CITY OF PALOS VERDES ESTATES

PERSONNEL RULES

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PERSONNEL RULES

RULE I

DEFINITIONS

For the purpose of these Personnel Rules and Regulations, unless it is plainly evident from the context that a different meaning is intended, certain terms used herein shall have the definitions ascribed to them as set forth below.

"Applicant" a person who has applied for employment or promotion.

"Appointing Authority": The position authorized to hire and/or promote an applicant to a position. Except as otherwise provided in the Palos Verdes Estates Municipal Code, the City Manager shall be the Appointing Authority for Department Head and staff positions in the City Manager's office, and Department Heads shall be the Appointing Authority for personnel within their respective departments.

"At-will": The employment status of City employees who: (1) do not hold "regular" status, (2) serve at the pleasure of the Council or City Manager, and/or (3) can be terminated at any time, without cause, and without the right of appeal. Employees who have their "regular" employment status changed to an at-will employment status as a result of a change in position must sign a notification and acknowledgment form accepting their at-will employment as a condition of employment.

"City": The City of Palos Verdes Estates.

"City Council": The City Council of Palos Verdes Estates.

"City Manager": The administrative head of the government of the City as defined by Chapter 2.08 of the Palos Verdes Estates Municipal Code.

"Class" shall mean the inclusion under one common designation of a number of units of employment, all of which involve the same general line and character of work.

"Classification Plan": An orderly arrangement of City positions by separate and distinct classes.

"Department Head": The person responsible to oversee a particular City Department's operations and budget, identified here as: Police Chief and Director of Public Works/Planning. A Department Head who is an independent contractor shall not enjoy any rights or benefits under these Rules, but shall have the same authority conferred upon any Department Head under these Rules, including but not limited to the authority to impose disciplinary action.

"Eligible List": A record of the persons qualified for employment in a specific class or position, arranged in the order of their standing in examination.

"Emergency Appointment": An appointment to fill a position without regard to these rules, on a temporary basis because of an emergency, and only until an appointment from the appropriate eligible list can be made.

"Employee" A person holding a position described in the City's classification plan.

"Examination": The process, procedure, rating, interview, test, evaluation or assessment, whether scored or unscored, formal or informal, which affects a person's eligibility for, or consideration for appointment to selection to a position.

"Personnel Officer": The City Manager or the person designated by the City Manager to fulfill human resource functions for the City pursuant to California Government Code section 45004.

"Permanent Appointment": The appointment to a permanent position within a class, after the successful completion of the probationary period, subject to Rule IX.

"Permanent Position": A budgeted position, the duties of which are not expected to terminate at any stated time.

"Position" Any office or employment contained in the City's classification plan

"Probationary Period": The one-year period of paid service established to review an employee's job performance as an extension of the examination process required before an employee gains regular status.

"Regular Full-Time Employee": An employee who successfully completes the probationary period, who regularly works forty (40) hours per week, or the maximum number of hours scheduled by a department or division.

"Regular Part-Time Employee": An employee who regularly works twenty (20) hours or more per week, but less than forty (40) hours per week, and who are subject to and successfully completes the probationary period. Employees working less than 20 hours per week do not acquire regular status, are not entitled to benefits, and serve at the pleasure of the appointing authority.

"Temporary Appointment": The appointment to a permanent position temporarily vacant by reason of leave of absence or illness of a regular employee, and/or pending examination, and/or when the needs of the service make it necessary to employ persons for a temporary period.

"Temporary/Seasonal Employee": An employee who is hired on a temporary/seasonal basis to perform duties of which are not permanent in nature, and are expected to terminate. Temporary/seasonal employees do not acquire regular status, are not entitled to benefits, and serve at the pleasure of the appointing authority.

"Termination": A voluntary or involuntary separation of an employee from City employment.

RULE II

GENERAL PROVISIONS RULES AND REGULATIONS

Sec. 1. **Personnel System Established.** These rules establish the City's personnel system. These rules apply to all regular full and regular part-time City employees, except those employees or employee groups where the rules specifically provide otherwise. These rules do not confer any rights or benefits upon persons employed as independent contractors. Effective the date of adoption, these Personnel Rules supersede any and all prior personnel policies except for departmental standard operating procedures.

Sec. 2. **Conflict with Memorandum of Understandings**. If a provision of these rules conflicts with any provision of an applicable memorandum of understanding between the City and a recognized employee organization, to the extent of such conflict, the memorandum of understanding's provision shall control.

Sec. 3. **Amendments**. Any future amendments or modifications to these rules are subject to approval by the City Council after completion of the meet and confer process with recognized employee organizations as may be required by the Meyers Milias Brown Act

Sec. 4. **No contract of employment**. These rules do not create any contract of employment, express or implied, or any rights in the nature of a contract.

Sec. 5. **Equal Employment Opportunity**. The City prohibits discrimination against employees or applicants for employment on the basis of race, color, religion, sex, gender identity, national origin, ancestry, citizenship status, age (40 and above), marital status, physical or mental disability, medical condition, sexual orientation, ethnicity, or any other basis protected by law. The City 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 who believe they have experienced any form of employment discrimination are encouraged to report this immediately, using the complaint procedure provided in Rule XVI, subsection (f) of these Personnel Rules.

RULE III

CLASSIFICATION AND PERSONNEL SYSTEM

Sec. 1 **Classification Plan.** The City Manager shall be responsible for preparing and maintaining a classification plan of all classes within the City, including class specifications. The classification plan shall consist of classifications of employees defined by specifications, including title, description of typical duties and responsibilities of each classification, and a statement of the desirable training, experience and other qualifications of applicants for positions in each classification. The classification plan shall be developed and maintained so that all positions substantially similar with respect to duties, authority, and character of work are included within the same classification. The allocation or reallocation of any position to any existing class shall not be

considered a revision of the plan. The Classification Plan will not include persons employed as independent contractors.

Sec. 2 **Revisions to Classification Plan.** The classification plan shall be revised from time to time as changing conditions require. The revisions may consist of the addition, abolishment, consolidation, division or amendment of existing classes.

RULE IV

APPLICANTS AND APPLICATIONS

Sec. 1. **Competitive Examination**. Whenever an open competitive examination is to be given for a position, the Personnel Officer shall, at least 10 calendar days prior to the final filing date, issue an appropriate advertisement regarding the position. At the written request of the appointing authority, the Personnel Officer may limit recruitment to current employees.

Application for any position must be submitted on forms provided by the Personnel Officer. All applications must be completed in full and signed by the applicant. The Personnel Officer will not process any application, which is not fully completed, signed, and dated.

These rules shall not apply to the manner of recruitment and hiring of individuals to serve as Department Heads or City Manager.

Sec. 2. **Disqualification of Applicants**. The applicant may be disqualified if the applicant:

(a) Has made false statements of any material fact, or practiced any deception or fraud on the application or declarations;

(b) Is found to lack any of the requirements, certifications, or qualifications for the position involved;

(c) Is physically or mentally unable to perform the essential functions of the job, with or without reasonable accommodation if disabled;

(d) Is a current user of illegal drugs;

(e) Is a relative of an employee, and is subject to the Employment of Relatives Policy as set forth in Rule V of these Personnel Rules.

(f) Has been convicted of a crime, either a felony or misdemeanor, that relates to the position duties that the applicant would perform;

(g) Used or attempted to use political pressure or bribery to secure an advantage in the examination process;

(h) Directly or indirectly obtained confidential information regarding examinations;

(i) Failed to submit the employment application correctly or within the prescribed time limits;

(j) Has had his or her privilege to operate a motor vehicle in the State of California suspended or revoked, if driving is job-related.

(k) For any material cause which would render the applicant unsuitable for the position, including a prior resignation from the City, termination from the City, or a significant disciplinary action.

Sec. 3. Time of Filing Applications. Applications shall not be accepted unless the application fully complies with the provisions of these rules and regulations and the City is accepting applications for the position. Applications shall be marked with the date and time filed.

Sec. 4. Persons Excluded. Individuals involved in receiving applications or in preparing, conducting, or holding an examination for a position shall be precluded from applying for that position at the time of such examination.

RULE V

EMPLOYMENT OF RELATIVES POLICY

The City restricts the hiring and/or employment of relatives of City employees based on the following criteria:

Sec. 1. Definitions. For the purposes of this policy the following definitions shall apply:

(a) A "relative" is defined as a spouse, domestic partner, child, step-child, parent, step-parent, parent-in-law, legal guardian, brother, sister, brother-in-law, sister-in-law, step-sister, step-brother, aunt, uncle, niece, nephew, grandchild, grandparent, regardless of their place of residence, individuals related to a domestic partner, or any other individual related by blood or marriage living within the same household as the City employee.

(b) An "employee" is defined as any person who receives a City payroll check for services, full or part-time, rendered to the City.

Sec. 2. General Provisions. The employment of relatives of City employees is limited to the following situations:

(a) Any relative of a City Council member or the City Manager shall not be considered for employment with the City in any capacity, either full time or part-time.

(b) Any relative of a Department Head may not be considered for employment within the department or area of responsibility of such Department Head.

(c) Any relative of a City employee shall not be considered for employment if, at the time of such employment, a direct supervisor-subordinate relationship would exist.

(d) Relatives of City employees, except for relatives of Council members, the City Manager, or Department Heads, may be hired for temporary assignments as long as the temporary assignment does not otherwise conflict with this Section (2).

Sec. 3. Conflict of Interest. If two existing City employees become married, related or become domestic partners and their employment conflicts with the policy stated in paragraph (2) above they may continue employment provided that such employment does not present a substantial and tangible detriment to the supervision, safety, or security of the particular work unit. The Department Head will consult with City Manager to determine whether such detriment or undue hardship exists.

Sec. 4. Limitations on Hiring. In no case may an employee participate directly or indirectly in the recruitment or selection process for a position for which an employee's relative may have filed an official employment application.

Sec. 5. City Manager Authority. In all situations where the City Manager determines a conflict exists between present or future related employees, the City Manager shall attempt to resolve such conflict in the following manner:

(a) Attempt to redefine the job responsibilities of the related employees within the department to minimize the conflict.

(b) If such redefinition of job status is not feasible, attempt to transfer one of the employees to a similar position that would not be in violation of this policy.

(c) If transfer is not feasible or acceptable, request the voluntary resignation of one of the employees.

(d) If one of the employees does not resign voluntarily, the employee with the least cumulative City service may be discharged by the City Manager.

Sec. 6. Exception: This policy shall not apply to any full-time employees who, as of July 1, 2011, are working in the City's Police Department and are relatives with each other as defined in Section 1(a) above.

RULE VI
EXAMINATIONS

Sec. 1. General. After the time limit for receiving applications for a particular position has expired, the Personnel Officer, and the Appointing Authority will determine the total number of applicants who meet the minimum qualifications for the position. The chosen applicants will then be given further examination in order to place them on the eligible list. The examination shall test fairly the relative capacities of the persons examined to discharge the duties of the position.

Sec. 2. Scoring and Qualifying. The failure to meet established standards described in the job announcement, may be grounds for declaring such applicant as failing in the entire examination or as disqualified for subsequent parts of an examination. A candidate's final score in a given

examination will be the average of the scores on each competitive part of the examination on which the applicant qualified, weighted as shown in the examination announcement.

Sec. 3. **Notice of Results**. Each applicant will be notified of his or her pass/fail status of examinations. Actual scores are provided upon request.

Sec. 4. **Inspection of Papers**. Any candidate has the right to inspect his or her own examination paper during normal working hours within 14 calendar days after the notices of examination results are mailed. Any error in computation, or incorrectly scored written test answers brought to the attention of and confirmed by the Personnel Officer or designee will be corrected, and the final score will be adjusted accordingly. Such corrections will not, however, invalidate appointments previously made. Examination papers are not subject to inspection by the public or by other candidates or applicants, except as required by law.

Sec. 5. **Veterans' Preference**. Pursuant to Government Code section 50088, preference shall be given to a veteran over other identically qualified applicants, with the exclusion of promotional opportunities. The term "Veteran" as used in this rule shall mean: (1) any person who has served full time for 30 days or more in the armed forces in time of war or in time of peace in a campaign or expedition for service in which a medal has been authorized by the government of the United States, or (2) during the period September 16, 1940, to January 31, 1955, or (3) who has served at least 181 consecutive days since January 31, 1955, and who has been discharged or released under conditions other than dishonorable, but does not include any person who served only in auxiliary or reserve components of the armed forces whose service therein did not exempt him or her from the operation of the Selective Training and Service Act of 1940.

Sec. 6. **New Employee Examination.** Regular city employees shall be hired through a competitive examination process conducted by the Personnel Officer. Examinations may include one or all of the following: a written examination, an oral panel examination and a physical fitness examination. The score of each examination conducted may be weighted to establish an eligibility-for-hire list for each class of a position.

Sec. 7. **Promotional Examination**. Promotion shall be based upon a competitive examination that evaluates records to determine efficiency, character, and seniority, and upon such other objective and subjective tests and measures as may be necessary. The Personnel Officer shall then create an eligible list and the Appointing Authority will make appointments from that list in the same manner as prescribed in Rule VIII Sec. 7. Whenever practicable, vacancies shall be filled by promotion. The Appointing Authority, however, shall have the discretion to determine whether a position should be filled through an open to the public, or closed competitive examination process.

RULE VII

ELIGIBLE LISTS

Sec. 1. **General Provisions**. After completion of an open or promotional examination, the Personnel Officer will prepare an eligible list consisting of the names of applicants who passed the examination, arranged alphabetically. Notwithstanding any other provision of these rules, if there are less than three names on an eligible list, the Appointing Authority may declare such list void, in

which case a new examination shall be given. Eligible lists will become effective upon certification by the Appointing Authority.

Sec. 2. **Duration of List**. Eligible lists for classes for which there is continuous recruitment remain in effect indefinitely. All other eligible lists remain in effect for 12 months, unless the Appointing Authority abolishes the list or the list is exhausted or extended by the Appointing Authority. The Appointing Authority with consultation of the City Manager, may extend the list at any time prior to the expiration of the list if he or she determines that it is in the best interest of the City to do so.

Sec. 3. **Removal from List**. The name of any person appearing on an eligible list will be removed by the Personnel Officer upon the applicant's written request to be removed from the list, or failure to respond to a notification of an opening from the Personnel Officer. It is the applicant's responsibility to keep the Personnel Officer informed of his or her current address and telephone number.

RULE VIII

CERTIFICATION AND APPOINTMENT

Sec. 1. **Requisition for Certification**. Whenever a vacant position is to be filled, the Appointing Authority shall ask the Personnel Officer for certification of names of persons eligible for the position. The Appointing Authority also shall state whether the position to be filled is temporary or permanent and when service must begin. Except where an emergency appointment is necessary, vacancies may be filled by promotion, transfer or reinstatement, within the provision of these rules and with the approval of the Appointing Authority or by new appointment from an eligible list by the Appointing Authority.

Sec. 2. **Certification of Eligibles**. Upon receipt of requisition for certification of names to fill a vacancy, the Personnel Officer shall certify to the Appointing Authority from the appropriate eligible list, the names of three top scoring persons.

Sec. 3. **Objections and Substitutions**. If, for reasons stated in Section 2 of Rule IV, the Appointing Authority objects to any of the persons certified, the Personnel Officer may investigate the charges, and if the objection is sustained, shall remove the name of such person from the eligible list.

Sec. 4. **Background Screening.** Prior to an appointment, the Appointing Authority, his or her designee, or the Personnel Officer, shall perform a thorough and complete background investigation on the eligible applicant, which may include, but is not limited to, work experience, education, competency, moral character, and/or criminal history. Upon completion of this process and at the discretion of the Appointing Authority or the Personnel Officer, the applicant may be disqualified from the process.

Sec. 5. **Medical Examinations**. At the Appointing Authority's discretion or as otherwise required by law, all applicants for a position may be required to undergo a medical examination which may include testing for controlled substances and/or psychological examination which shall be job related and consistent with a business necessity. Any such examination shall be conducted for

the purpose of verifying an applicant's ability to safely perform the essential functions of a particular position, either with or without a reasonable accommodation.

Sec. 6. **Rule of Three.** In the case of a promotion, the Appointing Authority may utilize the "rule of 3" in making an appointment by choosing among the top three names on the eligibility list.

Sec. 7. **Temporary Appointment**. At the Appointing Authority's discretion, when it is impractical to make an appointment from an eligibility list because of the short duration of the work or project to be performed or because there is no eligibility list, then a person may be employed in that position in an acting capacity or as a temporary or seasonal employee.

RULE IX

PROBATIONARY STATUS

Sec. 1. **Policy**. Except for persons who are otherwise employed in an at-will status or who are not covered by these rules, all persons hired by the City to fill a position shall be required to successfully complete 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.

Sec. 2. **Length of Probation.** Unless otherwise specified by memorandum of understanding or these Personnel Rules, the probationary period generally is 12 months of actual and continuous service. The Appointing Authority may at its discretion extend the probationary period provided that the probationary employee is notified in writing prior to the expiration of the probationary period that the probationary period has been extended, and the length of that extended probationary period.

Sec. 3. **Separation Without Cause.** At any time during the probationary period or extended probationary period, the employment relationship may be terminated without cause and without right of appeal, grievance or hearing, except for legally required liberty interest hearings pursuant to Lubey v. City and County of San Francisco. The probationary employee will be notified prior to the expiration of the probationary period that he or she has been rejected for regular appointment.

Sec. 4. **Probation After Promotion.** On accepting a promotion, an employee serves a new probationary period of twelve (12) months of actual and continuous service. At the Department Head's discretion, the probationary period may also be extended provided that the employee is notified in writing of the extension and the length of time of the extension. An employee does not acquire regular status in the promotional position until the successful completion of the probationary period. If the employee fails to satisfactorily complete the probationary period in the promotional position, the employee will be entitled to return to the position held prior to promotion at the range and step previously held if not subject to termination for disciplinary reasons. The employee is not entitled to notice or a hearing if rejected during probation.

RULE X

TRANSFERS, RESIGNATIONS, LAYOFFS, JOB ABANDONMENT AND REINSTATEMENT

Sec. 1. **Voluntary Transfer**. A regular employee may initiate a request to transfer to another position in the same or lower classification for which the employee is qualified in the opinion of the Appointing Authority by submitting a letter of "Request to Transfer" to the Personnel Officer. The "Request" will be kept on file for one year from the date received. With the approval of the Department Head for whom the employee now works and the Department Head for whom the employee wishes to work, the employee will be transferred to the new position when the first vacancy becomes available.

Sec. 2. **Involuntary Transfer**. The City may involuntarily transfer an employee at any time from one position to another in the same or comparable classification without loss of compensation or benefits. Whenever possible, an employee being involuntarily transferred will receive ten working days notice. Nothing herein shall abridge the right of a peace officer to administratively appeal a transfer for the purposes of punishment under the Public Safety Officers Procedural Bill of Rights.

Sec. 3. **Appeal of Involuntary Transfer**. If an employee objects to the involuntary transfer, the employee may, within ten working days of the Notice of Transfer, file a written appeal with the City Manager setting forth the reasons therefore. Any appeal filed must be based upon the alleged violation of the requirements for transfer and/or procedure followed. The City Manager's decision shall be the final administrative action.

Sec. 4. **Resignation**. An employee who wishes to resign from City employment in good standing must submit the resignation to his or her Department Head two weeks prior to the planned separation date. A resignation becomes final when accepted by the Appointing Authority. Once a resignation has been accepted by the Appointing Authority, it cannot be withdrawn.

Sec. 5. **Unexcused Absence**. The unexcused absence of an employee shall be cause for the imposition of appropriate disciplinary action, which may include termination.

Sec. 6. **Layoffs**. The City Council may in its discretion implement layoff due to lack of work or funds or because the need for a position no longer exists. Should such position or employment or any position involving all or any of the same duties be reinstated or created within two years, the employee laid off shall be eligible to be appointed thereto in preference to any other qualified persons on the eligible list for such position.

(a) Notice of Layoff. Layoff shall take effect thirty (30) days after the employee is in receipt of a notice in writing of the proposed layoff action. An employee proposed for layoff will have the opportunity to respond to the City Manager within five (5) days of receipt of notice to provide any information the employee may have that relates to the decision to layoff.

(b) Order of Layoff. The order of layoff shall be by inverse seniority. Seniority is defined as length of service with the City of Palos Verdes Estates in a classification within a designated department. If there are two or more employees to be laid off

who have identical seniority in a group, the order of layoff shall be total length of continuous service with the City of Palos Verdes Estates. If the length of service with the City of Palos Verdes Estates is also identical, layoff shall be based upon evaluation of performance determined by the City Manager in consultation with the Department Head.

(c) Displacement Rights (Bumping). Regular employees who are designated to be laid off and have held regular status in a lower classification within the classification series in the same department, may displace employees in the lower classification provided that the employee exercising the displacement privilege has greater length of service in the class to which the employee seeks to bump, including any time in a higher paid classification, than the incumbent he or she is seeking to displace. If the employee in the higher classification has not held status in a lower classification, then no displacement rights accrue to that individual. Conditions which affect displacement rights are as follows:

(1) The employee exercising the displacement privilege will displace employees in the lower classifications as prescribed in the Notice of Layoff.

(2) All employees must exercise displacement privileges within five (5) working days after receipt of the Notice of Layoff, by written notice to the City Manager. If these privileges are not exercised within the specified time period, they are automatically forfeited.

(d) Demotions and Transfers. Upon request of the employee subject to layoff, and with the approval of the Appointing Authority, an employee who has not held status in a lower classification may be allowed to demote to a vacant authorized position in the same department if he/she meets all requirements of the lower position as determined by the Appointing Authority. All employees who are demoted will be paid at the same rate of pay as prior to demotion, if, and only if, the rate of pay is within the range of the lower position. If this is not the case, the rate of pay shall be within the salary range of the lower position which is closest to the rate of pay prior to demotion. An employee who is transferred in lieu of layoff shall still have their name placed on the reemployment list.

(e) Reemployment List. The eligibility of the individual on the Reemployment Lists shall extend for a period of two (2) years from the date of demotion or layoff. Eligible employees not responding to written notification of an opening within five (5) working days shall have their names removed from the Reemployment List.

(1) Demoted and Transferred Employees. Employees who are demoted or transferred as a result of a layoff shall have their names placed on a classification reemployment list, in the order of their classification seniority. Vacant positions within a classification series shall be first offered to employees on this list.

(2) Laid Off Employees. Employees who are laid off and held regular status at the time of the layoff shall have their names placed on the Reemployment

List for classification in which they previously held status and for classifications at the same or lower salary range for which they qualify in the order of their classification seniority. Vacant positions will be offered to eligible persons on the Reemployment List who qualify for such vacancies after those demoted as a result of layoff but prior to an open or promotional recruitment.

(f) Reinstatement. Notice of recall from layoff shall be provided to the laid off, demoted or transferred employee and shall specify the date for reporting to work, which shall not be more than fourteen (14) working days from the date the notice is received. Notice shall be deemed to have been received when sent to the last known address on file with the city.

RULE XI

PERFORMANCE EVALUATIONS

Sec. 1. Frequency. Employees shall receive performance evaluations at least once per year. Supervisors may, however, evaluate a subordinate's performance as often as the supervisor deems appropriate, and for legitimate business reasons.

Sec. 2. Process. The evaluation of an employee's performance is an ongoing process. Evaluations must be documented in writing on forms, which may be prescribed by the City. 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 necessarily 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.

Sec. 3. 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 30 calendar days after the employee receives the evaluation.

RULE XII

LEAVES OF ABSENCE

Sec. 1. Family Care Leave. To the extent not already provided for under current leave policies and provisions, the City will provide family and medical care leave for eligible employees as required by state and federal law. The following provisions set forth certain 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 both the FMLA and the CFRA.

(a) Definitions

(1) "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.

(2) "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.

(3) "Child" means a child under 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 stepchild.

(4) A child is "incapable of self care" if he or 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 self, grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.

(5) "Parent" as defined by FMLA and CFRA 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. The City also defines "parent" to include in-laws.

(6) "Spouse" means a husband or wife as defined or recognized under California State law for purposes of marriage.

(7) "Domestic Partner," as defined by Family Code §§ 297 and 299.2, shall have the same meaning as "Spouse" for purposes of CFRA Leave.

(8) "Sibling" as defined by City policy means the biological, adoptive, in-law, step or foster sister or brother of an employee.

(9) "Serious health condition" means an illness, injury impairment, or physical or mental condition that involves:

(i) 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

(ii) 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:

1) 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

2) 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:

1) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse;

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

3) 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.

(10) "Health Care Provider" means:

(i) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;

(ii) 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;

(iii) 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;

(iv) 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;

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

(vi) 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.

(11) "Active Duty or Call to Active Duty Status" means a duty under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation for members of the Reserve components, the National Guard, and certain retired members of the Regular

Armed Forces and retired Reserve while serving on active duty status during a war or national emergency declared by the President or Congress.

(12) "Contingency Operation" means a military operation that is (1) designated by the Secretary of Defense as an operation in which members of the United States Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or (2) that results in the call to order to, or retention on, active duty members of the United States Armed Forces by law or any other provision of law during a war or national emergency declared by the President or Congress.

(13) "Covered Servicemember" means a curent 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.

(14) "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.

(15) "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.

(16) "Serious Injury or Illness" means an injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.

(b) Reasons for Leave. Leave is only permitted for the following reasons:

(1) The birth of a child or to care for a newborn of an employee;

(2) The placement of a child with an employee in connection with the adoption or foster care of a child;

(3) As defined by FMLA and CFRA, leave to care for a child, parent, spouse, or domestic partner who has a serious health condition.

(4) Leave because of a serious health condition that makes the employee unable to perform the functions of his or her position;

(5) Leave for a "qualifying exigency" may be taken arising out of the fact that an employee's spouse, son, daughter, or parent is on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation (under the FMLA only, not the CFRA); or

(6) Leave to care for a spouse, son, daughter, parent, or "next of kin" 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 (this leave can run up to 26 weeks of unpaid leave during a single 12-month period) (under the FMLA only, not the CFRA).

(c) Employees Eligible For Leave. An employee is eligible for leave if the employee:

(1) Has been employed for at least 12 months; and

(2) Has been employed for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

(d) 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.

(1) 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, there must be compliance with the notice and medical certification provisions of this policy.

(2) Spouses Both Employed By the City. In any case in which a husband and wife both employed by the City are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 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 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.

(e) Employee Benefits While on Leave. Leave under this policy is unpaid. While on leave, employees will continue to be covered by the City's group health insurance to the same extent that coverage is provided while the employee is on the job. However, employees will not continue to be covered under the City's other non-health benefits.

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 Personnel Officer will inform the employee whether the premiums should be paid to the carrier or to the City. An eligible employee's coverage on a particular plan may be dropped if the employee is more than 30 days late in making a premium payment. However, an eligible employee will receive a notice at least 15 days before coverage is to cease, advising that coverage will be dropped if the premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

If an employee fails to return to work after his or 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 or her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. The City shall have the right to take legal action to recover premiums due the City.

(f) 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.

(1) 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.

An employee must use sick leave concurrently with leave under this policy if:

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

(ii) 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 the City's sick leave policy.

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

(i) Employees are required to use accrued compensatory time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act; and

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

(iii) The order in which leave banks are used shall be in the employee's discretion.

(3) City's Right To Require An Employee To Exhaust FMLA/CFRA Leave Concurrently With Other Leaves. If an employee takes a leave of absence for any reason which is FMLA/CFRA-qualifying, the City 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 on leave pursuant to Labor Code § 4850.

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

(g) 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.

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 or 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, an employer may require the employee to provide a copy of the covered servicemember's active duty orders or other documentation issued by the military which indicates that the covered servicemember is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered servicemember'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 servicemember.

(1) 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 Department Head within the time frame requested by the Department Head (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(i) 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.

(ii) 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.

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

(h) 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 or for the employee's own 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.

(i) 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 or 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 or her supervisor as soon as possible that such leave will be needed. Such notice may be orally given. If the City determines that an employee's notice is inadequate or that the employee knew about the need for leave well in advance of the request, the City may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute.

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

(j) Reinstatement Upon Return From Leave

(1) 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.

(i) 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 the City, the employee will be reinstated within two business days, where feasible, after the employee notifies the employer of his or her readiness to return.

(ii) Employee's Obligation To Periodically Report On His or Her Status. Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

(iii) 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 or 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.

(iv) 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 City within 75 miles of the work site) if such denial is necessary to prevent substantial and grievous economic injury to the City's operations, and the employee is notified of the City's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

(2) Required Forms. Employees must fill out the following applicable forms (which the Personnel Officer will provide) in connection with leave under this policy:

(i) "Notice of Family or Medical Leave Form";

(ii) 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;

(iii) Authorization for payroll deductions for benefit plan coverage continuation; and

(iv) Fitness-for-duty to return from leave form.

Sec. 2. Pregnancy 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 months per pregnancy.

At the end of the employee's period(s) of pregnancy disability, or at the end of four months of pregnancy disability leave, whichever occurs first, a California Family Rights Act-eligible employee may request to take CFRA leave of up to 12 workweeks for reason of birth of her child, if the child has been born by this date. There is no requirement that either the employee or child have a serious health condition in order for the employee to take CFRA leave for the birth of her child. There is also no requirement that the employee no longer be disabled by her pregnancy before taking CFRA leave for the birth of her child.

(a) Notice and Certification Requirements.

(1) Requests for pregnancy disability leave must be submitted in writing and must be approved by the employee's Department Head before the leave begins. The Department Head may request supported 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. If it is not possible to provide advance notice of the need for pregnancy disability leave, such as during an emergency or unforeseen complication, then notice must be provided as soon as practicable.

(2) All leaves must be confirmed in writing, have an agreed-upon specific date of return, and be submitted to the Department Head prior to the leave being taken, except, as noted above, where it is not possible to provide advance notice because of an emergency or unforeseen complication. Requests for an extension of leave must be submitted in writing to the Department Head 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. The maximum pregnancy disability leave is four months.

(b) 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.

(c) Benefits During Leave

(1) An employee on pregnancy disability leave may receive any group health insurance coverage that was provided before the leave on the same terms as provided to other employees who become disabled off-duty, if: 1) the employee is eligible for concurrent family medical leave; and 2) the employee has not already exhausted this 12-week group health insurance coverage benefit in the current family medical leave eligibility period. The City may recover premiums it paid to maintain health coverage, as provided by the family and medical leave laws, if an employee does not return to work following pregnancy disability leave.

(2) An employee on pregnancy disability leave who is not eligible to receive group health insurance coverage as described above, may receive health insurance coverage in conjunction with COBRA guidelines by making monthly premium payments to the City.

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

(d) Reinstatement. No later than 15 calendar days after a child's birth or placement, the employee must notify her Department Head of the date of her anticipated return to work.

(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. The employer will provide the employee

notification of available positions that the employee is qualified for within 60 calendar days.

(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 Personnel Officer in cooperation with the Department Head 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, unless the employee decides to take additional time under California Family Rights Act, which does not run concurrent with Pregnancy Disability Leave.

Sec. 3. **Sick Leave**. Sick leave is leave from duty which is granted by the City to an employee because of illness, injury, exposure to contagious disease, illness or injury of a member of the employee's immediate family requiring the employee's attendance, and medical, dental and optical appointments to the extent that such appointments cannot be scheduled outside the work day.

An employee's immediate family shall consist of the employee's: spouse; domestic partner; children; step-children, or the mother, father, brother, sister, grandchildren or grandparents of the employee, Mothers-in-Law, Fathers-in-Law, Brothers-in-Law, Sisters-in-Law or other members of the employee's family residing in the employee's home; or other members of the employee's family primarily dependent upon the employee.

(a) Usage. An employee may be granted sick leave only in case of actual sickness as defined above. In the event that an employee or a member of the employee's immediate family recovers from any such sickness after being granted sick leave, and during the regularly scheduled hours of work, then such employee shall notify the appropriate immediate supervisor and be available to return to duty.

In order to apply for sick leave use, an employee shall notify the appropriate immediate supervisor within one (1) hour after the time established as the beginning of the employee's work day for all non-Police Department employees and at least three (3) hours before the employee's scheduled shift for all Police Department employees, unless the City determines that the employee's duties require more restrictive reporting unless such notice is not reasonably possible. Failure to do so without good reason shall 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 will keep the immediate supervisor informed as to the date the employee expects to return to work.

(b) Accrual. Employees will accrue sick leave according to the terms specified by the applicable memorandum of understanding. Sick leave will not accrue during leaves of absence without pay unless required by law.

(c) Impermissible Uses.

(1) 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.

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

(3) Sick leave will not be granted to any employee during the first six full calendar months of the employee's employment. However, on the successful completion of six months of employment, the employee will be credited with sick leave that would otherwise have been accrued during the probationary period as provided in this policy.

(d) Certification of need for sick leave. The City may require a physician's certification at any time regarding the sickness or injury of the employee or their immediate family member and the date of the employee's intended return to work. For police employees, requests for certification must be made within three (3) hours of the employee calling in sick.

(e) Use of vacation in lieu of sick leave. Employees will not be permitted to use vacation in lieu of sick leave unless approved by the Department Head.

(f) Placement on sick leave by supervisor. Supervisors have the discretion to place employees on sick leave when, in the supervisor's judgment, the employee's presence at work would endanger the health and welfare of other employees or where the employee's illness or injury interferes with the performance of that employee's duties.

(g) Abuse of sick leave. An employee is subject to disciplinary action for excessive use of sick leave and/or abuse of sick leave. Abuse of sick leave is a claim of entitlement to sick leave when the employee does not meet the requirements of sick leave as defined in Section 1.

(h) Evaluation of usage. Abuse of sick leave will be considered in establishing the performance rating.

(i) Inability to return to work. Unless otherwise prohibited by statute, e.g. Labor Code section 4850, and only after completion of a good-faith interactive process meeting between the employee and the Personnel Officer in coordination with the Department Head, where it is determined that an employee is unable to perform the essential functions of his or her position, with or without reasonable accommodation, as a result of a physical or psychological illness or injury for a period of six (6) months from the first date of the absence shall:

(1) Be terminated from employment. Regular 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,

(2) If eligible for disability retirement, be retired under the Public Employees Retirement System.

(j) Peace officers. Peace officer 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.

Sec. 4. **Holiday Leave**. City Hall observes the following holidays:

- New Year's Day
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Day

Except for employees in the Police Officers Association bargaining unit, if any of these holidays falls on a Sunday, the Monday following will be treated as the holiday. If the holiday falls on a Saturday, the Friday preceding will be treated as the holiday.

Unless an applicable Memorandum of Understanding or Police Department policy provides otherwise, employees must have been employed by the City on the day preceding and the day following a holiday to qualify for holiday pay. For the purposes of this paragraph, an employee who is absent on authorized vacation with pay or on accrued sick leave shall be deemed to be employed at such time.

City Hall observes the following holidays as "working holidays" where employees still report, however City services are closed to the public (with the exception of the Police Department).

Martin Luther King Day

Columbus Day

Employees will accrue Holidays according to the terms specified by the applicable memorandum of understanding. Holidays will not be allowed during leaves of absence without pay unless required by law.

Sec. 5. Vacation Leave. The purpose of annual vacation leave is to enable each eligible employee to return to his or her work mentally and physically refreshed. Except as otherwise provided in a memorandum of understanding, all employees are entitled to take annual vacation leave with pay as follows:

(a) Accrual. Employees will accrue vacation according to the terms specified by the applicable memorandum of understanding. Vacation leave will not accrue during leaves of absence without pay unless required by law (e.g., military leave).

(b) Cap on accrual. At no time may an employee have a total balance of vacation days in excess of two times his or her current annual accrual rate or the amount set forth in the applicable MOU. When the employee reaches the maximum accrual he or she shall cease earning vacation leave until the balance falls below the maximum accrual.

(c) Scheduling. The Department Head and employee shall schedule the times at which vacation leave is to be taken with due consideration being given to the desires of the employee and operational needs of the department. Use of vacation leave in less than one-day increments is discouraged.

(d) Holidays falling during vacation leave. Where a paid holiday falls during an employee's vacation leave, that day will not be charged as vacation hours. Where an illness or injury necessitates hospitalization of an employee during his or her vacation leave, the days of hospitalization will not be charged as vacation hours. .

Sec. 6. Administrative Leave. The City has the right to place an employee on leave at any time with full pay. An employee may be placed on administrative leave pending investigation of misconduct, potential disciplinary action, or other reasons that the Appointing Authority in consultation with the City Manager, in his or her discretion, believes warrant such leave. Employees shall not be placed on administrative leave as harassment, discrimination or for other improper motive.

Sec. 7. Bereavement Leave. In the event of a death in an employee's immediate family, bereavement leave shall be granted to an employee in accordance with the applicable memorandum of understanding or upon the recommendation of the Department Head and approval of the City Manager. "Immediate family" consists of the following: Employee's spouse, domestic partner, child, stepchild, parent, grandparent, grandchild, brother, sister, mother/father-in-law, son or daughter-in-law, brother or sister-in-law, legal guardian, or custodial child, or the same relatives of a domestic partner. .

Sec. 8. Compassionate Leave. In the event of a bona fide illness in an employee's immediate family, compassionate leave may be granted to an employee in accordance with the applicable memorandum of understanding or upon the recommendation of the Department Head and approval of the City Manager. "Immediate family" consists of the following: Employee's spouse, domestic partner, child, stepchild, parent, grandparent, grandchild, brother, sister, mother/father-in-

law, son or daughter-in-law, brother or sister-in-law, legal guardian, or custodial child, or the same relatives of a domestic partner.

Sec. 9. Jury Duty and Court Appearances. Unless an applicable Memorandum of Understanding or Police Department policy provides otherwise, an employee shall be permitted leave under the following circumstances:

(a) Jury Duty. An employee who is summoned to serve on a jury must notify his or her immediate supervisor or Department Head as soon as possible after receiving notice of both possible and actual jury service in order to receive time off for the period of actual service required on such jury. A non-sworn regular full-time employee shall be paid up to 10 work days of jury service, and must sign-over to the City the court pay received for jury service, but not for mileage. Non-sworn regular part-time employee employees shall receive pay for jury service in an amount that is proportional to the hours worked. The time spent on jury duty is not work time for purposes of calculating overtime compensation.

(b) Subpoena. An employee who is subpoenaed to appear in court in a matter regarding an event or transaction which he or she perceived or investigated in the course of his or her City job duties will do so without loss of compensation. The time spent will be considered work time. However, an employee subpoenaed to appear in court in a matter unrelated to his or her City job duties or because of civil or administrative proceedings that he or she initiated does not receive compensation for time spent related to those proceedings. An employee may request to receive time off without pay, or may use accrued vacation for time spent related to those proceedings. The time spent in these proceedings is not considered work time and City vehicles may not be used to attend such proceedings.

(c) Victims. An employee who has been a victim of a violent crime or domestic violence has the right to take time off to: 1) appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding; 2) seek medical or psychological assistance; or 3) participate in safety planning to protect against further assaults. An affected employee must give the City reasonable 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.

Sec. 10. Military and National Emergency Leaves. 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.

Sec. 11. Voting. If an employee does not have sufficient time outside of working hours to vote at a statewide election, the employee may take up to two hours off without loss of pay at the

beginning or end of the day. An employee wishing to take this time off must obtain prior approval from his or her immediate supervisor at least 48 hours prior to the leave.

Sec. 12. **Leave without Pay**. Upon the request of the employee and the recommendation of the Department Head, a leave of absence without pay may be granted by the City Manager to an employee who has completed at least one year of continuous service prior to the effective date of the leave. An employee is not entitled to a leave of absence as a matter of right.

(a) Request. Request for leave of absence without pay shall state specifically the reason for the request, the date when the employee desires to begin the leave, and the probable date of return.

(b) Failure to return from leave. An employee's failure to return to his or her employment upon the termination of any authorized leave of absence, except under extraordinary circumstances, is cause for the employee's separation from City service.

(c) Conditions of leave. 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; however, 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. Nor is the City required to maintain contributions toward group insurance or retirement coverage except as required by law. An employee may maintain his or her health insurance benefits (including for eligible dependents) by timely paying the appropriate premiums. 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. The employee shall be reinstated to his or her former position upon the timely return from the authorized leave, or to a comparable position if the former position is abolished during the period of leave.

Sec. 13. **School 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 eight (8) hours in any calendar month of the school year, without pay, to participate in activities of the school of his or her child. The employee must provide reasonable advance notice of the planned absence. The employee may be required to use vacation and/or compensatory 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.

Sec. 14. **Student Suspension 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 shall be allowed to leave work to attend a school meeting after the child has been suspended. The employee must provide reasonable advance notice of the need for the absence, and may be required to use vacation and/or compensating time off to cover the absence. The City may also require the employee to provide documentation from the school as verification of his or her attendance at a school meeting regarding the child's suspension.

Sec. 15. Compensatory Time. Regular employees accrue Compensatory Time Off (CTO) at the rate of 1.5 hours for each hour worked over 40 hours of actual work in the employee's work week. CTO limits are established by the applicable memorandum of understanding. During employment, CTO is cashed out at the employee's current FLSA regular rate of pay (including all FLSA-applicable salary differentials). Terminating employees shall be compensated for all accrued, unused compensatory hours at the current FLSA regular rate of pay, or the average regular rate for the prior three years, whichever is higher.

(a) Supervisor Approval Required Before Work. An employee may opt to accrue compensatory time-off ("CTO") in lieu of cash payment for overtime worked.

(b) Employee Requests to Use CTO. The City will grant an employee's request to use accumulated CTO provided that: 1) the department can accommodate the use of CTO on the day requested; and 2) the employee makes the request no later than five days prior to the date requested. If the employee does not provide five days' notice, or if the department cannot accommodate the time off, the City will provide the employee the opportunity to cash out the CTO requested at the end of the current pay period. The requirement to hire behind an employee on an overtime basis shall be a basis to deny the use of CTO.

RULE XIII

COMPENSATION AND PAYROLL PRACTICES

Sec. 1. Workweek. The workweek begins at 12:00 a.m. on Monday and ends at 11:59 p.m. on Sunday, except as otherwise designated by an applicable memorandum of understanding, or as otherwise designated for employees on a flexible schedule, or as designated pursuant to 29 USC § 207(k) for safety employees.

Sec. 2. Overtime. Unless otherwise stated in a memorandum of understanding, "overtime" is all hours an overtime-eligible employee actually works over 40 hours in his or her work week. Overtime is compensated at 1.5 times the Fair Labor Standards Act (FLSA) regular rate of pay. Only actual hours worked will be counted toward the 40-hour threshold for purposes of calculating FLSA overtime pay. No overtime shall be recorded or reported for less than 10 minutes of work. Overtime-eligible employees are not permitted to work overtime except as the Department Head authorizes or directs. No employee may work overtime without receiving the approval of the appropriate supervisor prior to performing the work. Working overtime without advance approval is grounds for discipline.

Sec. 3. Travel.

(a) Commute Time. Travel time to and from work is commute time, which is not compensable, even if the employee is asked to report to different work locations on different days. Travel from home to the first work site of the day or from the last work site of the day to home is considered commute time. In addition, travel from home to a work site other than an employee's regular work location on an emergency

basis (such as a call-out in the middle of the night) will not be compensated unless the employee must travel a substantial distance (i.e., significantly more than the normal home to work commute) to address the emergency.

(b) Travel During the Workday. Travel during the workday (after the employee has reported to work), is considered hours worked for the City. However, travel from the employee's last work location to home is not compensable.

(c) Overnight Travel. Overnight travel is considered hours worked by the employee if it occurs:

(1) During regular work hours; or

(2) On an off day during the employee's normal work hours; or

(3) Outside of work hours, if the employee has to drive to the location.

If the employee travels on public transportation or as a passenger in an automobile, the time spent traveling is non-compensable. Supervisors should schedule overnight travel for employees on public transportation outside of their normal work hours if possible. If the employee is offered public transportation for travel outside of normal work hours and declines the offer, the travel time is non-compensable.

(d) Special One Day Assignment Outside the City. If an employee is required to travel out of the City for a special assignment, and the time spent traveling is significantly longer than the employee's normal commute, a portion of the travel time should be counted as hours worked. If the employee is driving to the location, only the time in excess of the employee's normal commute shall be considered as hours worked. If the employee is taking public transportation to the City, the travel time shall be counted as hours worked, except for travel between the employee's home and the public transportation facility, such as an airport or train station. Travel to attend a training program that is a regular and contemplated part of an employee's position shall not be considered a special assignment.

Sec. 4. **Training**. Compensation for training will be either paid or unpaid, in accordance with this policy.

(a) Attendance at Training Programs. An employee will not be compensated for attendance at a training program if each of the following four conditions exist: (1) attendance is voluntary, (2) the training program occurs outside of normal working hours, (3) the employee does not perform productive work, and (4) the training is not directly related to the employee's current job.

(b) Voluntary training. Attendance is considered voluntary only if the employee's working conditions are not adversely affected if he or she does not attend the training. If a supervisor within the employee's chain of command suggests that an employee's future advancement or performance evaluation will be affected if the employee does not attend the training, attendance would not be voluntary.

(c) Classes Offered At A School Or College. If an employee voluntarily enrolls in a class outside of work hours that is offered at a school, college or vocational institute, the training is not considered hours worked as long as the employee does not perform any productive work for the City. Additionally, if the City offers such a class to its employees outside of normal work hours, or pays for employees to attend such a class, it will not be considered hours worked.

(d) State-Mandated Certifications. If state law requires that an employee obtain a certification for his or her job, and the employee voluntarily attends the necessary training to obtain such certification outside of normal work hours, the time spent at that training is not counted as hours worked.

(e) Coming Back to Work After Training Day. All employees who attend training are required to return to their regular work location if, at the end of the training day, after traveling back to their regular City work location, there would be at least one half hour left in their work day.

Sec. 5. **Out-of-class Pay**. An employee who is temporarily directed by his or her supervisor in writing to serve in a regular higher position will be compensated at a higher rate of pay in accordance with the following:

(a) Except as provided in the applicable MOU, to be eligible for the additional compensation, the employee must first work a minimum of three (3) consecutive workweeks in the higher class within any 12-month period. The days of out-of-class assignment need not be consecutive. Once this qualification is satisfied, no additional requalification will be required.

(b) Temporary assignments out-of-class shall be recorded only in full-shift units. An employee working out-of-class for less than one full shift will not be credited with working out-of-class service time.

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

(d) Time worked in a higher class shall not earn credits toward the completion of probationary requirements in the higher class.

(e) Except as provided in the applicable Memorandum of Understanding, an employee who has qualified under these provisions will be compensated at the minimum rate established for the higher class for each completed work shift served in the higher class after three (3) consecutive workweeks have been completed In the event of overlapping salary ranges, a 5% increase to the base pay, shall be paid for out-of-class assignments. The higher rate of pay shall be used in computing overtime when authorized overtime is served in a non-exempt, out-of-class work assignment. The

overtime rate shall be the rate established by the overtime regulations that apply to the higher class.

Sec. 6. **Acting Pay**. Except as provided in the applicable Memorandum of Understanding, employees who by written assignment 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, if performing the duties thereof. for a period of three (3) workweeks. 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.

RULE XIV

CORRECTIVE AND DISCIPLINARY ACTION

Sec. 1. **General**. The City will administer corrective and disciplinary actions fairly, reasonably, and impartially. All Regular employees shall be subject to the imposition of discipline if just cause exists therefore, under the sole discretion of their respective Appointing Authority, up to and including termination. These rules do not confer any rights or benefits upon persons who are at-will, including but not limited to independent contractors.

Corrective action shall mean oral or written reprimands, except that in the case of peace officers, written reprimands shall be considered “punitive action” from which an officer is entitled to an administrative appeal under the Public Safety Officers Procedural Bill of Rights. Except in cases of disciplinary action as defined herein, appeals by peace officers from punitive actions as defined in Government Code section 3303 shall not be conducted pursuant to this Rule but shall be conducted pursuant to a procedure to be adopted by the City under Government Code section 3304.5.

Disciplinary action shall mean demotion, suspension without pay, reduction in pay (temporary or permanent), or termination. For peace officers, disciplinary action shall also include transfer for purposes of punishment within the meaning of Government Code section 3303. The degree of discipline shall depend on the severity of the infraction or misconduct, as well as any prior related disciplinary actions taken, and shall be in accordance with any applicable labor contract, City policies and procedures, as well as local, state, or federal laws and regulations. An employee who is represented by an employee organization has the right to have a representative present in any meeting in which the employee reasonably believes may result in disciplinary action against him or her. Except in the case of employees covered by the Public Safety Officers Procedural Bill of Rights Act, the City shall not be responsible for advising the employee of the right of representation, if any.

Sec. 2. **Causes for Corrective and/or Disciplinary Action**. While the following is not a list of all possible grounds for which an employee may be subject to corrective or disciplinary action, the following are examples of the type of misconduct that could result in corrective or disciplinary action, up to and including termination, being taken. This list is not exhaustive. The City retains the right to impose discipline whenever it deems appropriate.

(a) Violation of any department rule, City policy, rule, regulation, ordinance or resolution;

(b) Absence without authorized leave;

(c) Excessive absenteeism and/or tardiness as defined by the employee's Department Head, these rules, or Memorandum of Understanding;

(d) Use of disability leave in a manner not authorized or provided for pursuant to the disability leave policy or other policies of the City;

(e) Making any intentional or negligent false statement, omission or misrepresentation of a material fact;

(f) Providing wrong or misleading information or other fraud in securing appointment, promotion or maintaining employment;

(g) Unsatisfactory job performance;

(h) Inefficiency;

(i) Malfeasance or misconduct, which shall be deemed to include, but shall not be limited to the following acts or omissions:

(1) Conviction of a felony. "Conviction" shall be construed to be a determination of guilt of the accused by a court, including a plea of guilty or nolo contender, regardless of sentence, grant of probation, or otherwise.

(2) Commission of any criminal act as defined under California Penal Code § 15.

(3) The damaging of City property, equipment, or vehicles, or the waste of City supplies through negligence or misconduct.

(4) Insubordination; or insulting or demeaning the authority of a supervisor or manager;

(5) Dishonesty;

(6) Theft;

(7) Violation of the City's or a department's confidentiality policies, or disclosure of confidential City information to any unauthorized person or entity;

(8) Misuse of any City property, including, but not limited to: physical property, tools, equipment, City communication systems, or Intellectual Property;

(9) Mishandling of public funds;

(10) Falsifying any City record;

(11) Discourteous treatment of the public or other employees;

(12) Failure to cooperate with a supervisor or fellow employees;

(13) Unapproved outside employment or activity that violates the City's policy governing outside employment, or other enterprise that constitutes a conflict of interest with service to the City;

(14) Any conduct that impairs, disrupts or causes discredit to the City, the employee's City employment, to the public service, or other employee's employment

(15) Failure to comply with OSHA Safety Standards and City safety policies;

(16) Altering, falsifying, and tampering with time records, or recording time on another employee's time record; or

(17) Working overtime without prior authorization.

Sec. 3. Types of Corrective Action

(a) Oral Warning – this type of corrective action is appropriate for infractions of a relatively minor degree or in situations where the employee's performance needs to be discussed. Supervisors shall inform the employee that he or she is issuing an oral warning, that the employee is being given an opportunity to correct the condition, and if the condition is not corrected, the employee shall be subject to more severe corrective or disciplinary action. A conference summary of the oral warning shall be maintained in the departmental file and shall be removed from that file after one year from the date of the oral warning if the condition is corrected and there are no further occurrences of that same condition.

Oral warnings are not grievable. There is no right to an administrative appeal of an oral warning.

(b) Written Warning/Reprimand – This type of corrective action shall be issued in the event the employee continues to disregard an oral warning, or if the infraction is severe enough to warrant a written warning/reprimand being placed in the employee's personnel file. The written warning/reprimand shall state the nature of the infraction or misconduct, identify the facts supporting the written warning/reprimand, and describe the corrective action that must be taken by the employee to avoid disciplinary action being imposed.

Written warnings/reprimands are not appealable, except that sworn personnel shall have the right to an administrative appeal pursuant to Government Code section 3304(b). Employees shall have the right to submit a written response to the written warning/reprimand within 30 days of receipt. The employee's response will be attached to the written warning/reprimand in the employee's personnel file.

Sec. 4. Types of Disciplinary Action. The disciplinary actions described below are guidelines only. The City reserves the right to impose whatever level of discipline it deems appropriate based on the nature and severity of the employee's actions.

(a) Suspension Without Pay – This type of disciplinary action is appropriate for policy violations, unacceptable conduct, or for repeated acts of misconduct. A suspension without pay may also be given for minor policy violations where the employee has previously received a written warning/reprimand, but has not demonstrated appropriate behavioral changes

(b) Demotion/Reduction in Pay –Demotion may be used when warranted by the nature of the employee's actions or when other corrective or disciplinary actions have been ineffective. Demotion may also be justified when the employee is unable or unwilling to perform his or duties at an acceptable level. The demotion can be to a lower range or a lower step, and may be either temporary or permanent. A Reduction in Pay shall be deemed a demotion within the meaning of this section unless such reduction is a part of a general plan to reduce all salaries and wages as a part of an economic or general curtailment program in which case the disciplinary action procedures do not apply.

(c) Termination –Termination may be warranted when deemed appropriate by the Appointing Authority and/or the City Manager due to the nature and severity of the employee's actions. An employee may also be terminated after repeated offenses of a less serious nature when other corrective or disciplinary actions have been ineffective in having the employee correct his or her behavior or conduct.

(d) [For peace officers only] A transfer for purposes of punishment within the meaning of Government Code section 3303.

Sec. 5. Disciplinary Action Procedures. In any disciplinary action taken against a regular employee that is not at-will, the employee shall be entitled to written notice of the proposed discipline in accordance with *Skelly v. State Personnel Board* (1975) 15 Cal. 3d 194, 215, 124 Cal. Rptr. 14. For any proposed suspension, demotion, or termination, the City shall adhere to the following procedures:

(a) Notice of Proposed Discipline. The City will provide the employee with written notice of proposed discipline from the Appointing Authority of the proposed discipline. The Notice of Proposed Discipline will include:

(1) The date the proposed discipline would be effective;

(2) The specific ground(s) and particular facts upon which the action will be taken.

(3) Copies of the materials upon which the proposed action is based

(4) The right to request, within 10, days a pre-disciplinary meeting with the Appointing Authority, who shall serve as the *Skelly* officer. Additional time to

respond may be approved by the Appointing Authority in writing. In lieu of requesting a pre-disciplinary meeting, within the same 10 day period, the employee may submit a written response the Appointing Authority.

(5) The right to have a representative of his or her own choosing at the pre-disciplinary meeting.

(b) Pre-Disciplinary Meeting. The pre-disciplinary, or *Skelly* meeting, is the employee's opportunity to respond to the proposed discipline, rebut the charges, and/or identify mitigating circumstances. It is not an evidentiary hearing, and the employee will not be allowed to call or cross-examine witnesses, or interrogate the *Skelly* officer.

(c) Notice of Discipline. If, after the pre-disciplinary meeting, the Appointing Authority decides to impose the discipline or a lower form of discipline, or corrective action, he or she shall provide the employee with a written notice of discipline or corrective action. The Appointing Authority must also provide the Personnel Officer with a copy of the notice of discipline. The written notice of discipline must advise the employee of the right to appeal the imposition of discipline in the manner set forth below. If the proposed discipline is reduced to a corrective action, the employee's right to appeal the corrective action is limited to the procedures set forth for corrective actions.

Sec. 6. **Appeal Process**. Regular, not at-will, employees may appeal the imposition of discipline by filing a written request for appeal with the City Manager. This written request must be presented to the City Manager within ten (10) days following service of the notice of discipline. Failure to appeal by the employee or his or her representative within ten (10) working days will make the disciplinary action final and conclusive.

(a) Hearing Officer. A hearing officer will be mutually selected by the parties by strike-out from a list of seven neutral hearing officers to be provided by the California State Mediation and Conciliation Service.

(b) Subpoenas. The Hearing Officer has authority to issue subpoenas; each party is responsible for serving his, her, or its own subpoena(s).

(c) Conduct of Hearing. The formal rules of evidence shall not apply, although the Hearing Officer shall have discretion to exclude evidence, which is incompetent, irrelevant or cumulative, or the presentation of which will otherwise consume undue time. At the hearing, the employee and the Appointing Authority shall have the right to present documentary evidence and oral testimony under oath and to cross-examine witnesses. A recording of the hearing shall be prepared.

(d) Costs of Hearing. The costs/fees of the Hearing Officer shall be borne by the City. The City and the employee shall each bear their own expenses in presenting the appeal. If the employee wishes a copy of the hearing transcript, he or she must share the costs of the preparation of the transcript.

(e) Burden of Proof. The Appointing Authority bears the burden of proof at the hearing as to the basis for the discipline. The standard of proof shall be by preponderance of the evidence. The level of discipline is subject to review under an abuse of discretion standard.

(f) Recommended Decision. At the completion of the hearing, and after reviewing and considering any closing briefs submitted by the parties, the Hearing Officer shall render a recommended decision which shall i) state whether the discipline should be upheld, modified, or reversed, and ii) set forth which charges, if any, the Hearing Officer believes are sustained and the reasons therefore.

(g) Final Decision- Except as provided below, the Hearing Officer's recommended decision shall be submitted to the City Manager for a final decision. The City Manager may adopt, modify, or reject the Hearing Officer's recommended decision. If the City Manager intends to modify or reverse the Hearing Officer's recommended decision, the City Manager shall review the hearing transcripts, exhibits, and any briefs. The City Manager shall send his or her final decision of written findings and conclusions, along with a proof of service of mailing, to each of the parties and each of the parties' representatives.

In cases involving peace officer termination, demotion or suspension of three weeks or more, the Hearing Officer's recommended decision shall be submitted to the City Manager for review. The City Manager may adopt, modify, or reject the Hearing Officer's recommended decision. If the City Manager intends to modify or reverse the Hearing Officer's recommended decision, the City Manager shall review the hearing transcripts, exhibits, and any briefs. The City Manager shall send his or her decision of written findings and conclusions to the City Council for a final decision. The City Council may adopt, modify, or reject the City Manager's decision. If the City Council intends to modify or reject the City Manager's decision, its members must review the exhibits, the hearing transcripts, and any briefs prior to reaching a final decision to modify or reject the recommended decision. The City Council shall issue its final decision of written findings and conclusions, along with a proof of service of mailing, to each of the parties and each of their representatives.

In cases involving discipline imposed by the City Manager on a non at-will employee who reports to the City Manager, the Hearing Officer's recommended decision shall be submitted to the City Council for a final decision. The City Council may adopt, modify, or reject the Hearing Officer's recommended decision. If the City Council intends to modify or reject the recommended decision, its members must review the exhibits, the hearing transcripts, and any briefs prior to reaching a final decision to modify or reject the recommended decision. The City Council shall issue its final decision of written findings and conclusions, along with a proof of service of mailing, to each of the parties and each of their representatives

(h) Judicial Review. The final decision of the City Manager or the City Council is reviewable by administrative writ of mandamus under Code of Civil Procedure Section 1094.5.

RULE XV

PERSONNEL FILES

Sec. 1. **General**. The City maintains a personnel file on each employee. An employee's personnel file will contain only material that is necessary and relevant to the administration of the City's personnel program. Personnel files are the property of the City, and access to the information they contain is restricted.

Sec. 2. **Changes in Personal Information**. Each employee is responsible to promptly notify the Personnel Officer of any changes in relevant personal information, including: 1) Mailing address, 2) Telephone number, 3) Persons to contact in emergency, 4) Number and names of dependents. The Personnel Officer will then notify the department to update the information on all necessary files.

Sec. 3. **Location of Personnel Files**. Unless otherwise permitted by the City Manager, personnel files shall be maintained by the City Manager's Office with a duplicate file for all police personnel maintained by the Police Chief in the Police Department.

Sec. 4. **Medical Information**. All medical information about an employee or applicant is kept separately and is treated as confidential, in accordance with applicable state or federal law. 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 that complies with the requirements of the Confidentiality of Medical Information Act.

(a) 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.

The City will not provide employee or applicant medical information to a third party (except as permitted under the California Confidentiality of Medical Information Act) unless the employee signs an authorization form prescribed by the Personnel Officer in conformity with the Confidentiality of Medical Information Act.

(b) Release of medical information. The City will release only the medical information that is identified in the employee's authorization. If the employee's authorization indicates any limitations regarding the use of the medical information, the City will communicate those limitations to the person or entity to which it discloses the medical information.

Sec. 5. References and Release of Information in Personnel File

(a) Public Information. Upon request, the City will release information about its employees only to the extent required by law. The City will not disclose personnel information if it believes doing so would constitute an unwarranted invasion of personal privacy or jeopardize the safety of law enforcement personnel.

(b) Reference Checks. All requests from outside the City for reference checks or verification of employment concerning any current or former employee must be referred to the Personnel Officer. Information will be released only if the employee signs an authorization approved by the Personnel Officer, except that without such authorization, the following limited information will be provided: dates of employment, and title upon departure. Supervisors should not provide information in response to requests for reference checks or verification of employment, unless specifically approved by the Department Head on a case-by-case basis.

(c) Peace officers. Peace officer personnel records are confidential pursuant to Penal Code section 832.7 Peace officer personnel records shall only be disclosed as permitted by and in accordance with state law. Access of Peace officer personnel records must be coordinated with the Personnel Officer, or the Chief of Police.

Sec. 6. Employee Access to Personnel File.

(a) 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 the Personnel Officer to arrange an appointment. The review must be done in the presence of the Personnel Officer.

(b) Copies. On request, an employee is entitled to receive a copy of any employment-related document he or she has signed or that is contained in his or her personnel file. An employee who wishes to receive such a copy should contact the Personnel Officer.

(c) Inspection by third persons. 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. The Personnel Officer will notify the employee of the date, time and place of the inspection in writing. It is the employee's responsibility to notify the person to whom the employee has given written authorization of the date, time and place of the inspection.

(d) No addition or removal. 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.

(e) Peace Officers. Employees who are peace officers covered by the Public Safety Officers Procedural Bill of Rights Act shall be afforded such additional rights regarding their personnel files/records as may be provided by the Act.

RULE XVI

EQUAL EMPLOYMENT OPPORTUNITY

Sec. 1. Harassment/Discrimination/Retaliation Prohibited. The purpose of this rule is to establish a Discrimination, Harassment, and Retaliation Prohibition and Remedial Action Policy which defines and prohibits discriminatory, harassing and retaliatory conduct and provides a written procedure for the proper reporting, investigation and resolution of complaints of discrimination, harassment and retaliation in violation of the City's policy.

(a) Policy. The City is committed to providing a work environment free of discrimination, harassment and retaliation. The City's philosophy is that every employee has the right to work in a safe and supportive environment and is to be treated with courtesy, dignity and respect. Every City employee, official, officer, independent contractor, agent and nonemployee who have contact with City employees is expected to adhere to a standard of conduct that is respectful to all persons within the work environment. The City strictly prohibits discrimination and harassment on the basis of actual or perceived race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, sexual identity, pregnancy, perceived pregnancy, childbirth, pregnancy or childbirth related medical conditions, veteran status, or any other legally protected category. The City also prohibits retaliation against any individual for making a complaint of discrimination and/or harassment or for participating in an investigation or disciplinary action involving such a complaint. This Policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, reinstatement, transfer, leave of absence, training opportunities and compensation. This Policy further applies to all employees, including but not limited to, City employees, officials, officers, independent contractors, agents and nonemployees who have contact with employees during work hours or City premises. It is the responsibility of each and every City employee, official, officer, independent contractor, agent and nonemployee who has contact with City employees to report discrimination, harassment and retaliation.

The City considers discrimination, harassment and retaliation to be a serious offense of misconduct. Employees who violate this Policy may be subject to disciplinary action up to and including termination. If it is determined that a City official, officer, agent, independent contractor, or nonemployee has engaged in such misconduct, then the City will take immediate and corrective action legally available to it to remedy the misconduct and deter future occurrence.

This Policy shall be reviewed and discussed by each supervisor or manager with his or her personnel on an annual basis during each employee's annual performance evaluation to remind each employee of its contents, protections, and penalties.

(b) Definitions

(1) Discrimination. Discrimination is any form, or combination, of verbal, physical, or visual conduct by which an employee is treated differently or less favorably than other similarly situated employees for the sole reason that the employee is a member of a legally protected category. For example, it would be a violation of this Policy for an individual to be denied employment or terminated from employment solely because that individual has a disability which does not affect work performance or is 40 years of age or older.

(2) Harassment. Harassment is any form, or combination, of verbal, physical, or visual conduct based on an employee's membership in a legally protected category, that is sufficiently severe or pervasive so as to negatively affect an employee's work performance and/or alter the conditions of employment and create an intimidating, hostile or otherwise offensive working environment, whether or not the conduct is intended to harass, and whether made in general, directed to the employee or directed to a group of which the employee is a part.

(3) Retaliation. Retaliation is any form, or combination, of verbal, physical, or visual or environmental conduct against any person who advises that they may in the future, or who already has, reported such alleged discrimination and/or harassment to any local, state or federal authority, or who has participated in the investigation of such report and/or any resulting remedial actions.

(4) Legally Protected Category. A legally protected category is any group or characteristic which has been determined by or identified as such in any law, statute, ordinance, regulation, or court decision applicable in the City, including, but not limited to, actual or perceived race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, sexual identity, ethnicity, pregnancy, childbirth, pregnancy or childbirth related medical conditions, veteran status, or any other legally protected category.

(5) Sexual Harassment. Sexual harassment is a form of harassment defined as follows: Any action that constitutes an unwelcome sexual advance or request for sexual favors, or any verbal or physical conduct of a sexual nature that is (i) related to or conditional to the receipt of employee benefits, including, but not limited to, hiring and advancement, (ii) related to or forms the basis for employment decisions affecting the employee, or (iii) sufficiently severe or pervasive so as to affect an employee's work performance negatively and/or alter the conditions of employment and create an intimidating, hostile or otherwise offensive working environment.

(c) Examples of Prohibited Conduct

(1) Verbal Misconduct. Verbal misconduct includes inappropriate, offensive and/or unwelcome conversations, comments, statements, speeches, stories, remarks, epithets, slurs, jokes, whistling, noisemaking or verbal innuendos

made to someone or said out loud or in manner that others can hear regarding a legally protected category of people or personal characteristic as defined above. This may include, but is not limited to, inappropriate, offensive and/or unwelcome verbal communication regarding a person's physical appearance, body, attire, sexual prowess or lack thereof, marital status, pregnancy, sexual orientation or gender or identity, unwelcome flirting or advances or propositions, requests or demands for sexual favors, unlawful verbal abuse, improper threats or intimidation, and/or patronizing or ridiculing statements that convey derogatory attitudes about a particular category of people or a particular personal characteristic.

(2) Physical Misconduct. Physical misconduct includes inappropriate, offensive and/or unwelcome assault, touching, or physical interference with free movement when directed at a legally protected category of people on the basis of protected personal characteristics as defined above. This may include, but is not limited to, inappropriate, offensive and/or unwelcome touching, patting, unnecessary brushing against, lingering, hand holding, grabbing, poking, pinching, stroking, massaging, hugging, kissing, staring, leering, gesturing and/or blocking of a person's movement.

(3) Visual Misconduct. Visual misconduct includes inappropriate, offensive and/or unwelcome demonstrations, displays or circulation of inappropriate, offensive and/or unwelcome visual or written material when directed at a legally protected category of people on the basis of protected personal characteristics as defined above. This may include, but is not limited to, inappropriate, offensive and/or unwelcome posters, notices, bulletins, cartoons, drawings, graffiti, reading materials, computer graphics, display of internet websites, emails, faxes or other depictions based upon a legally protected category, whether posted on City property or personal property in the workplace.

(d) Outside scope of employment. By definition, unlawful discrimination, harassment and/or retaliation are not part of any employee's job functions or duties and is not within the course and scope of an individual's employment with the City.

(e) Questions. Employees who have questions about what conduct is prohibited or how to file a complaint may contact their supervisor, Department Head, the Personnel Officer, the City Manager or other management official.

(f) Reporting Discrimination, Harassment and/or Retaliation. If an employee believes he or she has witnessed or experienced any discriminatory, harassing or retaliatory conduct by a City employee, official, officer, independent contractor, agent or nonemployee who has contact with employees during work hours or on City premises, then he or she should immediately communicate to that person that such behavior is unwelcome. However, failure to do so does not prevent an employee from filing a complaint, nor does it in any way exonerate the person engaging in such alleged misconduct.

City management is readily available and receptive to complaints of discrimination, harassment and/or retaliation. If an employee feels that he or she has witnessed, or has been the subject of, discrimination, harassment, and/or retaliation by another City employee, official, officer, independent contractor, agent or nonemployee who has contact with employees during work hours or on City premises, then the employee should immediately report the facts of the incident or incidents and the name(s) of the individual(s) involved to the employee's immediate supervisor. If an employee does not feel that the matter can be discussed with his or her immediate supervisor, then the employee should contact the employee's Department Head and arrange for a meeting to discuss the complaint. If an employee does not feel that the matter can be discussed with either the supervisor or Department Head, then the employee should contact the Personnel Officer and arrange for a meeting to discuss his or her complaint. If an employee believes that he or she can not discuss the issue with the Personnel Officer, then the employee should schedule a meeting to discuss the complaint with the City Manager. An anonymous written complaint also can be delivered to the Personnel Officer or City Manager. It is recommended that complaints be made no later than fifteen (15) calendar days after the incident, but complaints may be made at any time. In addition, a written and signed statement of the complaint should be submitted to a supervisor, Department Head, the Personnel Officer or the City Manager within ten (10) calendar days of the initial report. But employees may also make verbal complaints. Employees in need of assistance in filing a written complaint will be provided assistance.

(1) Information to be included in a written complaint. A written complaint should include the following information:

(i) The affected employee's name, department and position title.

(ii) The name of the person or persons violating the City's Policy on discrimination, harassment, and/or retaliation, including their title(s) if known.

(iii) The specific nature of the discrimination, harassment, and/or retaliation, how long it has gone on, and any employment action (demotion, failure to promote, dismissal, refusal to hire, transfer, etc.) taken against the affected employee as a result of the discrimination, harassment and/or retaliation (if applicable).

(iv) Witnesses to the violation of the City's Policy on discrimination, harassment and/or retaliation.

(v) Whether the affected employee previously has reported discrimination, harassment and/or retaliation, and if so, when and to whom.

(2) Notification to the City is essential. Employees will not be penalized in any way for reporting discrimination, harassment and/or retaliation. This would be considered another form of retaliation and an employer may not retaliate

against employees who oppose practices prohibited by local, state and federal law, file complaints, or otherwise participate in an investigation, proceeding or hearing conducted by local, state and federal agencies, including but not limited to the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission. Similarly, the City will discipline employees who interfere with its own internal investigations and its own internal complaint procedure. Was error in formatting

(3) Anonymous complaints. Any employee who wishes to report a violation of the City's Policy on discrimination, harassment and/or retaliation but is uncomfortable disclosing his or her identity may do so by following the above complaint procedure and filing the complaint anonymously with the Personnel Officer or City Manager. Employees should know, however, that anonymity in the complaint procedure may compromise the City's ability to complete a thorough investigation and/or the anonymity may eventually be lost as part of the investigative and/or disciplinary process.

The City cannot resolve violations of its policy prohibiting discrimination, harassment or retaliation unless it knows about it. Therefore, it is the responsibility of every employee to bring these kinds of problems to the attention of the City so that the necessary steps can be taken to correct the problem.

(g) City's Response to Complaints. If a complaint is filed with a supervisor, the supervisor shall file a copy of the complaint with the Department Head. All complaints of discrimination, harassment and/or retaliation that are reported to management will be investigated promptly, thoroughly, objectively, completely and as confidentially as possible. The City, as part of its investigation, will make every attempt to interview all individuals with information relative to the complaint.

Any investigation which involves the interview of a sworn Police Officer will comply with the Public Safety Officers Procedural Bill of Rights (Government Code Sections 3300-3313). Any investigation related to a complaint under this Policy will be conducted with as much confidentiality as possible and with respect for the rights of all individuals involved. Information related to the investigation will be provided on a "need to know" basis only.

The purpose of this provision is to protect the confidentiality of the employee who files a complaint, to encourage the reporting of any incidents of discrimination, harassment, and/or retaliation, and to protect the reputation of any employee wrongfully charged.

It is important for the complainant and the accused to understand that it is a violation of this Policy to discuss any investigation with other employees or to conduct his or her own investigation at any time except as allowed by law or contract with an employee organization. If an employee has any information that could assist the City in its investigation, that employee shall contact the person conducting the investigation. Failure to follow this Policy may subject an employee to discipline, as

the confidential nature of the complaint and the investigation is vital in protecting the privacy rights of all parties involved.

At the end of the investigation, the City will make its determination and communicate that determination to the complainant and to the accused. Complainants are not entitled to copies of any notes or other written materials regarding the investigation, as the City considers those written materials to be confidential documents. If it is determined that the accused has violated City policies, appropriate corrective action will be taken in accordance with established City disciplinary procedures, up to and including discharge. If the accused is not a City employee, the City will seek to impose other appropriate action.

Employees who believe that they have been the subject of discrimination, harassment or retaliation may, within one year of such misconduct, may also file a complaint with the California Department of Fair Employment and Housing ("DFEH"). The DFEH may also investigate and process the complaint. Violators are subject to penalties that may include sanctions, fines, and/or injunctions, and may be personally liable for back pay and damages. The address of the local DFEH office is as follows:

Department of Fair Employment and Housing
Los Angeles District Office
611 West Sixth Street, Suite 1500
Los Angeles, CA 90017
Contact Info:
Telephone: (213) 439-6799
Toll-free: (800) 884-1684

While the City vigorously defends its employees' right to work in an environment free of discrimination, harassment and/or retaliation, it also recognizes that intentionally false accusations of such misconduct can have serious consequences. Accordingly, any employee who is found, through the City's investigation, to have intentionally, falsely accused another person of discrimination, harassment, or retaliation will be subject to appropriate disciplinary action, up to and including discharge.

Sec. 2. Reasonable Accommodation.

(a) 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.

(b) Procedure.

(1) Request for Accommodation. An employee who desires a reasonable accommodation in order to perform essential job functions should make such a request in writing to the Personnel Officer or Department Head. The request must identify: a) the job-related functions at issue; and b) the desired accommodation(s).

(2) Reasonable Documentation of Disability. Following receipt of the request, the Personnel Officer or Department Head may require additional information, such as reasonable documentation of the existence of a disability.

(3) Fitness-for-Duty Examination. The City may require an employee to undergo a fitness-for-duty examination to determine whether the employee can perform the essential functions of the job with or without reasonable accommodation. The City may also require that a City-approved physician conduct the examination.

(4) Interactive Process Discussion. After receipt of reasonable documentation of disability and/or a fitness for duty report, the City will arrange for a discussion, in person or via telephone conference call, with the employee, and his or her representative(s) of choice, if any. The purpose of the discussion is for the City and the employee to work in good faith to fully discuss all feasible potential reasonable accommodations.

(5) Case-by-Case Determination. The City determines, in its sole discretion, whether reasonable accommodation(s) can be made, and the type of accommodation(s) to provide. The City will not provide accommodation(s) that would pose an undue hardship upon City finances or operations, or that would endanger the health or safety of the employee or others. The City will inform the employee of its decision as to reasonable accommodation(s) in writing.

RULE XVII

FITNESS-FOR-DUTY EXAMINATIONS

Sec. 1. **Applicants**. 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.

Sec. 2. **Current Employees**. The Department Head, in consultation with the City Manager, 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: 1) the employee appears to be unable to perform or has difficulty performing one or more essential functions of his or her job; and 2) there is reason to question the employee's ability to safely or efficiently complete work duties.

Sec. 3. **Role of Health Care Provider**. A City-selected health care provider will examine the employee at City expense and while the employee is in a paid capacity. The City will provide the heath 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: 1) the employee is fit to perform the essential job functions of his or her position; 2) there are any reasonable accommodations that would enable the employee to perform the essential job functions; and 3) 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 promptly inform the employee and 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

Sec. 4. **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. No employee shall be discriminated against in terms and conditions of employment due to the employee's refusal to sign such a waiver. However, nothing shall prohibit the City from taking such action as is necessary in the absence of medical information due to the employee's refusal to sign the waiver.

Sec. 5. **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 Personnel Officer will submit the information that the employee provides to the City-paid health care provider who conducted the examination. The Personnel Officer will request the City-paid health care provider to determine whether the information alters the original fitness for duty assessment.

RULE XVIII

SUBSTANCE ABUSE POLICY

Sec. 1. **Policy**. City policy prohibits the unauthorized or unlawful use of alcohol by employees while on City property, in City vehicles, engaged in City paid activities, or during work hours. City policy also prohibits employees from possessing, selling, purchasing, distributing, or reporting to work while under the influence of alcohol or controlled substances.

Consistent with its EEO policy, the City maintains a policy of non-discrimination and reasonable accommodation with respect to recovering addicts or alcoholics, those who are perceived as having such a dependency and those having a medical history reflecting treatment for this condition. Employees are encouraged to seek assistance before their dependency renders them unable to perform their essential job functions and/or jeopardizes the safety and health of themselves or others.

All employees are advised that full compliance with these policies shall be a condition of employment with the City.

Sec. 2. **Conditions**.

(a) Prohibition Against Unlawful or Unauthorized Presence of Controlled Substance, Drug and Alcohol in the Workplace. The unlawful or unauthorized manufacture, distribution, dispensation, possession, or use of a controlled substance, drug or alcohol is absolutely prohibited on City property, in City vehicles, on City paid time, or while engaged in City activities. This includes field work sites, where applicable.

(b) Prohibition Against Working or Reporting to Work "Under the Influence". No employee shall work, report to work, or be present on City property, in City vehicles, on City paid time, or be engaged in City activities while under the influence of a controlled substance, alcohol, drug or any other substance that could impair their ability to safely perform his or her duties.

(c) Reporting the Use of Any Controlled Substances Which Significantly Affect Safety or Performance. An employee under the influence of a substance which could impair job performance or safety has an obligation to inquire and determine whether the legal substance he or she is taking may/will affect his or her ability to safely and efficiently perform his or her duties. If the employee is using such a substance, the employee must obtain a written statement of any work restrictions from his or her physician. Any such information must be reported to the employee's immediate supervisor prior to commencing work under the influence of any such substance, without disclosing the identity of the substance. Employees possessing or taking any substance prescribed by a licensed physician must have the controlled substance in its original container, which identifies the date of prescription and authorizing physician.

Sec. 3. Sanctions for Violation of Substance Abuse Policy. Any employee who violates the Substance Abuse Policy described above shall be subject to disciplinary action up to, and including, immediate discharge.

Sec. 4. Drug and Alcohol Abuse Awareness & Treatment Program. All employees who believe they have a problem with drugs, controlled substances, or alcohol are encouraged to use various medical, psychological, self-help, or community services available to help such individuals. The City will attempt to make reasonable accommodations for any employee who, before he or she is reasonably suspected of violating the City's Substance Abuse Policy, voluntarily seeks assistance through such programs and/or the City's Employee Assistance Program.

Any employee who voluntarily seeks help before he or she is reasonably suspected of violating this Policy will be assisted by the City in the following manner:

(a) The employee and covered family members will be assisted in locating an appropriate treatment or counseling program and will be informed as to the medical benefits which may be available under the City's medical health benefits program.

(b) The employee and covered family members will be encouraged to seek confidential assessment and counseling from the City's Employee Assistance Plan provider.

(c) The employee who is identified as having a problem with drugs, controlled substances, or alcohol as a result of a drug test based upon reasonable suspicion, or a physical examination, will be subject to the following:

(1) The employee will be assisted in locating an appropriate treatment or counseling program through the Employee Assistance Program (EAP). Continued employment will be dependent upon the employee's satisfactory work performance. The EAP will provide feedback to the City indicating compliance with a treatment program.

(2) The employee will be assisted in applying for short-term disability benefits which may be available under the City's benefit program.

(d) If drug or alcohol abuse is reasonably suspected as a result of an accident or other activity on the job, an evaluation on a case-by-case basis will be made on the severity of the incident. Appropriate disciplinary action up to and including termination will be taken. If employment is continued, treatment as described above, must be followed as a condition of employment.

Sec. 5. Enforcement Procedures:

(a) Peace officers. The Public Safety Officers Procedural Bill of Rights Act will continue to apply to all sworn personnel.

(b) Controlled Substance and Alcohol Testing

(1) Reasonable suspicion testing of current employees

(i) Where there is reasonable suspicion to believe that an employee is using, or is under the influence of controlled substances or alcohol, the City will require that the individual undergo a urinalysis or blood alcohol test to determine the presence of any of these substances.

(ii) The suspicious conduct must be witnessed by two (2) supervisors or City officials, if feasible. If not feasible, only one supervisor or City official need witness the conduct. If possible, the witness or witnesses should have received training in the identification or actions, appearance, or conduct that would indicate whether an individual is using or is under the influence of a controlled substance or alcohol.

(iii) The decision to test must be based upon reasonable suspicion that an employee is under the influence of controlled substances, a drug, or alcohol.

(iv) The circumstances that might trigger reasonable suspicion testing include, for example, evidence of repeated errors on the job, regulatory or City rule violations, attendance problems, if coupled with a specific event that indicates reasonable suspicion of substance, drug, or alcohol abuse.

(v) The City will immediately provide for transporting the individual to a collection site for the collection of a urine or blood sample.

(vi) The individual must submit to testing, upon reasonable suspicion, for the use of controlled substances or alcohol when requested to do so by the City. Refusal to submit to testing will be considered as a positive test.

(2) Post-Accident Testing. Where there is reasonable suspicion that an employee is under the influence of controlled substances, a drug, or alcohol, or reasonable suspicion to believe the employee was at fault in the accident and controlled substance or alcohol use may have been a factor, the employee must be taken to the laboratory testing facility to provide a urine specimen to be tested for the use of controlled substances and alcohol as soon as possible after an accident, but in no case later than three hours after the accident. An employee who is seriously injured and cannot provide a specimen at the time of the accident must provide the necessary authorization for obtaining hospital records and other documents that would indicate whether there were any controlled substances or alcohol in his or her system.

(3) Follow-up Testing. If an employee in the course of employment enters an employee assistance program for controlled substance related problems, or an alcohol and controlled substance rehabilitation program, the City will require the employee to submit to a controlled substance and alcohol test as a follow-up to such program on a quarterly, semi-annual or annual basis for one year.

(4) Written Notice. All applicants and employees subject to this policy shall be given written notification of the City's controlled substance and alcohol testing requirements prior to administration of the test.

(5) Confirmation of Test Results. Any employee testing positive for a controlled substance or alcohol will be given a reliable confirmatory urinalysis test separate and independent from the initial test. The confirmatory test will utilize a gas chromatography and mass spectrometry (GC/MS) methodology. If necessary, additional tests will be performed to distinguish between lawful and unlawful substances. Confirmed positive test results shall be reported to the Personnel Officer.

(6) Review of Test Results. All confirmed positive test results will be reviewed by the Department Head who may consult with a Medical Doctor to determine whether there is any legitimate explanation for the positive test result. Individuals testing positive will be given the opportunity to review with the Department Head and/or consulting Medical Doctor any legitimate reasons for testing positive. If it is determined there is a legitimate medical explanation for the confirmed positive test result, the report will show the test result as negative, and all records relating to the test will be expunged.

If the individual is unable to establish that the substance was legally obtained or cannot obtain a physician's certificate, and if the consulting Medical Doctor determines that there are no other legitimate medical explanations for the confirmed positive test result, the report will show the test to be a verified positive test result. In such cases, applicants will be considered ineligible for employment with the City for six months. Employees will be subject to disciplinary action up to, and including, immediate discharge as set forth above.

(7) Quality Control and Privacy Concerns. Procedures have been developed in an attempt to insure the integrity, confidentiality and reliability of controlled substance and alcohol tests and to minimize the impact upon the privacy and dignity of persons undergoing such tests to every extent feasible. The City has established a chain-of-custody procedure for both sample collection and testing that will verify the identity of each sample and test result. The City representative, agent or designee engaged in a urinalysis controlled substance and alcohol testing program shall directly observe any individual in the process of producing a urine specimen. See Attachment A for "Sample Collection Procedures" to be followed.

Sec. 6. Inspection. The City may conduct random inspections for controlled substances, drugs or alcohol on City facilities and property such as, but not limited to, City vehicles, desks, file cabinets, and city-issued employee lockers. The City will maintain a duplicate key or the combinations to all desks, cabinets and lockers. Employees should be present during the inspection of their property and are expected to cooperate in the conduct of such inspections. A specific time may be set for the inspection and to insure the employee's compliance. Inspections of City facilities and property may be conducted at any time and do not have to be based on reasonable suspicion.

Sec. 7. Consent of Applicants and Employees. All employees are required to consent to controlled substance and alcohol testing pursuant to these policies as a condition of continued employment. Consent to controlled substance and alcohol testing include an employee's obligation to fully cooperate. Upon request, such person must promptly complete any required forms and releases and promptly provide a sample for testing. A refusal to sign the consent and acknowledgement forms will result in disqualification for such a position or disciplinary action up to, and including, termination, as the case may be. Prior to any testing under this Policy, the individual will be required to sign an Acknowledgement Form (Release and Consent).

RULE XIX

WORKPLACE VIOLENCE

Sec. 1. Policy. It is the City's policy that every employee is entitled to work in a safe environment. To this end, violence, or the threat of violence in the workplace will not be tolerated in any form. Employees are expected to conduct themselves in accordance with the City's Personnel Rules and Regulations. The City recognizes that individuals may experience difficulties related to their work, their relationships with co-workers, supervisors, managers, or members of the public. The City offers an Employee Assistance Program (EAP) for employees to receive support in handling any difficulties that may arise. When such difficulties are known, departments should inform affected employee(s) of the services provided by the EAP.

All individuals have the right to self-expression. However, the City has a zero tolerance policy towards all expressions of violence or potential violence, except when the expression is legitimately required by the employee's job responsibilities as a peace officer.

The following policy will clarify the roles and responsibilities of all parties involved with handling the act or threat of violence.

Sec. 2. Definitions

(a) "Workplace violence" violence in which an individual inflicts, or threatens to inflict, on others at the place of work: 1) damage of property, 2) serious bodily harm, 3) bodily injury, or 4) death.

(b) "Violence": an intense and extreme behavior used to frighten, intimidate, injure, damage, or destroy another person or property. It is usually an expression of anger, and can take the following forms: 1) gestures, 2) innuendo, 3) intimidation, 4) physical force, 5) retaliation 6) rough action, 7) self-prediction of loss of control, 8) stalking, 9) threats.

(c) "Threat": a direct or implied expression of intent to inflict physical harm and/or actions that a reasonable person would perceive as a threat to physical safety or property. Because intent may not always be discerned by co-workers, jokes about physical acts of violence will not be tolerated. The following are some examples of behaviors that may be considered threats.

(1) Verbal threats which include descriptions of what the violent person plans to do.

(2) Threatening conduct, such as intimidating others, displaying or brandishing a weapon.

(3) Bizarre statements or actions threatening physical harm.

(4) Obsessions, such as apparently nursing a grudge against a co-worker or supervisor or from frustrated romantic interests.

Sec. 3. General Requirements

(a) No employee of the City shall threaten or conduct an act of violence towards another employee or City property during their course of employment. The City has zero-tolerance for workplace violence.

(b) All acts or threats of violence will be reported as soon as possible to a supervisor, Department Head, Assistant City Manager (Risk Management) and Personnel Officer (Personnel).

(c) All reported acts or threats of violence will be investigated by the department in which the act occurred or, if more than one department is involved, by the Personnel Officer and/or other departments qualified to undertake an investigation.

(d) No employee shall bring to the work site, on his or her person, or in his or her belongings or vehicle, any non-job related weapon or dangerous material of any type: for example, firearms, knives, or firecrackers.

(e) Individuals who commit acts of violence not otherwise authorized by law are subject to disciplinary action up to and including termination. Even in the absence of prior progressive disciplinary actions, violations of this policy may be cause for appropriate discipline, which may include dismissal from employment.

(f) All employees are responsible for using safe work practices, for following written procedures and policies, and for assisting in maintaining a safe and secure work environment.

Sec. 4. Responsibility

(a) Management/Supervisor. It is the responsibility of all managers and supervisors within the City to make every effort to ensure that a safe and violence-free workplace exists by providing appropriate training and supervision. Potential exposure to workplace violence can be reduced with strong commitment, and the day-to-day involvement of managers, supervisors, and employees. In the event of a direct or implied threat, or an act of violence, the immediate supervisor or responsible person shall:

(1) Inform the employee who was threatened that threats or acts of violence will not be tolerated, and that an investigation will take place,

(2) Inform the accused employee that threats or acts of violence will not be tolerated and disciplinary action may follow. Employee would be strongly encouraged to access the services of the EAP,

(3) Avoid escalating the situation by making counter-threats to or humiliating the employee who is allegedly threatening violence,

(4) Evaluate the need to remove the employee who allegedly made the threat or committed the act of violence from the workplace,

(5) With the concurrence of the City Manager, determine the pay status of the employee who has been removed from the workplace as a result of an alleged threatened or committed act of violence,

(6) Take reasonable steps to prevent escalation of threats or acts of violence,

(7) Conduct or arrange for a full investigation by gathering information from individuals who were at the scene where the alleged threat or act was committed,

(8) Make every effort to take measures appropriate for the situation, to prevent harm to persons or property,

(9) When appropriate, contact the Police Department for assistance. In the event of an emergency, call 911 or use the intercom system.

Supervisors or Department Heads will, as soon as practicable, contact the Assistant City Manager and Personnel Officer for assistance on appropriate action to take before the employee can return to work, or to seek guidance for the conduct of the investigation.

(b) Employees. Every employee is responsible for compliance with this policy, and to report any and all threats of violence as soon as possible to their supervisor or Department Head without fear of reprisal. The report of an act of threat of violence should include at the minimum the information described below. In addition, employees will adhere to the following:

(1) All threats need to be reported and taken seriously. Employees who become aware that a threat may have been made will promptly notify department management of the details of the alleged threat.

(2) In the event an employee obtains a restraining order against another person (who may not be an employee), the employee is required to report this information to the Department Head to ensure a safe workplace. A description of the individual (including a photograph if available) whom the restraining order is filed against should be provided to the Department Head. Under certain circumstances, the City can offer assistance in obtaining a restraining order against persons who are harassing, threatening or stalking employees.

(3) If an individual who has allegedly made a threat unexpectedly arrives at the workplace, call the police for assistance, if needed.

Sec. 5. **Investigations**. An investigation, as may be appropriate, shall follow a report of an act or threat of violence. The investigation shall be conducted by the Department Head, or City Manager or designee. Guidance on the conduct of the investigation can be obtained from the City Manager's office or the Police Department.

(a) Prior to beginning any investigation, the investigative officer shall contact the City Attorney or the Police Department to establish the rights of the accused employee. This shall be done prior to interviewing any witnesses or the accused employee.

Sec. 6. **Reports**. The Risk Management and Personnel Department shall maintain the files and records of the City relating to reports of workplace violence.

RULE XX

USE OF CITY PROPERTY AND EQUIPMENT

Sec. 1. **Policy**. City property is to be used for conducting City business, unless otherwise authorized. City property includes, but is not limited to: telephones, cell phones, desks, computers (including hardware and software), file cabinets, lockers, communications stored or transmitted on

City property (such as e- and voice-mails), vehicles and any other City property used by City employees in their work. Employees do not have a reasonable expectation of privacy in City property or equipment.

City property may be monitored and searched at any time and for any reason, subject to the requirements of the Public Safety Officers Procedural Bill of Rights Act. Messages sent or received on City equipment including cell phones may be saved and reviewed by others. As a result, City employees have no expectation of privacy in the messages sent or received on City property or equipment.

Every City employee is required to adhere to all City rules and policies while on City property or using City property or equipment.

Sec. 2. Use of Communications Equipment.

(a) Minimal Personal Use of Communications Equipment Permitted. City employees may use City telephones, cell phones, computers and e-mail for personal use provided that the use:

(1) is kept to a reasonable minimum;

(2) does not have any impact upon other City employees or operations;

(3) allows the employee to efficiently perform City work; and

(4) is not abusive, illegal, or inappropriate.

(b) Inappropriate Use of Communications Equipment Prohibited. The following are examples of inappropriate and prohibited uses of the City's communications systems:

(1) Exposing others, either intentionally or unintentionally, to material which is offensive, obscene or in poor taste;

(2) Any use that would be offensive to a reasonable person because it involves an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, medical condition (cancer or HIV/AIDS related), genetic characteristics, and physical or mental disability (whether perceived or actual);

(3) Communication of confidential City information to unauthorized individuals within or outside the City;

(4) Sending messages with content that conflicts with any City policies, rules or other applicable laws;

(5) Unauthorized attempts to access City data or systems;

(6) Theft or unauthorized copying of electronic files or data;

(7) Initiating or sustaining chain letters, and

(8) Intentionally misrepresenting one's identity for improper or illegal acts.

RULE XXI

VEHICLE USAGE

Sec. 1 Policy. This policy establishes procedures regarding the use of City owned and employee owned vehicles operated during the course of City business. Use of City owned vehicles shall be relied upon as the primary means of vehicle usage, as it provides the greatest control over operating costs, usage, maintenance, inspection, and insurance.

(a) Authority. This policy has been approved by the City in matters regarding the use of vehicles operated during the course of City business. This policy does not apply to commercial motor vehicles.

(b) Definitions

(1) "Accident Kit" an information packet that should be kept in the vehicle's glove box to include a pen, Driver's Report of Accident, Information Exchange cards, Witness cards, and first response instructions after an accident. An Accident Kit is available from the California JPIA and distributed to attendees of Driver Awareness workshops.

(2) "City Business" activities that require the use of a vehicle and are authorized by the employee's supervisor. In the use of personal vehicles, City business also means that the operator is being reimbursed for mileage expenses according to Internal Revenue Service guidelines.

(3) "City-Owned Vehicle" a vehicle owned by the City, and assigned on a shared, designated, or permanent basis.

(4) "Commercial Motor Vehicle" a motor vehicle or combination of vehicles designed or used for the transportation of persons or property for compensation.

(5) "Non-Preventable Accident" the vehicle operator did everything reasonably possible to prevent the accident.

(6) "Preventable Accident" the vehicle operator failed to do everything reasonably possible to prevent the accident.

(7) "Privately Owned Vehicle" a personally owned vehicle used by an employee, whether owned by the employee or not.

(8) "Vehicle Operator" an employee who is operating a City owned vehicle or a personally owned vehicle on City business.

(c) The City shall maintain a list of employees required to drive City owned or privately owned vehicles on City business, and shall be responsible for overseeing the implementation of driver training programs and ensuring that employees attend required training.

(d) The Personnel Officer shall coordinate driver training programs and maintain attendance records. The Personnel Officer shall ensure that evidence of insurance and driver's license information are maintained in each employee's file. The Personnel Officer shall receive and record Department of Motor Vehicles Pull Notice reports and notify supervisors when necessary.

(e) Department Heads shall review all accidents of their respective employees to determine whether an accident was preventable or non-preventable, and make disciplinary recommendations.

(f) Supervisors shall routinely monitor the driving of each employee while performing the job-related driving responsibilities. Supervisors shall review driving records as part of employee performance evaluations. Supervisors shall report accidents as indicated in Section 7.

(g) City employees shall promptly provide insurance and driver license information when notified that their job duties include driving an City owned or privately owned vehicle. Employees will comply with the requirements of this policy. Failure to comply may result in disciplinary action, up to and including termination.

Sec. 2. Vehicle Types and Use.

a) Use of City owned vehicles

(1) City owned vehicles are categorized and restricted based upon type and use:

(i) Vehicles kept overnight at City facilities, assigned for use on a shared or designated basis for daily City business. Personal use is expressly prohibited.

(ii) Vehicle assigned to the City Manager in accordance with his/her Employment Agreement.

(iii) Vehicles for emergency or on-call use, authorized for use to and from work to respond on a 24-hour basis. Employees authorized to operate emergency or on-call vehicles may make reasonable, but limited stops before and after work shifts for traveling to and from work.

(2) Only City employees are authorized to operate City owned vehicles.

(3) City owned vehicles are for transporting employees whose duties require a motor vehicle, and other persons to conduct business activities important to City interests.

(4) Under no circumstances shall family members or friends be transported in City owned vehicles. This shall also apply to employees authorized to commute to and from the City or for emergency on-call use.

(b) Use of Privately Owned Vehicles

The use of an employee's personal vehicle may be preferable and more efficient for use if a City owned vehicle is not available. Under those circumstances, the following policy will apply:

(1) An employee may use his or her privately owned vehicle for City business as requested by the employee's supervisor. The employee will obtain an Accident Kit from the Risk Manager to be kept with the privately owned vehicle while conducting City business. Employees in the Police Officers' Association bargaining unit may not be required to use their personal vehicles.

(2) Each employee is responsible for maintaining their vehicle in a safe operable condition, and maintaining accurate maintenance records.

(3) Employees using a privately owned vehicle shall maintain accurate records of the purpose and extent of travel, and submit reimbursement claims per the City's reimbursement policy. The mileage allowance is intended to cover the employee's cost of operating and insuring the vehicle on City business. The employee is responsible for all operating expenses of the privately owned vehicles including but not limited to, gasoline, oil, maintenance, wear and tear, depreciation and insurance.

(4) The City is not liable for any damage to an employee's privately owned vehicle, unless caused by the City's negligence (employee's negligence excepted). Employees are responsible for notifying his/her supervisor, the Department of Motor Vehicles, and the employee's insurance company in case of an accident. If an employee is responsible for an accident while driving a City owned or personally owned vehicle, he is responsible for any increase in his or her personal automobile insurance premium.

Sec. 3. Driver Training.

(a) Employees who drive City owned vehicles shall complete a defensive driver training course. Consideration should be given to other employees who regularly use privately owned vehicles for their essential job functions.

(b) New employees shall complete a defensive driver training at the first available course date after the commencement of employment.

(c) Employees who change assignments to include driving a City owned vehicle are required to complete a defensive driver training program.

(d) Employees required to participate in defensive driver training shall repeat training at least once every three years.

Sec. 4. General Guidelines.

(a) Employees shall obey all Federal, State and local laws while operating City owned or privately owned vehicles on official City business.

(b) Employees (except police officers to the extent exempt under the Vehicle Code) operating a City owned or privately owned vehicle shall ensure that all persons in the vehicle use seat belts and are properly adjusted before starting the engine.

(c) When transporting cargo, materials or tools, the vehicle operator is responsible for securing such items.

(d) No person shall be allowed to ride on running boards, fenders, hoods, tailgates, beds or other locations on a vehicle not designed or approved by the vehicle manufacturer for passenger seating. An exception to this shall be vehicles designed and equipped for passengers outside the cab area.

(e) Any injuries sustained by the vehicle operator or other employees while operating a vehicle on City business shall be covered by workers' compensation.

(f) A vehicle operator involved in a preventable accident is subject to disciplinary action.

(g) Except for official police business, alcoholic beverages and drugs shall not be transported or placed in any City owned vehicle, nor a privately owned vehicle while it is used for city business.

(h) Any employee operating a City owned vehicle, regardless of frequency, is responsible for the proper care and operation of that vehicle while under the employee's control.

(i) Before operating the vehicle and at least once a day, the employee shall check to make certain that all vehicle safety equipment including headlights, turn signals, brake lights and windshield washers are functioning properly.

(j) Any vehicle damage beyond normal wear and tear or that includes defects affecting the safe operation of the vehicle must be documented and reported to the employee's supervisor.

(k) No employee shall operate a City owned vehicle found to be in an unsafe condition.

Sec. 5. **Use of Electronic Devices**. Employees shall not use any device, including but not limited to any computer, navigational equipment, and/or cell phone that may cause driver distraction. Police officers are exempt from this provision when driving an authorized emergency vehicle within the course and scope of their duties.

Sec. 6. **Rental Vehicles.** When it is necessary for a City employee to use a rental vehicle for City business, the employee shall use a City approved rental City. Optional loss damage coverage should be purchased from the rental City at the time of rental.

Sec. 7. **Accident Reporting Requirements.** Any accident involving a City owned vehicle, rented or leased vehicle or privately owned vehicle used in the performance of City duties shall be reported as follows:

(a) The vehicle operator shall summon medical care for any injured parties.

(b) The vehicle operator shall notify appropriate law enforcement agencies.

(c) The vehicle operator shall collect information about the other parties involved by completing the “Accident Kit” located in the City owned vehicle’s glove box.

(d) The vehicle operator shall notify his/her supervisor. The supervisor shall be responsible for initiating the departmental investigation of the accident and completing all required City reports. In the event of serious bodily injury, an Incident Report form shall be completed by the supervisor and submitted to the California JPIA.

(e) The supervisor shall notify the City’s risk manager.

(f) The vehicle operator must report the accident to the DMV if more than $750 in property damage, or anyone was injured (no matter how slight) or killed. The report must be filed, whether the vehicle operator caused the accident or not and even if the accident occurred on private property. The report must be made on the California Traffic Accident Report, form SR 1, and must be made within ten days of the accident. If the report is not filed with the DMV, the vehicle operator’s driving privilege will be suspended. The police or California Highway Patrol will not file this report.

Sec. 8. **Insurance Requirements.** Proof of insurance is required before any privately owned vehicle can be authorized for City business, and shall be provided annually to the Personnel Officer and no later than January 31 of each year.

(a) Employees who are authorized to use privately owned vehicles on City business shall maintain coverage in an amount not less than $100,000 per person/ $300,000 per occurrence (or a combined single limit of $300,000) and property damage coverage in an amount not less than $25,000 per occurrence.

(b) California Insurance Code §11580.9 states that where two or more policies affording valid and collectible liability insurance apply to the same motor vehicle in an occurrence out of which a liability loss shall arise, it shall be conclusively presumed that the insurance afforded by that policy in which the motor vehicle is described or rated as an owned vehicle is primary and the insurance afforded by any other policy shall be excess.

(c) The City shall not be responsible for any increase in the employee's automobile insurance premium as a result of an accident.

(d) In the event of an accident, the employee is responsible for paying any deductible required by the insurance company.

(e) If insurance coverage is canceled, terminated, lapsed, or curtailed for any reason, the employee must notify the immediate supervisor and the vehicle shall not be used for City service.

(f) When an employee operating a City owned vehicle is involved in an accident, defense and settlement of any claim shall be the responsibility of the California JPIA, to the maximum protection limit (the California JPIA Memorandum of Coverage provides automobile liability coverage to all member entities, their City councils, commissions, committees, and employees). If an employee operating a City owned vehicle is sued independently as a result of an at-fault accident, the California JPIA may provide coverage to that employee if the accident qualifies as a covered occurrence.

(g) With the exception of sworn police, should an employee using a privately owned vehicle on City business be involved in an accident resulting in injury or property damage, the employee's own insurance carrier shall respond to defend the employee. Should a claim exceed the limits of the employee's own insurance, the California JPIA liability protection program would respond in an excess capacity if the accident qualifies as a covered occurrence.

(h) Sworn police operating their privately owned vehicles at the direction of the City in the performance of their duties must report the accident to their private automobile insurer, but he City shall be considered the owner of the vehicle for the purpose of liability and defense of the claim. If it is later determined that the City did not direct or request the employee to sue their private vehicle when the loss occurred, the City and employee will provide notice to the insurance company so the City may be reimbursed.

Sec. 9 Driver's License.

(a) City employees authorized to use City owned or privately owned vehicles on City business must possess a valid California driver's license and provide proof of licensing upon hire.

(b) City employees must maintain a driver's license for the class of vehicle to be driven.

(c) An employee whose driver's license is suspended or revoked for any reason must notify their supervisor no later than the first workday following suspension or revocation of their driver's license. Such employee shall not be allowed to operate any City owned or privately owned vehicles on City business.

(d) Employees who possess temporary driving permits or hardship licenses shall not be permitted to operate City or privately owned vehicles in the performance of official City duties.

Sec. 10. Review of Driving Record.

(a) The City shall enroll employees that operate City owned or privately owned vehicles on City business in the Department of Motor Vehicles (DMV) Pull Notice Program. When a vehicle operator has received a violation, the DMV assigns points according to the type of violation, and automatically sends notification to the City. The Personnel Officer maintains a list of violation point counts.

(b) In compliance with Vehicle Code Section 1808.47, information received from the DMV shall be used solely for the intended purpose, and kept in locked storage. Under no circumstances shall addresses or other information be given to a third party.

(c) Employees accumulating four or more points in a 12 month period or six in a 24 month period or eight in a 36 month period may have City driving privileges suspended.

(d) Employees involved in a preventable collision or demonstrating questionable driving capabilities shall be required to attend remedial training in defensive driving. An employee may be regarded as having questionable capabilities based on a review of points assigned by the DMV for citations or vehicular accidents.

(e) Employees involved in preventable accidents or have a disqualifying action taken against their driver's license shall be subject to disciplinary action, the severity determined by the nature of the offense and the employee's past driving and disciplinary action records.

(f) Employees involved in two or more preventable accidents within a 36 month period while operating a City owned or privately owned vehicle in the performance of official City business shall be subject to disciplinary action up to and including suspension of City driving privileges.

(g) Employees convicted of driving while under the influence of drugs or alcohol (DUI) or refusing to submit to a lawful roadside sobriety test are subject to disciplinary action up to and including suspension of City driving privileges.

(h) Intentional abuse, moving violations, reckless operation, or negligent actions while operating any vehicle may result in the suspension of employee driving privileges and further disciplinary action.

(i) Temporary or permanent suspension of City driving privileges for employees whose position requires operation of a vehicle shall be considered a loss of the ability to perform an essential job function.

(j) If an employee has City driving privileges suspended, the City shall attempt to arrange for the employee to perform the essential functions of the job. If such accommodation is not possible or creates an unreasonable hardship for the City or coworkers, loss of City driving privileges shall be considered just cause for reassignment to a position that does not require operation of a vehicle at a pay rate commensurate with that position. If no such position is open, the employee may be terminated.