestic Partner,” as defined by Family Code §§ 297 and 299.2, shall have the same meaning as “Spouse” for purposes of CFRA Leave.
- G. “Serious health condition” means an illness, injury impairment, or physical or mental condition that involves:
1. Inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or
 2. Continuing treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
 - a) A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three full consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - i) Treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist by a health care provider, by a nurse, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity; or
 - ii) Treatment by a health care provider on at least one occasion which must take place within seven days of the first day of incapacity and results in a regimen of continuing treatment under the supervision of the health care provider. This includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.

- b) Any period of incapacity due to pregnancy or for prenatal care. This entitles the employee to FMLA leave, but not CFRA leave. (Under California law, an employee disabled by pregnancy is entitled to pregnancy disability leave.)
- c) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - i) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse;
 - ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.
- d) A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
- e) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

H. "Health Care Provider" means:

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

the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;

4. Nurse practitioners and nurse-midwives, clinical social workers, and physician assistants who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;
 5. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
 6. Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.
- I. "Covered active duty" means: (1) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with Armed Forces to a foreign country, or (2) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of a member of the Armed Forces to a foreign country under a call or order to active duty under certain specified provisions.
- J. "Covered Servicemember" means: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty; or (2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
- K. "Outpatient Status" means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to either: (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

- L. “Next of Kin of a Covered Servicemember” means the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.
- M. “Serious Injury or Illness” means: (1) in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; or (2) in the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy, means a qualifying injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

III. Reasons for Leave

Leave is only permitted for the following reasons:

- The birth of a child or to care for a newborn of an employee;
- The placement of a child with an employee in connection with the adoption or foster care of a child;
- Leave to care for a child, parent, spouse, or domestic partner who has a serious health condition;
- Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position;

- Leave for a “qualifying exigency” may be taken arising out of the fact that an employee’s spouse, son, daughter, or parent is on covered active duty or call to active duty status (under the FMLA only, not the CFRA); or
- Leave to care for a spouse, son, daughter, parent, or “next of kin” who is a covered servicemember of the United States Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces (this leave can run up to 26 weeks of unpaid leave during a single 12-month period) (under the FMLA only, not the CFRA).

IV. Employees Eligible for Leave

An employee is eligible for leave if the employee:

- Has been employed by the City of Desert Hot Springs for at least 12 months; and
- Has been employed by the City of Desert Hot Springs for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

V. Amount of Leave

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

A. Minimum Duration of Leave

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

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

B. Spouses Both Employed by the City of Desert Hot Springs

In any case in which a husband and wife both employed by the City of Desert Hot Springs are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child (i.e., bonding leave).

In any case in which a husband and wife both employed by the City of Desert Hot Springs are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 26 workweeks during any 12-month period if leave is taken to care for a covered servicemember.

Except as noted above, this limitation does not apply to any other type of leave under this policy.

VI. Employee Benefits While on Leave

Leave under this policy is unpaid. While on unpaid leave, employees will continue to be covered by the City's group health insurance plan for up to 12 weeks each leave year. If the employee is disabled by pregnancy, coverage will continue to be covered for up to four months each leave year.

In the event an employee is disabled by pregnancy and also uses leave under the CFRA, the City will maintain the employee's health benefits while the employee is disabled by pregnancy (up to four months or 17 1/3 weeks) and during the employee's CFRA leave (up to 12 weeks). However, employee will not be covered under any voluntary benefit plans which are not provided pursuant to the agency's group health plans.

Employees may make the appropriate contributions for continued coverage under the preceding non-health benefit plans by payroll deductions or direct payments made to these plans. Depending on the particular plan, the City will inform you whether the premiums should be paid to the carrier or to the City. Your coverage on a particular plan may be dropped if you are more than 30 days late in making a premium payment. However, you will receive a notice at least 15 days before coverage is to cease, advising you that you will be dropped if your premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

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

his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control.

VII. Substitution of Paid Accrued Leaves

While on leave under this policy, as set forth herein, an employee may elect to concurrently use paid accrued leaves. Similarly, the City may require an employee to concurrently use paid accrued leaves after requesting FMLA and/or CFRA leave, and may also require an employee to use family and medical care leave concurrently with a non-FMLA/CFRA leave which is FMLA/CFRA-qualifying.

A. **Employee's Right To Use Paid Accrued Leaves Concurrently With Family Leave**
Where an employee has earned or accrued paid vacation, administrative leave, or compensatory time, that paid leave may be substituted for all or part of any (otherwise) unpaid leave under this policy. As for sick leave, an employee is entitled to use sick leave concurrently with leave under this policy if:

1. The leave is for the employee's own serious health condition; or
2. The leave is needed to care for a parent, spouse, child, or domestic partner with a serious health condition, and would be permitted as sick leave under City of Desert Hot Springs sick leave policy. See Chapter 8 (Sick, Disability and Workers' Compensation Leave).

B. **City of Desert Hot Springs Right To Require An Employee To Use Paid Leave When Using FMLA/CFRA Leave**

Employees must exhaust their accrued leaves concurrently with FMLA/CFRA leave to the same extent that employees have the right to use their accrued leaves concurrently with FMLA/CFRA leave, with the following exceptions:

1. Employees are not required to use paid leave during leave pursuant to a disability plan that pays a portion of the employee's salary while on leave unless the employee agrees to use paid leave to cover the unpaid portion of the disability leave benefit; and

C. **City of Desert Hot Springs Right To Require An Employee To Exhaust FMLA/CFRA Leave Concurrently With Other Leaves.**

If an employee takes a leave of absence for any reason which is FMLA/CFRA qualifying, the City of Desert Hot Springs may designate that non-FMLA/CFRA leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement. The only

exception is for peace officers and firefighters who are on leave pursuant to Labor Code § 4850.

- D. City of Desert Hot Springs and Employee's Rights If An Employee Requests Accrued Leave, Other than Accrued Sick Leave, Without Mentioning Either the FMLA or CFRA.

If an employee requests to utilize accrued vacation leave or other accrued paid time off, other than sick leave, without reference to a FMLA/CFRA-qualifying purpose, the City of Desert Hot Springs may not ask the employee if the leave is for a FMLA/CFRA qualifying purpose. However, if the City of Desert Hot Springs denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA qualifying purpose, the City of Desert Hot Springs may inquire further into the reason for the absence. If the reason is FMLA/CFRA-qualifying, the City of Desert Hot Springs may require the employee to exhaust accrued leave as described above.

VIII. Medical Certification

Employees who request leave for their own serious health condition or to care for a child, parent or a spouse who has a serious health condition must provide written certification from the health care provider of the individual requiring care if requested by the City of Desert Hot Springs.

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

Employees who request leave to care for a covered servicemember who is a child, spouse, parent, or "next of kin" of the employee must provide written certification from a health care provider regarding the injured servicemember's serious injury or illness.

The first time an employee requests leave because of a qualifying exigency, the City may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service. A copy of new active duty orders or similar documentation shall be provided to the City if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different covered military member.

A. Time to Provide a Certification

When an employee's leave is foreseeable and at least 30 days notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the City of Desert Hot Springs within the time frame requested by the City of Desert Hot Springs within fifteen (15) calendar days from the request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

B. Consequences for Failure to Provide an Adequate or Timely Certification

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

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

C. City's Review of the Contents of Medical Certification for Employee's Own Serious Health Condition

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

2. Authentication and Clarification: After giving the employee an opportunity to cure the deficiencies in a medical certification for the employee's own serious health condition, the City may contact the health care provider who provided the certification to clarify and/or authenticate the certification. "Authentication" means providing the health care provider with a copy of the certification form and requesting verification that the information on the form was completed or authorized by the health care provider who signed the form. "Clarification" means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of the response. The City

may not ask for additional information beyond that required on the certification form.

D. Second and Third Medical Opinions

If the City of Desert Hot Springs has reason to doubt the validity of a certification, the City of Desert Hot Springs may require a medical opinion of a second health care provider chosen and paid for by the City of Desert Hot Springs. If the second opinion is different from the first, the City of Desert Hot Springs may require the opinion of a third provider jointly approved by the City of Desert Hot Springs and the employee, but paid for by the City of Desert Hot Springs. The opinion of the third provider will be binding. An employee may request a copy of the health care provider's opinions when there is a second or third medical opinion sought.

E. Intermittent Leave or Leave on a Reduced Leave Schedule

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition {"serious health condition"}, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

IX. Employee Notice of Leave

Although the City recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. Except for qualifying exigency leave, if leave is foreseeable, at least 30 days' notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. Such notice may be orally given. For foreseeable leave due to a qualifying exigency, an employee must provide notice of the need for leave as soon as practicable, regardless of how far in advance such leave is foreseeable.

X. Reinstatement upon Return from Leave

A. Right to Reinstatement

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position

with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

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

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

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

C. Fitness-for-Duty Certification

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

D. Reinstatement of "Key Employees"

The City may deny reinstatement to a "key" employee (i.e., an employee who is among the highest paid 10 percent of all employed by the District within 75 miles of the worksite) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the City of Desert Hot Springs, and the employee is notified of the City of Desert Hot Springs intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

XI. Required Forms

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

- “Request For Family or Medical Leave Form” prepared by the City to be eligible for leave. NOTE: EMPLOYEES WILL RECEIVE A RESPONSE TO THEIR REQUEST WHICH WILL SET FORTH CERTAIN CONDITIONS OF THE LEAVE;
- Medical certification—either for the employee’s own serious health condition or for the serious health condition of a child, parent, spouse or domestic partner.
- Authorization for payroll deductions for benefit plan coverage continuation; and
- Fitness-for-duty to return from leave form