

The City of Desert Hot Springs Employee Handbook of Rules and Regulations

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100 Introduction and General Information Policies

101 Effect and Applicability of Personnel Policies

101.1 ***No Contract Right; The City of Desert Hot Springs' Discretion to Modify These Policies***

These Personnel Policies ("Policies") do not create any contract right, or any express or implied contract of employment. The City of Desert Hot Springs ("City") retains the full discretion to modify these Policies at any time in accordance with law. It is the exclusive right of the City to establish and maintain departmental rules and procedures for the administration of its departments. In addition, this Handbook is not intended to cover all possible situations that may arise in your employment relationship with the City.

101.2 ***Applicability of Policies***

These Policies apply to all categories of employees of the City of Desert Hot Springs unless a specific section or provision excludes them. Independent contractors, temporary agency employees, volunteers, committee members and commission members are not employees.

101.3 ***Conflict Between These Policies and a Collective Bargaining Agreement***

If a provision of these Policies conflicts with any provision of a valid collective bargaining agreement between the City of Desert Hot Springs and a recognized employee organization, the provision of the collective bargaining agreement that is in conflict shall apply to employees covered by that collective bargaining agreement.

101.4 ***Employee Acceptance of Policies and Revisions to Policies***

As a condition of employment, all employees are required to read and request necessary clarification of these Policies. Each employee is required to sign a statement of receipt acknowledging that: a) he or she has received a copy, or has been provided access to the Policies; and b) understands that he or she is responsible to read and become familiar with the contents and any revisions to the Policies. Employees are responsible for knowing about and understanding any changes or revisions to these Policies once they have been disseminated.

102 Delegation of Authority

102.1 ***Delegation of Appointing and Personnel Authority to City Manager***

The City Council delegates to the City Manager the authority to authorize employment, establish job responsibilities, and perform other personnel actions as to all subordinate

employees in accordance with all federal and state laws and regulations and these Policies. The City Manager may delegate responsibility to the Human Resources Director, or other Managers or Supervisors, to perform personnel actions in accordance with this section.

102.2 *Retention of Personnel Authority as to Certain Personnel*

As to those elected officials, or employees who directly report to the City Council, the City Council retains all authority over all personnel actions as authorized by law and these Policies.

103 *Categories of Employees and Non-Employees*

103.1 *At-Will Employee*

An at-will employee is one who serves at the pleasure of the appointing authority, has no property right in continued employment, and has no right to any pre- or post-disciplinary procedural due process or evidentiary appeal. At-will employees include any of the following:

- (a) City Manager
- (b) Deputy City Manager
- (c) Assistant City Manager
- (d) Department Heads
- (e) Employees designated as temporary, seasonal, extra-help, limited term, etc.
- (f) Probationary employees

103.2 *Probationary Employee*

A probationary employee is one who is serving a probationary period at either: the outset of initial employment with the City; or at the outset of a promotion to a higher classification. During the initial probationary period, a probationary employee serves at the pleasure of the appointing authority, has no property right in continued employment, and has no right to any pre- or post-disciplinary procedural due process or evidentiary appeal. A probationary employee serving in the initial probationary period is an at-will employee. An employee serving a promotional probationary period has no property right to continued employment in the promotional capacity.

103.3 *For-Cause Employee*

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

103.4 Full or Part-Time Employee

A full-time employee is one whose position is budgeted to work at least 40 hours per week. Full-time employees receive all benefits provided in these Policies, unless otherwise provided in an MOU, or an employment agreement approved by the City Council. A part-time employee is one whose position is budgeted to work less than 40 hours per week. Part-time employees may have different rights to leave and other benefits under the law or these Policies, depending on the number of hours they work.

103.5 Temporary / Seasonal / or Extra-Help Employee

A temporary/ seasonal/ or extra-help employee is an at-will employee who is appointed for a short term, seasonal, or extra-help basis. A temporary/ seasonal/ or extra-help employee serves at-will and at the pleasure of the appointing authority, has no property right in continued employment, and has no right to any pre- or post-disciplinary procedural due process or evidentiary appeal.

103.6 Volunteer

A volunteer is not an employee, but instead is an individual who provides services to the City for civic or philanthropic reasons and receives no compensation or benefits other than nominal fees and reimbursement of expenses. A volunteer serves at-will and at the pleasure of the appointing authority, has no property right in continued employment, and has no right to any pre- or post-disciplinary procedural due process or evidentiary appeal.

103.7 Independent Contractor

An independent contractor is not an employee and serves solely pursuant to a contract that has been formed and approved by the City Manager. An independent contractor cannot be used to perform any part of the City's regular and customary work.

200 Equal Employment Opportunity

201 Equal Employment Opportunity Policy

Employment decisions include hiring, dismissing, promotion, transfer, layoff, recall, and other actions taken by the City regarding an employee's status.

Employment decisions are made on the basis of relevant job-related factors determined by the City and not on the basis of unlawful reasons, such as race, color, religion, sex, sexual orientation, gender identity, national origin, genetic information, age, military and veteran status, disability, marital status, or any other legally-protected category.

Employees, volunteers, or applicants who believe they have experienced any form of employment discrimination or abusive conduct are encouraged to report the conduct

immediately by using the complaint procedures provided in these Policies, or by contacting the U.S. Equal Employment Opportunity Commission, or the California Department of Fair Employment and Housing.

202 Fair Act Policy

The City follows all applicable state and federal laws requiring equal pay for employees who perform substantially similar work, when viewed as a composite of skill, effort, and responsibility when performed under similar working conditions.

California's Fair Pay Act prohibits employers from paying any of its employees wage rates that are less than what it pays employees of the opposite sex, or of another race, or of another ethnicity, for substantially similar work as defined above.

California's Fair Pay Act and the City prohibit discrimination or retaliation against any employee who invokes or assists in the enforcement of the Fair Pay Act.

If you believe you are not being paid the same wage as other employees engaged in substantially similar work, please report your concerns to Human Resources so that appropriate investigation and corrective action may be taken.

203 Policy Against Discrimination, Harassment & Retaliation; Complaint Procedure

203.1 Purpose

The City has a strong commitment to prohibiting and preventing discrimination, harassment and retaliation in the workplace. The City has zero tolerance for any conduct that violates this Policy. Conduct need not arise to the level of a violation of state or federal law to violate this Policy. Instead a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions. This Policy establishes a complaint procedure for investigating and resolving internal complaints of discrimination, harassment and retaliation. The City encourages all covered individuals to report any conduct they believe violates this Policy as soon as possible. Any retaliation against an employee because they filed or supported a complaint or because they participated in the complaint resolution process is prohibited. Individuals found to have retaliated in violation of this Policy will be subject to appropriate sanction or disciplinary action, up to and including termination.

203.1.1 Covered Individuals and Scope of Policy

The individuals covered by this Policy are; applicants, employees regardless of rank or title, elected or appointed officials, interns, volunteers, and contractors. This Policy applies to all terms and conditions of employment, internships, and volunteer opportunities, including, but not limited to, selection, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

203.2 **Definitions**

203.2.1 **Protected Classification**

This Policy prohibits harassment, discrimination or retaliation because of an individual's protected classification. "Protected Classification" includes race, color, religion, sex, sexual orientation, gender identity, national origin, genetic information, age, military and veteran status, disability, marital status, or any other legally protected category. This Policy prohibits discrimination, harassment or retaliation because: 1) of an individual's protected classification; 2) the perception that an individual has a protected classification; or 3) the individual associates with a person who has or is perceived to have a protected classification.

203.2.2 **Protected Activity**

This Policy prohibits discrimination, harassment, or retaliation because of an individual's protected activity. Protected activity includes; making a request for an accommodation for a disability; making a request for accommodation for religious beliefs; making a complaint under this Policy; opposing violations of this Policy; or participating in an investigation under this Policy.

203.2.3 **Discrimination**

This Policy prohibits treating covered individuals differently and adversely because of the individual's protected classification, actual or perceived; because the individual associates with a person who is member of a protected classification, actual or perceived; or because the individual participates in a protected activity as defined in this Policy. (Gov. Code § 12926(o).)

203.2.4 **Harassment**

Harassment may consist of offensive verbal, physical, or visual conduct when such conduct is based on or related to an individual's sex and/or membership in one of the above-described protected classifications, and:

- (1) Submission to the offensive conduct is an explicit or implicit term or condition of employment;
- (2) Submission to or rejection of the offensive conduct forms the basis for an employment decision affecting the employee; or
- (3) The offensive conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

Definition of verbal, physical, or visual conduct includes the following:

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- (a) Verbal conduct includes, but may not be limited to; epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This includes inappropriate comments about appearance, dress, physical features, gender identification, or race-oriented stories and jokes.
- (b) Physical conduct includes, but may not be limited to; assault, impeding or blocking movement, offensive touching, or physical interference with normal work or movement. This includes pinching, grabbing, patting, or making explicit or implied job threats or promises in return for submission to physical acts.
- (c) Visual conduct includes, but may not be limited to; derogatory posters, cartoons, emails, pictures or drawings related to a protected classification.

203.2.4.1 Guidelines for Identifying Harassment

Harassment includes any conduct which would be unwelcome or unwanted to an individual of the recipient's same protected classification. The following guidelines to determine if conduct is unwelcome or unwanted should be followed:

- (a) It is no defense that the recipient "appears" to have consented to the conduct at issue by failing to protest about the conduct. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized or subjected to retaliation.
- (b) Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. Small, isolated incidents might be tolerated up to a point. The fact that no one has yet complained does not preclude someone from complaining if the conduct is repeated in the future.
- (c) Even visual, verbal, or physical conduct between two people who appear to welcome the conduct can constitute harassment of a third person who witnesses the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at a particular individual.
- (d) Conduct can constitute harassment even if the individual has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual would find it offensive (e.g., gifts, over-attention, endearing nicknames, hugs).

Examples of conduct that may constitute prohibited harassment include, but are not limited to, the following:

- (a) Kidding or joking about sex or membership in one of the protected classifications;
- (b) Hugs, pats, and similar physical contact;
- (c) Assault, impeding or blocking movement, or any physical interference with normal work or movement;

- (d) Cartoons, posters, e-mails, texts and other materials referring to sex or membership in one of the protected classifications;
- (e) Threats intended to induce sexual favors;
- (f) Continued suggestions or invitations to social events outside the workplace after being told such suggestions are unwelcome;
- (g) Degrading words or offensive terms of a sexual nature or based on the individual's membership in one of the protected classifications;
- (h) Prolonged staring or leering at a person;
- (i) Similar conduct directed at an individual on the basis of race, color, ancestry, national origin, religious creed, physical disability, mental disability, medical condition, age (over 40), marital status, military or veteran status, sexual orientation, gender identity, gender expression, genetic information, or any other protected classification under applicable law.

203.2.5 Retaliation

Retaliation occurs when adverse conduct is taken against a covered individual because of the individual's protected activity as defined in this Policy. "Adverse conduct" may include but is not limited to: disciplinary action, counseling, taking sides because an individual has reported harassment or discrimination; spreading rumors about a complainant or about someone who supports or assists the complainant; shunning or avoiding an individual who reports harassment or discrimination; or making real or implied threats of intimidation to prevent or deter an individual from reporting harassment or discrimination.

203.3 Reporting Procedure

A covered individual who believes he or she has been subjected to discrimination, harassment or retaliation by co-workers, supervisors, managers, clients, customers, visitors, vendors, or others, should immediately notify -- orally or in writing -- any supervisor, manager, or department head, without regard to any chain of command. Any supervisory or management employee who receives a harassment complaint or report, or who observes or otherwise becomes aware of conduct that violates this policy, should immediately notify the Human Resources Director. Upon receiving notification of a harassment complaint or report, the Human Resources Director will complete and/or delegate to qualified, impartial personnel at his or her discretion, the following steps. If the Human Resources Director is accused, or a witness to the events at issue, an individual with higher authority will complete and/or delegate to qualified, impartial personnel, the following steps.

- (a) Provide the complainant with a copy of this policy.
- (b) Authorize and supervise the investigation of the complaint and/or investigate the complaint. The investigation will usually include interviews with:
 - 1) the complainant
 - 2) the accused

3) other persons who have relevant knowledge concerning the allegations in the complaint.

- (c) Review the factual information gathered through the investigation to determine whether the alleged conduct occurred and whether the conduct violates the Policy giving consideration to all factual information, the totality of the circumstances, including the nature of the conduct, and the context in which the alleged incidents occurred.
- (d) Report a summary of the determination as to whether this Policy has been violated to appropriate persons. If discipline or sanctions are imposed, the level of discipline or sanctions will not be communicated to the complainant.
- (e) If conduct in violation of this Policy occurred, take or recommend to the appointing authority prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.
- (f) Take reasonable steps to protect the complainant from further harassment, discrimination or retaliation.
- (g) All parties to the investigation will receive appropriate due process.
- (h) All parties to the investigation will receive notice when the investigation is complete.

203.4 Option to Report to Outside Agencies

203.4.1 EEOC and DFEH

An individual has the option to report harassment, discrimination or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These administrative agencies offer legal remedies and a complaint process. The nearest offices are listed on the Internet, in the government section of the telephone book or employees can check the posters that are located on City bulletin boards for office locations and telephone numbers.

203.4.2 Employee Protection Line

To help you report workplace wrongdoing easily and without fear, your organization has arranged with an independent third party to provide a valuable benefit for you—the Employee Protection Line. The Employee Protection Line allows you to report wrongdoing without giving your name or identifying yourself in any way. You may use the toll-free Employee Protection Line 24 hours a day, seven days a week. Your call will not be traced. You may make a report by calling (877) 651-3924. Your Employee Protection Line organization code number is 10278. You may also submit your report online at www.employeeprotectionline.com.

Important: When making a report on the Employee Protection Line, you must provide enough information so action can be taken, if necessary. Tell what has happened,

including dates, times and the full names of witnesses. Your report will be kept as confidential as possible and will be treated with the seriousness it deserves.

203.5 Confidentiality

Every effort will be made to assure the confidentiality of complaints made under this Policy to the greatest extent allowed by law. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. An employee who is interviewed during the course of an investigation is prohibited from attempting to influence any potential witness while the investigation is ongoing. An employee may discuss his or her interview with a designated representative. The City will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.

203.6 Responsibilities

(a) Each non-manager or non-supervisor is responsible for:

- 1) Treating all individuals in the workplace or on worksites with respect and consideration.
- 2) Modeling behavior that conforms to this Policy.
- 3) Participating in periodic training.
- 4) Cooperating with the City's investigations pursuant to this Policy by responding fully and truthfully to all questions posed during the investigation.
- 5) Taking no actions to influence any potential witness while the investigation is ongoing.
- 6) Reporting any act, he or she believes in good faith constitutes harassment, discrimination or retaliation as defined in this Policy, to his or her immediate supervisor, or to any supervisor, manager, department head, or Human Resources Director.

(b) In addition to the responsibilities listed above, each manager and supervisor is responsible for:

- 1) Informing employees of this Policy.
- 2) Taking all steps necessary to prevent harassment, discrimination and, retaliation from occurring, including monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.

- 3) Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
- 4) Following up with those who have complained, as directed by Human Resources, to ensure that the behavior has stopped and that there are no reprisals.
- 5) Informing those who complain of harassment or discrimination of his or her option to contact the EEOC or DFEH regarding alleged Policy violations.
- 6) Assisting, advising, or consulting with employees and the Human Resources Director regarding this Policy.
- 7) Assisting in the investigation of complaints involving employee(s) in their departments and, when appropriate, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with these Policies, up to and including termination.
- 8) Implementing appropriate disciplinary and remedial actions.
- 9) Reporting potential violations of this Policy of which he or she becomes aware to the Human Resources Director, regardless of whether a complaint has been submitted.
- 10) Participating in periodic training and scheduling employees for training.

203.7 Remedies

Remedial Action:

If the Human Resources Director determines that the complaint of harassment or discrimination is founded, the Human Resources Director shall take immediate and appropriate disciplinary action consistent with the requirements of law and any personnel rules or regulations pertaining to employee discipline. Other steps may be taken to the extent reasonably necessary to prevent recurrence of the harassment and to remedy the complainant's loss, if any.

Disciplinary action shall be consistent with the nature and severity of the offense, the rank of the harasser, and any other factors relating to the fair and efficient administration of the City's operations.

In the event a complaint is filed with the DFEH, and the DFEH finds that the complaint has merit, the DFEH will attempt to negotiate a settlement between the parties. If not settled, the DFEH may issue a determination on the merits of the case.

Where a case is not settled, the DFEH may pursue litigation in civil court with the Complainant as the Real Party in Interest. Legal remedies available through the DFEH for a successful claim by an applicant, employee, or former employee include possible

reinstatement to a former job; award of a job applied for; back pay; front pay; reasonable attorneys' fees; and under appropriate circumstances, punitive damages, out-of-pocket losses, affirmative relief, training, and emotional distress damages.

In the alternative, the DFEH may grant the employee permission to withdraw the case and pursue a private lawsuit seeking similar remedies.

204 Workplace Civility Policy

204.1 Purpose

The City of Desert Hot Springs is committed to providing a safe work environment. In addition to prohibiting all forms of discrimination and harassment, the City of Desert Hot Springs also prohibits any form of abusive conduct towards another individual or individuals in the workplace or elsewhere, such as at offsite events.

Every employee and other individuals, such as temporary agency workers, consultants, independent contractors and visitors, have the right to be treated with courtesy and respect. The City of Desert Hot Springs is committed to providing a workplace free from conduct that harms, intimidates, offends, degrades or humiliates an employee. It can include any intentional written, visual, verbal or physical act, when the act physically harms the individual or damages the individual's property or has the effect of interfering with an employee's ability to work; is severe or pervasive; and creates an intimidating or threatening environment.

For purpose of this policy, the City includes, but does not limit abusive conduct to the following: conduct in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

204.2 Examples

Examples of discourteous treatment or offensive conduct include, but are not limited to, excluding, tormenting, taunting, abusive comments, using threatening gestures, use of profane or disrespectful language; hostile and rude behavior and speech directed at someone; derogatory or sarcastic remarks; angry outbursts or yelling; name calling; sarcasm; spreading rumors; teasing; throwing anything at or toward a co-worker; and comments that undermine a co-worker's trust and confidence. Such conduct can also occur via use of electronic or telephonic communications.

204.3 Responsibility

Managers and supervisors must take reasonable measures to prevent such conduct, and to respond promptly if it is identified to address and prevent future instances.

204.4 Complaint Procedure

Any individual who believes that they have been subjected to or have witnessed abusive conduct from another individual are encouraged to report this to their supervisor, department head, or Human Resources representative. Any reports of such conduct marked by frequency, intensity, and duration, will be treated seriously and investigated promptly, confidentially and impartially.

204.5 Retaliation

No employee will be subjected to any form of retaliation for reporting, in good faith, a belief that abusive conduct has occurred, or participating in an investigation by the City of Desert Hot Springs or its representatives into allegations of abusive conduct.

205 Reasonable Accommodation and Interactive Process

205.1 Reasonable Accommodation

Absent undue hardship or direct threats to the health and safety of employee(s), the City provides employment-related reasonable accommodations to:

- (a) qualified individuals with disabilities, both applicants and employees, to enable them to perform essential job functions (Gov. Code § 12940(m)); and
- (b) employees with conditions related to pregnancy, childbirth, or a related medical condition, if she so requests, and with the advice of her health care provider (Gov. Code § 12945(3)(A)); and
- (c) employee victims of domestic violence, sexual assault, or stalking to promote the safety of the employee victim while at work (Labor Code § 230(f)(4)); and
- (d) employees who request reasonable accommodation to address a conflict between religious belief or observance and any employment requirement (Gov. Code § 12940(l)).

205.2 Supporting Documentation or Certification

205.2.1 Reasonable Medical Documentation of Disability

If the disability or the need for reasonable accommodation is not obvious, the City may require the individual to provide reasonable medical documentation confirming the existence of the disability and the need for reasonable accommodation, along with the name and credentials of the individual's health care provider. If the individual provides insufficient documentation, the City will: 1) explain the insufficiency; 2) allow the employee or applicant to supplement the documentation; and 3) pursue the interactive

process only to the extent that the request for reasonable accommodation is supported by the medical documentation provided. (2 CA Code Regs § 11069(c)(2) & (d).)

205.2.2 *Medical Certification Indicating the Need for a Reasonable Accommodation or Transfer Due to Pregnancy or Related Conditions*

If a pregnant employee, or an employee with a pregnancy-related condition, requests a reasonable accommodation or transfer due to pregnancy, the City will provide the employee with notice of the need for a medical certification within two business days after the employee's request for accommodation. A medical certification confirming the need for a reasonable accommodation, including transfer, is sufficient if it contains: a description of the requested accommodation or transfer; a statement describing the medical advisability of the accommodation or transfer due to pregnancy; and the date that the need for the accommodation or transfer will become necessary and the estimated duration of the accommodation or transfer. (2 CA Code Regs § 11050(b)(3).)

205.2.3 *Certification of Victim Status*

An employee who is a victim of domestic violence, sexual assault, or stalking and who requests an accommodation to provide for his or her safety while at work must provide both of the following:

- (a) a written statement signed by the employee or an individual acting on the employee's behalf, to certify that the accommodation is to address victim-safety concerns while at work; and
- (b) a certification demonstrating the employee's status as a victim of domestic violence, sexual assault, or stalking, which can be in the form of: a police report indicating the employee's victim status; a court order separating the perpetrator from the employee or that the employee has appeared in court for that purpose; or documentation from a medical professional or counselor that the employee is undergoing treatment for physical or mental injuries or abuse resulting from an act of domestic violence, sexual assault, or stalking. (Labor Code § 230(f)(7).)

205.3 *Fitness for Duty Examinations*

205.3.1 *Applicants*

After a conditional offer of employment has been extended to an applicant, the City may require the applicant to submit to a fitness for duty examination that is job-related; necessary for efficient operations of the City; and required of all applicants for the job classification. (Gov. Code § 12940(e) & (f).) An applicant or employee who is required to pass a medical and/or psychological examination will be notified of his/her right to obtain a second opinion at his/her expense and that he/she may submit such second opinions for consideration. (2 CA Code Regs § 11071(b)(2).)

205.3.2 *Current Employee*

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

- (a) the employee's ability to perform one or more essential functions of his or her job has declined; or
- (b) could cause a reasonable person to question whether an employee is still capable of performing one or more of his or her essential job duties or is still capable of performing those duties in a manner that does not harm him or herself or others. (Gov. Code § 12940(e) &(f).)

205.3.3 *Role of Health Care Provider*

The City may request the applicant's or employee's health care provider to conduct a fitness for duty exam on the applicant or employee or may request a City-selected health care provider to do so at the City's expense. The City will allow an employee paid time off to attend the exam. The City will provide the health care provider with a letter requesting a fitness for duty examination and a written description of the essential functions of the job. The examination will be limited to determining whether the applicant or employee can perform the essential functions of his/her position and any work restrictions and/or functional limitations that apply to the applicant or employee. The health care provider will examine the employee and provide the City with non-confidential information regarding whether:

- (a) the applicant or employee has a physical or mental condition that limits a major life activity, and a description of why the employee or applicant needs a reasonable accommodation to have an equal opportunity to participate in the application process, or to be considered for the job, or to perform the employee's job duties, or to enjoy equal benefits and privileges of employment
- (b) the applicant or employee is fit to perform essential job functions;
- (c) workplace restrictions or functional limitations apply to the applicant or employee, and the duration of the work restrictions or functional limitations;
- (d) there are any reasonable accommodations that would enable the employee to perform essential job functions; and
- (e) the employee's continued employment poses a threat to the health and safety of him or herself or others.

Should the health care provider exceed the scope of the City's request and provide confidential health information, without valid consent of the applicant or employee, the City will return the report to the health care provider and request another report that

includes only the non-confidential fitness for duty information that the City has requested. (2 CA Code Regs § 11069(c) & (d).)

205.3.4 *Authorization for Use of 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.

205.3.5 *Medical Information from the Employee or Applicant*

If an employee or applicant submits medical information to the City from his or her own health care provider, the Human Resources Director will not forward that information on to the health care provider who conducted the examination for the City, without the employee or applicant's written authorization. Upon receipt of the written authorization, the Human Resources Director will request the City-paid health care provider to determine whether the information alters the original fitness for duty assessment.

205.4 *Interactive Process*

205.4.1 *When to Initiate the Interactive Process*

The Human Resources Director will initiate the interactive process when:

- (a) an applicant or employee with a known physical or mental disability or medical condition requests reasonable accommodation(s) (2 CA Code Regs § 11069(b)(1)); or
- (b) the City otherwise becomes aware of the need for an accommodation through a third party (e.g. a doctor's note requesting an accommodation), or by observation of the employee's work (2 CA Code Regs. § 11069(b)(2)); or
- (c) the City becomes aware of the possible need for an accommodation because the employee with a disability has exhausted workers' compensation leave, Family and Medical Act leave, or other leave rights, but the employee and/or the employee's health care provider indicate that further accommodation is still necessary for recuperative leave or other accommodation (2 CA Code Regs. § 11069(b)(3)); or
- (d) an employee disabled by pregnancy, childbirth or related medical conditions requests a reasonable accommodation or transfer based on the advice of her health care provider (2 CA Code Regs § 11040(a)(1)); or
- (e) an employee with a physical or mental disability, regardless of cause, fails to return to work following pregnancy disability leave (2 CA Code Regs § 11047); or

- (f) an employee-victim of domestic violence, sexual assault, or stalking requests a reasonable accommodation(s) for his or her safety at work (Labor Code § 230(f)(1)); or
- (g) an employee requests an accommodation to address a conflict between religious belief, observance, or practice and any employment requirement (Gov. Code § 12940(l)); or
- (h) an employer is aware of the need for a reasonable accommodation for an employee's or applicant's religious beliefs, observance or practices. (2 CA Code Regs § 11060(b).)

205.4.2 Interactive Communication

After the occurrence of any of the above-stated circumstances that trigger the need to conduct an interactive process meeting, the Human Resources Director will promptly arrange for a discussion or discussions, in person or via conference telephone call, with the applicant or employee and his or her designated representative, (if any). The purpose of the interactive communications will be to discuss in good faith all feasible potential reasonable accommodations. The Human Resources Director will document these communications in writing. (Gov. Code 12940(n); 2 CA Code Regs § 11069(a).)

205.4.2.1 Potential Accommodations for Applicants or Employees with Disabilities

Depending on the facts of each case, the interactive process analysis will generally begin with a review of possible reasonable accommodations that would enable the individual to retain his or her current job. The process will generally then move on to possible reasonable accommodations in other vacant jobs, for which the individual is qualified, if there is no reasonable accommodation in the current job that does not cause undue hardship, or that does not present a risk of harm to the individual or others. The City will consider accommodations that the applicant or employee suggests but has the right to select and implement any reasonable accommodation that it deems effective. The range of potential reasonable accommodations includes, but is not limited to:

- making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities including; acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, and/or the provision of qualified readers or interpreters;
- job restructuring;
- part-time or modified work schedules (Gov. Code § 12926(p));
- paid or unpaid leave of absence of a finite duration that is likely to enable the employee to return to work at the end of the leave (2 CA Code Regs § 11068(c));
- preferential consideration to reassignment to a vacant, comparable position, except when such preference would violate a bona fide seniority system (2 CA Code Regs § 11068(d)(5));

- reassignment to a vacant lower-paid position if there is no funded, vacant comparable position for which the individual is qualified for (2 CA Code § 11068(d)(2)); or
- reassignment to a temporary position, if the individual agrees. (2 CA Code Regs § 11068(d)(3).)

205.4.2.2 *Potential Accommodations for Employees Affected by Pregnancy and Related Medical Conditions*

Depending on the facts of each case, the interactive process will attempt to identify and implement a reasonable accommodation that is consistent with the medical certification applicable to the applicant or employee. Please refer to section 808 of this handbook for a detailed list of your rights and responsibilities as a pregnant employee.

205.4.2.3 *Potential Accommodations for Employee-Victims of Domestic Violence, Sexual Assault, or Stalking*

Depending on the facts of each individual case, the interactive process analysis will review all possible accommodations that would enhance the safety of the employee victim at work. In determining what accommodation is reasonable, the City will consider the exigent circumstance or danger facing the employee. The City will consider the preferences of the employee to be accommodated but has the right to select and implement any accommodation that it deems effective. The range of potential safety measure accommodations includes, but is not limited to:

- transfer, reassignment, modified schedule;
- change in work telephone number;
- change in location of workstation;
- installation of locks;
- assistance in documenting domestic violence, sexual assault, or stalking that occurs in the workplace;
- the implementation of a safety procedure(s);
- adjustment to job structure, workplace facility, or work requirement; and
- referral to a victim assistance organization. (Labor Code § 230(f)(2).)

205.4.2.4 *Potential Accommodations for Religious Creed, Religious Dress Practice, or Religious Grooming Practice*

Depending on the facts of each case, the interactive process analysis will review all possible accommodations that would resolve the conflict between the religious belief or observance and any employment requirement. The City will consider the preference of the employee or applicant but has the right to select and implement any accommodation that it deems effective. The range of potential accommodations includes, but is not limited to:

- (a) job restructuring or job reassignment (but not segregation from other employees or the public) (Gov. Code § 12940(l)(2));

(b) modification of work practices, including dress or grooming standards (2 CA Code Regs § 11062(c)(2));

(c) allowing time off in an amount equal to the amount of non-regularly scheduled time the employee has worked in order to avoid a conflict with his or her religious observances (2 CA Code Regs § 11062(a))

205.4.3 *Determination*

After the interactive process communications, the Human Resources Director will review the information received, and determine: whether all available information has been reviewed; whether all potential accommodations that the applicant or employee has suggested have been considered; whether additional discussions with the applicant or employee would be helpful; whether the applicant's or employee's preferences have been taken into account; if there is a reasonable accommodation that would enable the applicant or employee to perform essential job functions without harming him or herself or others; and if the accommodations would pose an undue hardship on City finances or operations. The Human Resources Director will inform the applicant or employee of his or her determination in writing. The Human Resources Director will use his or her discretion based upon the particular facts of each case.

205.5 *Access to Medical Information Regarding Fitness for Duty*

Medical records and information regarding fitness for duty, or the need for an accommodation, will be maintained separately from non-medical records and information. Medical records and information regarding fitness for duty and the need for accommodation will be accessible only by the Human Resources Director and human resources personnel as needed, the City's legal counsel, first aid and safety personnel in case of emergency, and supervisors who are responsible for identifying reasonable accommodations. Medical records and information contained therein may be released pursuant to state and federal law. (2 CA Code Regs § 11069(g).

206 *Whistleblower Protection*

206.1 *Policy*

The City prohibits all of the following:

(a) taking any adverse employment action against an employee because the employee has or is believed to have disclosed information to any government or law enforcement agency, including to the City, if the employee has reasonable cause to believe that the information discloses a violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation (Labor Code § 1102.5(b));

- (b) preventing an employee from disclosing information to a government agency, including to the City, if the employee has reasonable cause to believe that the information discloses a violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation (Labor Code § 1102.5(a));
- (c) retaliating against an employee for refusing to participate in any activity that would result in a violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation (Labor Code § 1102.5(c)); and
- (d) retaliating against an employee because the employee's family member has or is perceived to have engaged in any of the protected activities listed in (a)-(c) above.

206.2 Policy Coverage

This Policy governs and protects City officials, officers, employees, seasonal/ temporary/ and extra help employees, or applicants for employment.

206.3 Definitions

- (a) "Protected activity" includes any of the following:
 - Filing a complaint with a federal or state enforcement or administrative agency that discloses any information that the employee has reasonable cause to believe violates state or federal law or a violation or noncompliance with a local, state, or federal rule or regulation.
 - Participating in or cooperating in good faith with a local, federal or state enforcement agency that is conducting an investigation in to alleged unlawful activity.
 - Testifying in good faith and with reasonable cause as a party, witness, or accused regarding alleged unlawful activity.
 - Associating with another covered individual who is engaged in any of the protected activities enumerated here.
 - Making or filing in good faith and with reasonable cause an internal complaint with the City regarding alleged unlawful activity.
 - Providing informal notice to the City regarding alleged unlawful activity.
 - Calling a governmental agency's "Whistleblower hotline" in good faith.
 - Filing a written complaint under penalty of perjury that the City has engaged in gross mismanagement, a significant waste of public funds, or a substantial and specific danger to public health or safety. (Labor Code §§ 53296(c) & 53297(d).)
 - Refusing to participate in any activity that the employee reasonably believes would result in a violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation. (Labor Code § 1102.5(c).)
- (b) "Adverse action" may include, but is not limited to, any of the following:
 - Real or implied threats of intimidation to attempt or prevent an individual from reporting alleged wrongdoing or because of actual or potential protected activity.

- Refusing to hire an individual because of actual or potential protected activity.
- Denying promotion to an individual because of actual or potential protected activity.
- Taking any form of disciplinary action because of actual or potential protected activity.
- Extending a probationary period because of actual or potential protected activity.
- Altering work schedules or work assignments because of actual or potential protected activity.
- Condoning hostility and criticism of co-workers and third parties because of actual or protected activity.
- Spreading rumors about a person because of that person's actual or perceived protected activity.
- Shunning or unreasonably avoiding a person because of that person's actual or perceived protected activity.

206.4 Complaint Procedure

An applicant, employee, or seasonal/ temporary/ / or extra help employee who feels he or she has been retaliated against in violation of this Policy should immediately report the conduct according to the complaint procedure in the City's Policy Against Discrimination, Harassment or Retaliation so that the complaint can be resolved fairly and quickly. Supervisors and Managers have the same responsibilities as defined in the Policy Against Discrimination, Harassment or Retaliation.

300 Classification Policies

301 Classification Plan

301.1 Classification Plan

The Human Resources Director shall ascertain and record the duties and responsibilities of all positions and, after consulting with affected department heads, shall recommend a classification plan, including job descriptions, for such positions. The plan and any revisions thereof shall become effective upon approval of the City Manager.

Following the approval of the classification plan, the Human Resources Director shall allocate every position to one of the classifications established by the plan.

When a new position is created, such position may not be filled, until the classification plan has been amended to provide for the new position.

301.2 Reclassification

The Human Resources Director may initiate a job audit to determine whether the duties of a position have changed to such an extent that they necessitate reclassification of the position from the existing classification to a more appropriate classification. Upon

completion of the job audit, the Human Resources Director shall make a recommendation regarding reclassification to the City Manager.

400 Recruitment, Selection, and Appointment

401 Recruitment, Selection and Appointment Policy

401.1 Job Announcement

The Human Resources department will prepare a job announcement to announce a proposed recruitment. The announcement may be posted on the City's website and other locations the Human Resources Director deems appropriate, depending upon whether the recruitment is open to the public or current employees only. The City reserves the right to recruit internally and/or appoint without a recruitment process.

401.2 Application Forms

Job applications shall require information describing an individual's training, experience, and other pertinent information as deemed necessary to assess qualifications for the job. Applicants may be required to provide supplementary information, including but not limited to; answers to job-related questions; resume; licenses; certifications; diplomas; letters of recommendation; and references. All applications must be completed in full and signed, physically or electronically, by the person applying. The Human Resources department will not process any application which is not fully completed and signed. Should an applicant be appointed to a position, the supplemental information shall become a part of the individual's permanent employment records.

401.3 Disqualification of Applications

The Human Resources department may disqualify any application for reason which may include, but not be limited to; not properly completed or incomplete, received after the application deadline, or indicates that the applicant does not meet the minimum qualifications for the position. Whenever an application is rejected, notice of such rejection shall be mailed or emailed to the applicant.

401.3.1 Criminal Conviction Check

After the Human Resources department makes a conditional offer of employment, the Human Resources department may then request information about criminal convictions, except for misdemeanor marijuana-related convictions that are over two years old, or convictions that have been judicially sealed, eradicated, or expunged. (Labor Code §§ 432.7-432.8.) Unless required by law, the City will not deny employment to any applicant solely because he or she has been convicted of a crime. The City may, however, consider the nature, date and circumstances of the offense, evidence of rehabilitation, as well as whether the offense is relevant to the duties of the position. This Policy does not apply to applicants for public safety jobs.

If the City determines to rescind the offer of employment based on the candidate's criminal conviction, the City will provide a written explanation of the reasons for the rescission, and a copy of the background check that was relied on. The candidate will then have 5 days to challenge the accuracy of the report, submit mitigating circumstances, or any other information the candidate feels is relevant. After considering any information submitted, the City will provide written notice of its final decision.

401.4 *Employment Examinations*

- (a) The Human Resources Director will determine the manner and methods of administering employment examinations. Examinations may consist of; written tests, oral tests, performance tests, evaluations of prior training and performance, experience and/or education, interviews, working style assessments, practical exercises, file review or any combination thereof. The content of all examinations will be job-related and designed to test knowledge, skills or abilities that help predict successful completion of job duties.
- (b) The content of all examinations will be kept confidential prior to the administration of the examination. All applicants who are invited to the examination will be notified of the nature of the examination.
- (c) An applicant with a disability may request accommodation in an examination process. Following receipt of a request for accommodation, the Human Resources Director may require additional information, such as reasonable documentation of the existence of a disability. (2 CA Code Regs § 11069(c)(2).)
- (d) Failure in one part of the examination, or 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. Each applicant will be notified by mail whether he or she will continue in the examination process.
- (e) Applicants who meet the minimum qualifications and pass all examinations may be subject to a background and/or reference check.

401.5 *Eligibility Lists*

- (a) After completion of an open or promotional examination for a classification, the Human Resources department may prepare an eligibility list consisting of the names of candidates who passed the examination. Eligibility lists shall become effective upon the certification by the Human Resources Director.
- (b) A person appearing on an eligible list will be mailed or emailed notice of his or her placement on the list.
- (c) A person placed on an eligibility list shall be removed from the list if he or she so requests in writing or fails to respond to notification of an opening within three days

after notification. It is the responsibility of the eligible person to keep the Human Resources department informed of his/her current physical or email address, or phone number.

401.6 *Appointments*

- (a) The City Manager or designee will make all appointments except for those classifications that report to the governing body. The City Manager or designee has discretion to decide in what manner a vacancy shall be filled. Vacancies may be filled by reinstatement, promotion, transfer, demotion, appointment of temporary / seasonal employees, or from an appropriate eligibility list if available. No specific list shall have priority over other lists. The City Council will make appointments for those classifications that report to it.
- (b) When a position is to be filled from a promotional or open eligibility list, the City Manager or designee may choose to may make the appointment from among the names on the eligibility list, may request a new examination and establish a new eligibility list, or may fill the position by any other method authorized by these Policies.
- (c) Appointment to certain positions may be made contingent upon the applicant/employee passing a drug / alcohol test, and/or a job-related medical and/or psychological examination. Such examination shall only be required after a conditional offer of employment has been made. (See Policy 206, Reasonable Accommodation and Interactive Process; and Policy 1208, Prohibitions on Drugs and Alcohol in the Workplace.)
- (d) The person accepting appointment shall report to the Human Resources department on the date designated by the Human Resources department. Otherwise, the applicant shall be deemed to have declined the appointment.

401.6.1 *Probationary Appointment*

- (a) At-Will Status: The probationary period is part of the examination process and is used to determine whether work performance or work-related behavior meets the required standards of the position. A probationary employee may be rejected at any time during the probationary period with or without cause or reason, without notice or appeal or grievance, and without any rights set forth under Policy 1002, Causes for Discipline and Procedures. The probationary employee will be notified prior to the expiration of the probationary period that he or she has been rejected from probation.
- (b) Length of Probation: Unless otherwise specified by memorandum of understanding or these Policies, the probationary period is 12 months, 2080 hours of actual and continuous service. The probationary period is automatically extended by the length of any absence of one work week or more. The probationary period can also be extended for cause by the Department Head at the discretion of the City Manager or his/her designee.

401.6.2 Probationary Period for Promotional Appointments

- (a) At-Will Status: A promotional probationary employee may be rejected at any time during the promotional probationary period with or without cause or reason, without notice or appeal or grievance, and without any rights described in Policy 1002, Causes for Discipline and Procedures. If the employee fails to satisfactorily complete the probationary period in the promotional position, the employee may return to a position held prior to promotion, if the employee successfully completed probation in that position, at the range and step held prior to promotion, and if there is a vacancy in the prior position, unless he or she is terminated for cause.
- (b) Length of Probation: On accepting a promotion, an employee serves a new probationary period of 12 months of actual and continuous service. The probationary period is automatically extended by the length of any absence of a week or more. A promotional probationary period may also be extended for cause by the Department Head at the discretion of the City Manager or his/her designee.

500 Nepotism and Fraternization

501 Nepotism and Fraternization

501.1 Purpose

The City of Desert Hot Springs is committed to maintaining a professional work environment free of conflicts of interest, nepotism, and favoritism. A workplace where employees maintain clear boundaries between family, personal, and work relationships leads to an environment that:

- Is fair, equitable, and safe;
- Promotes high employee morale; and
- Ensures trust in the City's merit-based employment system.

It is not unusual that members of the same family and people in romantic relationships may work for the City. In general, these relationships do not pose workplace problems. The purpose of this policy is to explain when family and romantic relationships may cause problems, or the appearance of problems, related to nepotism, favoritism, or conflicts of interest at work. This policy also establishes standards and disclosure requirements to prevent those problems from occurring.

Nepotism occurs when family members favor other family members in employment decisions. Nepotism does not align with the City's policy and practice of making employment decisions based solely on City needs, merit-

based processes, and individual qualifications, skills, knowledge, abilities, and performance.

Romantic relationships between supervisors and subordinate employees may raise issues of conflict of interest, abuse of authority, or favoritism. These relationships also have the potential to adversely impact other employees.

Moreover, the real or perceived power imbalance that may exist between a supervisor and a subordinate may raise questions about mutual consent.

People in both family and romantic relationships are referred to as "related persons" (defined in Section 502.3 below) solely for purposes of this policy.

501.2 *Applicability*

This policy applies to all City officers, elected officials, and employees including permanent civil service, exempt, temporary, full and part time, and provisional interns, and volunteer positions.

These individuals are referred to collectively as "employees" solely for purposes of this policy.

501.3 *Definitions*

a) "Employment decisions" refers to the full array of decisions and actions that involve City employees and their employment, including, but not limited to, decisions related to hiring, supervision, promotion, compensation, work hours, assignment of duties, performance evaluation, discipline, termination, and decisions involving other terms and conditions of employment such as those listed in Section 502.4 below.

b) "Related person(s)":

- A family member, whether by blood, adoption, marriage, or domestic partnership, including:
- Spouse;
- Domestic partner;
- Child;
- Parent;
- Grandparent/Grandchild;
- Aunt/Uncle;
- Sibling;
- First cousin;
- Niece/Nephew; and
- Any corresponding in-law, step, or foster relation
- A consensual romantic relationship occurring within the last two years. This includes, but is not limited to sexual, dating, engagement, or other intimate relationships.

c) "Direct supervision" means one employee directing the work of another employee. This includes temporary and project-based assignments.

d) "Indirect supervision" means one employee is responsible for the work of another employee through the organizational structure or chain of command. This includes temporary and project-based assignments.

501.4 Policy

Employees may not make, participate in making, or influence any employment decision involving a related person. This includes, but is not limited to:

- Hiring, promoting, transferring, or re-assignment;
- Serving on a hiring panel;
- Developing, administering, or rating a civil service exam;
- Initiating an administrative investigation or discipline;
- Assigning work;
- Preparing, conducting, or contributing information to a performance appraisal;
- Approving overtime or any other compensated time;
- Approving vacation, sick, or other leave time;
- Granting or denying permission to attend a conference or other work-related event; and
- Approving reimbursement for work-related expenses.

Employees are prohibited from directly supervising related persons. It is best practice that employees do not indirectly supervise related persons. Exceptions to this policy for indirect supervision may be made on a case by case basis as set forth below.

Nothing in this policy prohibits an employee from acting as a personal reference or providing a letter of reference for a related person seeking appointment to a position in any City department, board, commission, or agency, other than the employee's department, board, commission, or agency, or to a position under the control of any such department, board, commission, or agency.

This policy does not prohibit a supervisor from making an employment decision that impacts an entire unit or group of employees that includes a related person.

501.4.1 Reporting and Compliance

1. Direct supervision of related persons must be promptly reported by both employees to the Human Resources Director. Since employees cannot directly supervise related persons, the Department Head or Human Resources Director shall remove the conflict.
2. Indirect supervision of related persons must be promptly reported by both

employees to the Human Resources Director to assess the implications for the workplace, and to ensure that employment decisions are made appropriately.

- a. If, for operational reasons, the Department Head or Human Resources Director cannot remove the conflict, he or she shall formulate a management plan to address the indirect supervisory relationship while minimizing impact on the employees involved.
 - b. At a minimum, all management plans must address reporting relationships, supervision, and evaluation to ensure a supervisor does not participate in employment decisions regarding a related person, as prohibited by this policy.
3. Individuals who become related persons during City employment and while in a direct or indirect supervision situation must promptly disclose the relationship following the process set forth in Section 502.4.1.1 above.
 4. A Department Head prohibited under this policy from making, participating in, or influencing employment decisions involving related persons shall delegate in writing the authority to make employment decisions regarding such related persons to another employee within the department.

All employees are prohibited from retaliating against anyone who reports a potential violation of this policy.

All employees must cooperate with any investigation into possible violations of this policy. Violations may include, but are not limited to:

- Failing to report, or actively concealing, a relationship that falls within this policy; or
- Retaliating against another employee who has made a report under this policy.

Violations of this policy may lead to discipline, up to and including termination.

Employee questions about this policy should be directed to the Human Resources Director.

600 Compensation and Payroll Practices

601 Work Schedules and Attendance

601.1 Work Schedules

Work schedules are determined at the discretion of the department head and are subject to change with or without notice, according to the needs of the department or

City. An overtime-eligible employee shall be in attendance and at work during the hours specified by the supervisor.

601.2 *Lactation Break Time*

An employee who wishes to express breast milk for her infant child during her scheduled work hours will be provided a reasonable lactation accommodation (Labor Code § 1030; 29 USC § 207(r)). Those desiring to take a lactation break must notify a supervisor prior to taking such a break. Breaks may be reasonably delayed if they would seriously disrupt operations. (Labor Code § 1032.) When possible, the requested break should be taken concurrently with normal scheduled break periods. Overtime eligible employees must clock out for any lactation breaks that do not run concurrently with normally scheduled rest periods. Any such breaks will be unpaid.

601.3 *Private Location*

The City will make reasonable efforts to accommodate employees by providing an appropriate location to express milk in private. The City will attempt to find a location in close proximity to the employee's work area. Such space will meet the requirements of the California Labor Code included being shielded from view and free from intrusion, having a surface to place a personal items, having a place to sit, having access to electricity or alternative devices needed to operate an electric or battery powered breast pump. The City will provide access to a sink with running water and a refrigerator suitable for storing milk in close proximity to the employee's workspace. If a refrigerator cannot be provided, the City may provide another cooling device suitable for storing milk. Employees occupying such private areas shall either secure the door or otherwise make it clear to others through signage that the area is occupied and should not be disturbed. All other employees should avoid interrupting an employee during an authorized break under this section, except to announce an emergency or other urgent circumstance. Authorized lactation breaks for employees assigned to the field may be taken at the nearest appropriate private area.

601.4 *Notification of Unforeseen Late Arrival or Absence*

An overtime-eligible employee who is unexpectedly unable to report for work as scheduled must notify his or her immediate supervisor no later than the beginning of the employee's scheduled work time and report the expected time of arrival or absence. If the immediate supervisor is not available, the employee must notify the department head.

601.5 *Unauthorized Absence is Prohibited*

Arriving late to work or leaving early in connection with scheduled work times, breaks, or meal periods is prohibited, absent authorization. An overtime-eligible employee who fails to timely notify the supervisor of any absences as required by this Policy, or who is not present and ready to work during all scheduled work times will be deemed to have an unauthorized tardy or absence and will not receive compensation for the period of

absence.

601.6 Excessive Tardiness/Absenteeism and Abuse of Leave

Excessive tardiness occurs when an overtime-eligible employee who, without authorization, is late to work or late to return from breaks more than three times during any 30-day period. Excessive absenteeism occurs when the number of unapproved absences for reasons that are not permitted by state or federal law, exceeds five days during any 30-day period. Excessive tardiness or absenteeism may be grounds for discipline, up to and including termination.

Abuse of leave is a claim of entitlement to leave when the employee does not meet the requirements for taking the leave, and may be grounds for discipline, up to and including termination. Should the City suspect that there is an abuse of leave by an employee, the City may require that the employee submit a physician's certificate to support the absence.

602 Work Week, Overtime, and Compensatory Time Off

602.1 Work Week

The work week begins at 12:00 a.m. on Saturday and ends at 11:59 p.m. on Friday, or as otherwise designated in an applicable MOU, or by a Fair Labor Standards Act (FLSA) 29 USC § 207(k) work period for police employees.

602.2 Overtime

Fair Labor Standards Act (FLSA) overtime is all hours an overtime-eligible employee actually works over 40 hours in his or her designated work week. Only actual hours worked will be counted toward the 40-hour threshold for purposes of calculating Fair Labor Standards Act (FLSA) overtime pay; paid leave will not be counted. This is the FLSA threshold for calculation of overtime hours. Overtime calculations agreed upon in an MOU will be paid in accordance with the MOU.

602.2.1 No Remote Access for Overtime-Eligible Employees

Unless specifically assigned and monitored by the department head, overtime-eligible employees may not have remote access to City equipment, resources, or email. Overtime-eligible employees who receive authorization to have remote access to City equipment, resources, or email shall record and submit all remote time worked on their time record.

602.2.2 Prior Approval Required for Overtime

Overtime-eligible employees are not permitted to work overtime except as directed and authorized by their supervisor, or in case of emergency, as determined by the City.

Working overtime without prior authorization or approval is grounds for discipline. In emergency situations that necessitate working overtime, the employee must notify a supervisor as soon as possible, and in no event later than the end of that day upon which the emergency occurred. If the supervisor denies the request to work overtime, the employee must obey the supervisor's directive and cease working. Failure to follow these overtime approval procedures may subject the employee to disciplinary action, up to and including termination, for violating the overtime approval procedures.

602.3 *Accurate Time Reporting*

All employees must accurately report all work time on their time record.

602.4 *No Volunteering of Work Time*

All time spent for the benefit of the City must be reported as hours worked on time records so that the employee is paid for all work. Overtime-eligible employees may not "volunteer" work time to perform duties that are the same or similar as their stated or regular job duties. Employees have no authorization to work without compensation. No supervisor has authority to request overtime-eligible employees to volunteer work time.

602.5 *Compensatory Time Off*

An overtime-eligible employee may opt to accrue compensatory time-off (CTO) in lieu of cash payment for overtime worked if his or her supervisor agrees prior to overtime work being performed.

- (a) **Accrual Rate:** CTO accrues at the rate of 1.5 hours for each hour of overtime worked, or fraction thereof. Time in paid leave status does not count toward CTO. CTO cannot be accumulated in excess of FLSA maximums at any given time.
- (b) **Employee Request to Use CTO:** Reasonable request for use of compensatory leave shall not be denied.
- (c) **Carry Over:** An employee may carry to the next calendar year a maximum of eighty (80) hours of compensatory leave, one-hundred-sixty (160) hours for public safety employees. All compensatory hours in excess of said limits will be paid out at the beginning of each calendar year.
- (d) **City Cash Out:** The City reserves the right to cash out accumulated CTO at any time or to require the employee to otherwise use CTO time.
- (e) **Value of CTO Cash Out:** During employment, CTO is cashed out at the employee's current rate of pay. Employees separating from City service shall be compensated for all accrued, unused compensatory hours at their current rate of pay, or at the employee's average regular rate of pay over the most recent three-year period, whichever is higher.

603 Compensation and Benefits

603.1 Rate of Pay

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

603.2 Promotion

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

603.3 Demotion

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

603.4 Transfer

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

603.5 Bilingual Incentive Pay

The City may provide bilingual incentive pay to employees with demonstrated bilingual speaking ability. In order to qualify for bilingual incentive pay, the employee must pass a bilingual proficiency test which shall be given to those employees who request proficiency certification.

603.6 Acting Pay

Employees who are assigned to and actually perform the duties of a position with a higher salary classification than that in which they are regularly employed will receive the compensation specified for the position to which assigned, in accordance with the terms and conditions of an employee's MOU. The increased compensation will be at such a step within the higher classification as will accord such employee and increase of at least five percent (5%) over his or her current regular compensation, not to exceed the

maximum compensation for the higher classification. Acting pay may or may not be considered compensable income under CalPERS guidelines.

603.7 *Approval*

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

603.8 *Health Insurance*

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

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

603.9 *Group Term Life Insurance*

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

603.10 *City Retirement Plan*

All regular and probationary employees shall participate in the City retirement plan under the State of California Public Employees Retirement System (CalPERS) provisions for public safety and miscellaneous employees as approved by the City Council. Temporary employees shall be excluded from CalPERS until such a time as the employee works 1000 hours in a twelve-month period. Full details of CalPERS are available at <http://calpers.ca.gov> and are subject to change any time.

700 Performance Evaluation Policies

701 *Performance Evaluations*

701.1 Performance Evaluations

A non-probationary employee's supervisor will prepare and sign a performance evaluation on a City form for each performance evaluation period. The Department Head will review and approve all performance evaluations of subordinates in his or her department. The City Manager will review and approve all performance evaluations of department heads or any other employees under his or her direct supervision. Additional performance evaluations may be prepared at any time the Human Resources Director, Department Head, or City Manager deems necessary.

701.2 Probationary Employee Performance Evaluations

On or about the completion of six months of a probationary period, and again at any point prior to separation or the successful completion of the probationary period, the probationary employee's supervisor will prepare and sign a performance evaluation. The purpose of the probationary performance evaluation is to chart the probationer's progress toward meeting the standards of his or her position.

701.3 Performance Evaluation Meeting

The supervisor will meet with the employee to discuss the evaluation. The employee shall sign the evaluation to acknowledge its contents and that he or she has met with his or her supervisor to discuss the evaluation. The employee's signature shall not mean that he or she endorses the contents of the evaluation.

701.4 No Appeal Right

An employee does not have the right to appeal or submit a grievance regarding any matter relating to the content of a performance evaluation. Instead, the employee may comment on the evaluation in a written statement which will then be placed with the evaluation in the employee's personnel file. The written statement must be submitted within 10 days after the employee receives the evaluation.

800 Leaves of Absences

801 Vacation Leave and Holidays

801.1 Vacation Leave

Eligible full-time and part-time employees, with the exception of temporary/ seasonal/ and extra help employees, earn vacation leave while in paid status until they reach the applicable vacation accrual cap. Employees accrue vacation time according to their full or part-time status and the number of consecutive years the employee has worked for the City in accordance with their Memorandum of Understanding (MOU) or

Compensation and Benefit Profile. Eligible part-time employees, who work at least 30 hours per week, may accrue pro-rated vacation leave.

801.2 *Scheduling of Vacation Leave*

Vacation leave may not be used until it is earned. The employee and the department head will schedule the times when an employee may take vacation leave. The scheduling will be based on the employee's preference and the City's operational needs. An employee shall provide a minimum of one week's written advance notice, unless waived by the department head, when requesting vacation time off. The City may, at its discretion, require an employee to use accrued vacation.

801.3 *Unused Vacation Leave Upon Separation*

Any employee separating from the City who has accrued vacation leave shall be paid for all accrued vacation at his or her rate of pay at the time of separation.

801.4 *Holidays*

Full-time employees, with the exception of temporary/ seasonal/ and extra help employees, receive the holidays listed below with pay. When any day granted as a holiday falls on a Friday, the preceding Thursday shall be considered the holiday. If the holiday falls on a Saturday or Sunday, the following Monday shall be considered the holiday. Part-time employees, with the exception of temporary/ seasonal/ and extra help employees, whose scheduled work time falls on a holiday will receive that holiday off with pay for the hours they were scheduled to work.

- New Year's Day
- Martin Luther King's Birthday
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- December 24
- December 25
- One Floating Holiday for use within each fiscal yr.

801.5 *Effect of Holiday on Vacation Leave*

If one or more holidays falls within a vacation leave that an eligible full-time employee is taking, such holiday shall not be charged as vacation leave.

801.6 *Pay for Holidays*

Employees entitled to paid holidays or floating holidays shall be paid for the number of hours the employee was scheduled to work had it not been a holiday or floating holiday unless required to report to work by the department head in order to maintain City services.

802 Sick Leave

802.1 Purposes for Sick Leave

Sick leave is paid leave from work that can be used for the following purposes:

- (a) diagnosis, care, or treatment of an existing health condition of, or preventative care for, the employee or any of the following of the employee's family members: child of any age or dependency status; parent; parent-in-law; spouse; registered domestic partner; grandparent; grandchildren; or sibling (Labor Code §§ 233(b)(2); 245.5(c); 246.5(a)(1)); or
- (b) for an employee who is a victim of domestic violence, sexual assault, or stalking to: i) obtain or attempt to obtain a temporary restraining order or other court assistance to help ensure the health safety or welfare of the employee or his or her child; or ii) obtain medical attention or psychological counseling; services from a shelter; program or crisis center; or participate in safety planning or other actions to increase safety. (Labor Code §§ 230(c); 233(b)(3)(A); 246.5(a)(2).)

802.2 Terms of Sick Leave

(a) Accrual & Carryover for Different Categories of Employees:

- 1) Eligible full-time employees, with the exception of temporary/ seasonal/ and extra help employees, earn sick leave while in paid status in accordance with their Memorandum of Understanding (MOU) or Compensation and Benefit Profile. Eligible part-time employees, who work at least 30 hours per week, may accrue pro-rated sick leave. Accrued sick leave carries over from year to year. No accrual limit applies.
- 2) A part time employee who works less than 30 hours per week and 30 or more days within a year from the commencement of employment with the City accrues 24 hours or 3 workdays, whichever is greater, of paid sick leave per fiscal year after their first 90 days of employment. Accrued and unused sick leave carries over to the following year of employment but is limited to 48 hours or 6 workdays, whichever is greater. (Labor Code § 246(i).)

(b) Sick Leave Use:

An employee may use accrued sick leave, in a minimum increment of two hours, beginning on the 90th day after the first day of employment with the City subject to the limits and request provisions in this Policy. (Labor Code § 246(c) & (j).)

(c) Sick Leave Request:

To request to use sick leave if the need for leave is foreseeable, an employee must give the immediate supervisor reasonable advance written or oral notice. (Labor Code §§ 246(l); 246.5(a).) If the need for sick leave is not foreseeable, the employee shall provide written or oral notice of the need for the leave as soon as practicable. (Labor Code § 246(l).) If the employee is required to be absent on sick leave for more than one day, the employee must keep the immediate supervisor informed each day as to the date the employee expects to return to work and the purpose of the leave. Failure to request sick leave as required by this Policy without good reason, may result in the employee being treated as absent without leave.

(d) Certification:

The City may require that employees provide a physician's certification to support any absence that involves the illness of the employee or family member if the City suspects that there is an abuse of sick leave by the employee. All employees who use paid leave to address issues related to domestic violence, sexual assault or stalking, and who cannot provide advance notice of their need for leave must provide certification of the need for leave within a reasonable time thereafter. (Labor Code § 230(d)(2).)

(e) Sick Leave on Separation from Employment:

Unused sick leave is not cashed out upon termination, resignation, retirement, or other separation from employment. (Labor Code § 246(f)(1).) Unused sick leave may be converted to retirement service credits only as may be permitted under applicable retirement system laws and regulations.

(f) Sick Leave Reinstatement:

If an employee separates and is rehired within one year from separation, accrued and unused sick leave, to a maximum of 6 days or 48 hours, whichever is greater, will be reinstated. (Labor Code § 246(f)(2).) An employee who worked at least 90 days in the initial employment with the City may immediately use reinstated sick leave. An employee who had not worked 90 days in the initial employment with the City must work the remaining amount of the 90 day-qualifying period to be able to use accrued sick leave. (Labor Code § 246(c).)

803 Family and Medical Care Leaves

803.1 Statement of Policy; Concurrent Running of FMLA and CFRA Leaves

The City provides family and medical care leave for eligible employees as required by State and federal law. Employees who misuse or abuse family and medical care leave may be disciplined up to and including termination. Employees who fraudulently obtain or use CFRA leave are not protected by the CFRA's job restoration or maintenance of health benefits provisions. This Policy is supplemented by the Federal Family and Medical Leave Act ("FMLA"), and the California Family Rights Act ("CFRA"). Unless otherwise stated in this Policy, "Leave" means leave pursuant to the FMLA and CFRA. Unless otherwise provided by law, the City will run each employee's FMLA and CFRA leaves concurrently.

803.2 Definitions

- (a) "12-Month Period" means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken. (29 CFR § 825.200(b)(4); 2 CA Code Regs § 11090(b).)
- (b) "Single 12 Month Period" means a 12-month period which begins on the first day the eligible employee takes FMLA leave to take care of a covered servicemember and ends 12 months after that date. (29 CFR § 825.200(f).)
- (c) "Child" means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee's child is one for whom the employee has actual day-to-day responsibility for care, and includes a biological, adopted, foster or stepchild. A child is "incapable of self-care" if he/she requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living, such as caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning shopping, taking public transportation, paying bills, maintaining a residence, or using telephones and directories. (29 CFR § 825.102; Gov. Code § 12945.2(c)(1).)
- (d) "Parent" means the biological parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law. (29 CFR § 825.102; Gov. Code § 12945.2(c)(7).)
- (e) "Spouse" means one or two persons to a marriage, regardless of the sex of the persons, and for purposes of CFRA leave, includes a registered domestic partner as defined below. (29 CFR § 825.102; Fam. Code § 300; 2 CA Code Regs § 11087(r).)

- (f) "Domestic Partner" is another adult with whom the employee has chosen to share their life in an intimate and committed relationship of mutual caring and with whom the employee has filed a Declaration of Domestic Partnership with the Secretary of State, and who meets the criteria specified in California Family Code section 297. A legal union formed in another state that is substantially equivalent to the California domestic partnership is also sufficient. (Fam. Code § 299.2.)
- (g) "Serious Health Condition" means an illness, injury impairment, or physical or mental condition that involves:
- 1) Inpatient Care in a hospital, hospice, or residential medical care facility, including any period of incapacity (e.g., inability to work or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom). A person is considered "inpatient" when a health care facility admits him or her to the facility with the expectation that he or she will remain at least overnight, even if it later develops that such person can be discharged or transferred to another facility, and does not actually remain overnight; or
 - 2) Continuing treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
 - a. A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three consecutive calendar days; and
 - b. Any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - i. Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider; or
 - ii. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
 - 3) Any period of incapacity due to pregnancy or for prenatal care. (29 CFR § 825.120; Gov. Code § 12945.2(c)(8).) Note that pregnancy is a "serious

health condition" only under the FMLA. Under California law, an employee disabled by pregnancy is entitled to pregnancy leave. (See Policy 808, Leave Because of Pregnancy, Childbirth, or Related Medical Condition.)

- 4) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - i. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - ii. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - iii. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.
- 5) A period of incapacity that 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, health care provider.
- 6) 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. (29 CFR § 825.113; Gov. Code § 12945.2(c)(8); 2 CA Code Regs § 11087(q)(1).)

(h) "Health Care Provider" means:

- 1) A Doctor of Medicine or Osteopathy who is authorized to practice medicine or surgery in the State of California;
- 2) Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, which directly treats or supervises treatment of a serious health condition;
- 3) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;

- 4) Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;
 - 5) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
 - 6) Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits. (29 CFR § 825.102; Gov. Code § 12945.2(c)(6).)
- (i) "Covered active duty" means: 1) in the case of a member of a regular component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or 2) in the case of a member of the reserve component of the Armed Forces, duty during the deployment of members of the Armed Forces to a foreign country under a call or order to active duty under certain specified provisions. (29 CFR § 825.102.)
- (j) "Covered Servicemember" means: 1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or 2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. (29 CFR § 825.102 & 825.122.)
- (k) "Outpatient Status" means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to either: (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. (29 CFR § 825.102.)
- (l) "Next of Kin of a Covered Servicemember" means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. (29 CFR § 825.102.)
- (m) "Serious Injury or Illness" means: 1) in the case of a member of the Armed forces, including a member of the National Guard or reserves, means an injury or

illness that a covered servicemember incurred in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by the service in the line of duty on active duty in the Armed Forces) and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; or 2) in the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran. (29 CFR § 825.102.)

803.3 *Reasons for Leave*

Leave is only permitted for the reasons listed below.

- (a) The birth of a child or to care for a newborn of an employee; (29 CFR § 825.120; Gov. Code § 12945.2(c)(3)(A));
- (b) The placement of a child with an employee in connection with the adoption or foster care of a child; (29 CFR § 825.121; Gov. Code § 12945.2(c)(3)(A));
- (c) Leave to care for a child, parent, spouse, or domestic partner who has a serious health condition; (29 CFR § 825.113; Gov. Code § 12945.2(c)(3)(A) & (B));
- (d) Leave because of a serious health condition that makes the employee unable to perform any one or more essential functions of his/her position; (29 CFR § 825.113; Gov. Code § 12945.2(c)(3)(C));
- (e) Leave for a variety of "qualifying exigencies" 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 (29 CFR § 825.126 -- This is a FMLA leave and not a CFRA leave); or
- (f) Leave to care for a spouse, son, daughter, parent, or "next of kin" who is a covered servicemember of the U.S. Armed Forces who has a serious injury or illness: incurred in the line of duty while on active military duty; or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces. This leave can run up to 26 weeks of unpaid leave during a single 12-month period. (29 CFR § 825.127 -- This is a FMLA leave and not a CFRA leave.)

803.4 *Employees Eligible For Leave*

An employee is eligible for leave if:

- (a) The employee has been employed by the City for at least 12 months; and

- (b) The employee has been employed by the City for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave; and
- (c) The City directly employs at least 50 full or part-time employees within a 75-mile radius for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. The workweeks do not have to be consecutive. The phrase "current or preceding calendar year" refers to the calendar year in which the employee requests the leave or the calendar year preceding this request. (29 CFR § 825.109(d)-29 CFR § 825.111; Gov. Code § 12945.2(a) & (b); 2 CA Code Regs §§ 11087(d)(1) & 11087(e).)

An employee is eligible for 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption or foster care placement if:

- (a) The employee has been employed by the City for at least 12 months; and
- (b) The employee has been employed by the City for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave; and
- (c) The City directly employs at least 20 full or part-time employees within a 75-mile radius. (Gov. Code § 12945.6(a)(1).)

803.5 Amount of Leave

Eligible employees are entitled to a total of 12 workweeks (or 26 workweeks to care for a covered servicemember) of leave during any 12-month period. If 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. (29 CFR § 825.127.)

803.6 Minimum Duration of Leave

- (a) 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 less than two weeks duration on any two occasions. (2 CA Code Regs § 11090(d).)
- (b) If leave is requested to care for a child, parent, spouse or the employee him/herself with serious health condition, there is no minimum amount of leave that must be taken. However, compliance with the notice and medical certification provisions in this Policy is required. (29 CFR § 825.205; 2 CA Code Regs § 11090(e).)

803.7 Parents both Employed by the City

If both parents of a child, adoptee, or foster child are employed by the City and are entitled to bonding 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. (29 CFR § 825.120(a)(3).) If both parents of a covered servicemember are employed by the City and are entitled to leave to care for a covered servicemember, the aggregate number of workweeks of leave to which both may be entitled is limited to 26 work weeks during the 12-month period. This limitation does not apply to any other type of leave under this Policy. (29 CFR § 825.127(f).)

803.8 Employee Benefits While On Leave

- (a) **Group Health Insurance During Unpaid Leave:** Leave under this Policy is unpaid. While on unpaid leave, employees will continue to be covered by the City's group health insurance for up to 12 weeks each leave year to the same extent that coverage is provided while the employee is on the job. If the employee is disabled by pregnancy, coverage will continue up to four months each leave year. If an employee disabled by pregnancy also uses leave under the CFRA for baby-bonding, the City will maintain her coverage while she is disabled by pregnancy (up to four months or 17 1/3 weeks) and during her CFRA leave (up to 12 weeks). (Gov. Code §§ 12945(a)(2)(A) & 12945.2(s).)

- (b) **Benefit Plans Not Provided through the City Group Health Plan During Unpaid Leave Do Not Continue:** The City does not pay for benefit plans that are not part of the group health plan (e.g. life, short-term and long-term disability insurance, optional benefit plans, and retirement plans) for any employee on unpaid leave. As a result, employees will not continue to be covered under the City's benefit plans that are not provided through the City's group health plans while the employee is on unpaid leave. (2 Cal. Code Regs § 11092(e).)

- (b) **Payment of Premiums:** Employees may make the appropriate contributions for continued coverage under the health benefits plans by payroll deductions (if the employee is using his or her paid leave) or direct payments (if the employee is not using his or her paid leave). The City will inform the employee whether the direct payments for premiums should be paid to the carrier or to the City, and the deadlines for paying premiums in order to prevent coverage from being dropped. Employee contribution rates are subject to any changes in rates that occur while employee is on leave.

- (c) **Recovery of Premium if the Employee Fails to Return from Leave:** If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee

or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. (29 CFR § 825.213; Gov. Code § 12945.2(f)(1); 2 CA Code Regs § 11092(c)(5).)

803.9 *Substitution of Paid Accrued Leaves*

Although family and medical care leave is unpaid, an employee may elect and the City will require an employee to concurrently use all paid accrued leaves during family and medical care leave as described below.

803.9.1 *Employee's Right to Use Paid Accrued Leave Concurrently with Family Leave*

An employee may use any earned or accrued paid leave except sick leave for all or part of any unpaid family and medical care leave. An employee is entitled to use sick leave concurrently with family and medical care leave for the employee's own serious health condition or that of the employee's parent, spouse, domestic partner or child. (Gov. Code § 129045.2(e); Labor Code §§ 233 & 246.5(a)(1).)

803.9.2 *City's Right to Require an Employee to use Paid Leave when using FMLA/CFRA Leave*

Employees must use and exhaust their accrued leaves concurrently with family and medical care leave to the same extent that employees have the right to use their accrued leaves concurrently with family and medical care leave with two exceptions:

- (a) Employees are not required to use paid leave during leave pursuant to a disability plan that pays a portion of the employee's salary while on leave unless the employee agrees to use paid leave to cover the unpaid portion of the disability leave benefit; (29 CFR § 825.207(d); 2 CA Code Regs. § 11092(b)(2) & (3)); and
- (b) An employee must agree to use accrued sick leave to care for a child, parent, spouse or domestic partner. (Gov. Code § 12945.2(e); 2 CA Code Regs § 11092(b).) 806.9.3 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 purpose which also qualifies under both the FMLA and CFRA, the City will designate that leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement. The only exception is for sworn police personnel who are on paid industrial injury leave. (Labor Code §4850(e).)

803.9.3 *City's and Employee's Rights if an Employee Requests Accrued Leave without Mentioning FMLA or CFRA*

If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to a FMLA/CFRA qualifying purpose, the City may not ask the

employee if the leave is for a FMLA/CFRA qualifying purpose. (2 CA Code Regs § 11092(b)(4)(A).) 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 require the employee to exhaust accrued leave as described above. (2 CA Code Regs § 11092(b)(4)(A)(1).)

803.10 Medical Certification/ Recertification

Employees who request leave must provide a medical certification and/or recertification to support the need for the leave as described below:

- (a) **Employee's Own Serious Health Condition:** Employees who request leave for their own serious health condition must provide written certification from the health care provider that contains all of the following: the date, if known, on which the serious health condition commenced; the probable duration of the condition; and a statement that, due to the serious health condition, the employee is unable to work at all or is unable to perform any one or more of the essential functions of his or her position. (Gov. Code § 12945.2(j)(2); 2 CA Code Regs § 11087(a)(2); 2 CA Code Regs § 11091(b)(2).) Upon expiration of the time period the health care provider originally estimated that the employee needed for his/her own serious health condition, the employee must obtain recertification if additional leave is requested. (Gov. Code § 12945.2(j)(2); 2 CA Code Regs § 11091(b)(2); 29 CFR § 825.308.)

- (b) **Family Member Serious Health Condition:** Employees who request leave to care for a child, parent, domestic partner or a spouse who has serious health condition must provide written certification from the health care provider of the family member requiring care that contains all of the following: the date, if known, on which the serious health condition commenced; the probable duration of the condition; an estimate of the amount of time which the health care provider believes the employee needs to care for the child, parent, domestic partner, or spouse, and a statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision of the child, parent or spouse. The term "warrants the participation of the employee" includes, but is not limited to, providing psychological comfort, and arranging third party care for the covered family member, as well as directly providing, or participating in, the medical care. (Gov. Code § 12945.2(k)(1); 2 CA Code Regs § 11087(a)(1); 2 CA Code Regs § 11091(b)(1).) Upon expiration of the time period the health care provider originally estimated that the employee needed to care for a covered family member, the employer must obtain recertification if additional leave is requested. (Gov. Code § 12945.2(j)(2); 2 CA Code Regs § 11091(b)(1); 29 CFR § 825.308.)

- (c) **Servicemember Serious Injury or Illness:** Employees who request FMLA 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. (29 CFR § 825.310.) The City will

verify the certification as permitted by the FMLA regulations. (29 CFR § 825.310(e) &(f).)

- (d) **Qualifying Exigency:** The first time an employee requests FMLA leave because of a qualifying exigency, an employee may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to active duty status in a foreign country, and the dates of the military member's active duty service. A copy of the 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 military member. (29 CFR § 825.309.) The City will verify the certification as permitted by the FMLA regulations. (29 CFR § 825.309(d).)

803.11 Time to Provide a Medical Certification

When an employee has provided at least 30 days' notice for a foreseeable leave, the employee must provide a medical certification before the leave begins. When this is not possible, the employee must provide the medical certification to the City within the time frame requested by the City (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. (2 CA Code Regs § 11091(b)(3); 29 CFR § 825.305(b).)

803.12 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. (2 CA Code Regs § 11091(b)(3); 29 CFR § 825.313(a) & (b).) However, if an employee fails to provide a medical certification within the time frame established in this Policy, the City may delay the taking of FMLA/CFRA leave until required certification is provided, or deny FMLA/CFRA protections following the expiration of the time period to provide an adequate certification. (2 CA Code Regs § 11091(b)(3); 29 CFR § 825.313(a).)

803.13 Human Resources Review of the Contents of Medical Certification for Employee's Own Serious Health Condition

- (a) **Complete and Sufficient:** The employee must provide a certification for his or her own serious health condition that is complete and sufficient to support the request for leave. A certification is incomplete if one or more of the applicable entries on the certification form have not been completed. A certification is insufficient if the information on the certification form is vague, ambiguous, or not responsive. If the certification is incomplete or insufficient, the human resources department will give the employee written notice of the deficiencies and seven days to cure,

unless a longer period is necessary in light of the employee's diligent, good faith efforts to address the deficiencies. (29 CFR § 825.305(c).)

(b) **Authentication and Clarification:** After giving the employee an opportunity to cure the deficiencies in a medical certification for the employee's own serious health condition, the human resources department may contact the health care provider who provided the certification to clarify and/or authenticate the certification. "Authentication" means providing the health care provider with a copy of the certification form and requesting verification that the information on the form was completed or authorized by the health care provider who signed the form. "Clarification" means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of the response. The human resources department may not ask for additional information beyond that required on the certification form. (29 CFR § 825.307(a).)

803.14 *Second and Third Medical Opinions For Employee's Own Serious Health Condition*

If the City has a good faith, objective reason to doubt the validity of a certification for the employee's serious health condition, the City may require a medical opinion of a second health care provider chosen and paid for by the City 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. (29 CFR § 825.307(b) & (c); 2 CA Code Regs § 11091(b)(2)(A).) The City must provide the employee with a copy of the second and third medical opinions, where applicable, without cost, upon the request of the employee. (29 CFR § 825.307(d); 2 CA Code Regs § 11091(b)(2)(D).)

803.15 *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 for his or her own serious health condition, or to care for an immediate family member with 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. (2 CA Code Regs § 11090(e); 29 CFR § 825.202(b).) The City may require an employee who certifies the need for a reduced schedule or intermittent leave to temporarily transfer to an alternate position of equivalent pay and benefits that better accommodates the leave schedule. (2 CA Code Regs § 11090(e)(1); 29 CFR § 825.204.)

803.16 *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 verbal or written notice as possible of their need for leave. (29 CFR § 825.304(a).) If leave is foreseeable, at least 30

days' notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact day(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. (29 CFR § 825.302(a); 2 CA Code Regs § 11091(a)(2) & (3).) For foreseeable leave due to a qualifying exigency, an employee must provide verbal or written notice of the need for leave as soon as practicable, regardless of how far in advance such leave is foreseeable. (29 CFR § 825.302(a).)

803.17 Reinstatement Upon Return From Leave

- (a) **Reinstatement to Same or Equivalent Position:** 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 benefits and pay. 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. (2 CA Code Regs § 11087(f) & (g); 2 CA Code Regs § 11089(a); 29 CFR § 825.214-215; 29 CFR § 825.216.)
- (b) **Date of Reinstatement:** 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/her readiness to return. (2 CA Code Regs § 11089(c)(1) & (2).)
- (c) **Employee's Obligation to Periodically Report on His/Her Condition:** Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return. (29 CFR § 825.311.)
- (d) **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 stating that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement. (Gov. Code § 12945.2(k)(4); 29 CFR § 825.312.)
- (e) **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 worksite) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the City, and the employee is notified of the City's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur. (Gov. Code § 12945.2(r)(1); 29 CFR §§ 825.217-219.)

803.18 Required Forms

Employees must complete the applicable forms to receive family and medical care leave. The forms may be obtained from the human resources department.

804 Leave Because of Pregnancy, Childbirth, or Related Medical Condition

804.1 Amount of Leave

An employee who is disabled because of pregnancy, childbirth, or a related medical condition is entitled to an unpaid leave for up to the number of hours she would normally work within four calendar months (one-third of a year or 17 1/3 weeks). (Gov. Code § 12945(a).) For a full-time employee who works 40 hours per week, "four months" means 693 hours of leave entitlement, based on 40 hour per week times 17 1/3 weeks. (2 Cal. Code Regs § 11042(a)(1).) An employee who works less than 40 hours per week will receive a pro rata or proportional amount of leave. (2 Cal. Code Regs § 11042(a)(2).)

804.2 Notification and Certification Requirements

(a) Notice: Requests for pregnancy disability leave must be submitted in writing with reasonable advance notice of the medical need for the leave. (2 CA Code Regs § 11042(c)(1).) All leaves must be confirmed in writing, have an agreed-upon specific date of return, and be submitted to the human resources department. (2 CA Code Regs § 11042(a).)

(b) Certification: The request for pregnancy disability leave must be supported by a written certification from the attending physician stating that: the employee is disabled from working by pregnancy, childbirth or a related medical condition; 2) the date on which the employee became disabled by pregnancy, childbirth or a related medical condition; and 3) the estimated duration or end date of the leave. (2 CA Code Regs §§ 11050(b)(7); 11050(e).)

804.3 Compensation During Leave

Your Rights and Responsibilities as a Pregnant Employee

If you are pregnant, have a related medical condition, or are recovering from childbirth, **PLEASE READ THIS NOTICE.**

California law protects employees against discrimination or harassment because of an employee's pregnancy, childbirth or any related medical condition (referred to below as "because of pregnancy"). California law also prohibits employers from denying or interfering with an employee's pregnancy-related employment rights.

The City has an obligation to:

- reasonably accommodate your medical needs related to pregnancy, childbirth or related conditions (such as temporarily modifying your work duties, providing you with a stool or chair, or allowing more frequent breaks);
- transfer you to a less strenuous or hazardous position (where one is available) or duties if medically needed because of your pregnancy; and
- provide you with pregnancy disability leave (PDL) of up to four months (the working days you normally would work in one-third of a year or 17 $\frac{1}{3}$ weeks) and return you to your same job when you are no longer disabled by your pregnancy or, in certain instances, to a comparable job. Taking PDL, however, does not protect you from non-leave related employment actions, such as a layoff.
- provide a reasonable amount of break time and use of a room or other location in close proximity to the employee's work area to express breast milk in private as set forth in the Labor Code.

For pregnancy disability leave:

- PDL is not for an automatic period of time, but for the period of time that you are disabled by pregnancy. Your health care provider determines how much time you will need.
- Once the City has been informed that you need to take PDL, the City must guarantee in writing that you can return to work in your same position if you request a written guarantee. The City may require you to submit written medical certification from your health care provider substantiating the need for your leave.
- PDL may include, but is not limited to, additional or more frequent breaks, time for prenatal or postnatal medical appointments, doctor-ordered bed rest, severe "morning sickness," gestational diabetes, pregnancy-induced hypertension, preeclampsia, recovery from childbirth or loss or end of pregnancy, and/or post-partum depression.
- PDL does not need to be taken all at once but can be taken on an as-needed basis as required by your health care provider, including intermittent leave or a reduced work schedule, all of which counts against your four-month entitlement to leave.
- Your leave will be paid or unpaid depending on the City policy for other medical leaves.
- You may also be eligible for state disability insurance or Paid Family Leave (PFL), administered by the California Employment Development Department.
- At your discretion, you can use any vacation during your PDL.
- The City requires you to use any available sick leave during your PDL.
- The City is required to continue your group health coverage during your PDL at the same level and under the same conditions that coverage would have been provided if you had continued in employment continuously for the duration of your leave.
- Taking PDL may impact certain of your benefits and your seniority date; please contact Human Resources for details.
- If possible, you must provide at least 30 days' advance notice for foreseeable events (such as the expected birth of a child or a planned medical treatment for

yourself.) For events that are unforeseeable, we need you to notify us, at least verbally, as soon as you learn of the need for the leave. Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy.

Notice Obligations of Employees.

- Give the City reasonable notice: To receive reasonable accommodation, obtain a transfer, or take PDL, you must give the City sufficient notice for it to make appropriate plans. Sufficient notice means 30 days' advance notice if the need for the reasonable accommodation, transfer or PDL is foreseeable, otherwise as soon as practicable if the need is an emergency or unforeseeable.
- Provide a Written Medical Certification from Your Health Care Provider. Except in a medical emergency where there is no time to obtain it, the City may require you to supply a written medical certification from your health care provider of the medical need for your reasonable accommodation, transfer or PDL. If the need is an emergency or unforeseeable, you must provide this certification within the time frame the City requests, unless it is not practicable for you to do so under the circumstances despite your diligent, good faith efforts. The City must provide at least 15 calendar days for you to submit the certification. See Human Resources for a copy of a medical certification form to give to your health care provider to complete.
- PLEASE NOTE that if you fail to give the City reasonable advance notice or written medical certification of your medical need, the City may be justified in delaying your reasonable accommodation, transfer, or PDL.

You also may be entitled to additional rights under the California Family Rights Act of 1993 (CFRA) if you have more than 12 months of service with us, have worked at least 1,250 hours in the 12-month period before the date of you want begin your leave and work at a worksite with 50 or more employees within 75 miles of that worksite. This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of your child or for your own serious health condition (not related to pregnancy) or that of your child, parent or spouse. While the law provides only unpaid leave, employees may choose, or employers may require use of accrued paid leave while taking CFRA leave under certain circumstances. For further information on the availability of CFRA leave, please review your employer's Notice regarding the availability of CFRA leave.

This notice is a summary of your rights and obligations under the Fair Employment and Housing Act (FEHA). For more information about your rights and obligations as a pregnant employee, contact Human Resources, visit the Department of Fair Employment and Housing's website at www.dfeh.ca.gov, or contact the Department at 800-884-1684. The text of the FEHA and the regulations interpreting it are available on the Fair Employment and Housing Commission's website at www.dfeh.ca.gov.

805 Other Leaves

805.1 Management Leave

On the first paycheck in July of each year, employees who are exempt from FLSA overtime may receive paid management leave as authorized by the City Manager. This management leave must be used during the fiscal year in which it is received, or it will be converted to salary compensation at the end of each fiscal year. Newly hired or newly promoted employees who are exempt from FLSA overtime will receive a prorated amount of Management Leave for the fiscal year in which they are hired.

805.2 *Jury Duty Leave/Subpoenaed or Court-Ordered Witness Leave*

Any employee who is summoned to serve on a jury, or subpoenaed or ordered to be a witness, must notify his or her supervisor or department head as soon as possible. Any employee who is released from jury service prior to the end of his or her scheduled work hours must report to work unless otherwise authorized by his or her supervisor. (Gov. Code § 1230; Labor Code § 230; 28 USC § 1875(c).)

805.2.1 *Overtime-Eligible Employees*

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

805.2.2 *Overtime-Exempt Employees*

All FLSA-exempt employees will continue to receive their normal salary while on jury duty or as serving as a witness only for any work week in which they perform any work duties. (29 CFR § 541.602(a) & (b)(3).) The City will offset the amount from pay the employee receives from the Court for jury fees. (29 CFR § 541.602(b)(3).)

805.3 *Other Court or Administrative Proceeding Appearances*

805.3.1 *Regarding City Duties*

Any employee, who is subpoenaed to appear in court in a matter regarding an event or transaction in the course of his or her City job duties, must give his or her supervisor as much advance notice as is possible. The City will determine whether the matter involves an event or transaction in the course of the employee's City job duties. If so, this leave to appear in court will be without loss of compensation, and the time spent will be considered work time. The City will offset the amount from pay the employee receives for witness fees.

805.3.2 *Regarding Employee-Initiated Proceedings*

Any employee, who is subpoenaed to appear, or appears in court because of civil or administrative proceedings that he or she initiated, is not entitled to receive compensation for time spent related to those proceedings. An employee may request

to receive time off without pay or may use any accrued leave other than sick leave for time spent related to those proceedings. The time spent in these proceedings is not considered work time. Notwithstanding the above, an employee who is testifying or appearing as the designated representative in PERB conferences or hearings, or at a personnel or merit commission is entitled to paid release time. (Gov. Code § 3505.3(a)(2) & (3).)

805.3.3 *Regarding Crime Victim/ Victim Family Member Court Attendance Leave*

Any employee, who is a victim of a crime that is a serious or violent felony, or a felony involving theft or embezzlement, may take leave from work to attend judicial proceedings related to that crime, if the employee provides the City a copy of the notice of the scheduled proceeding in advance. If advance notice is not feasible, the employee must provide the City, within a reasonable time after the leave is taken, documentation from the District Attorney, victim's rights office, or court / governing agency that shows that the judicial proceeding occurred when the leave was used. An employee who is an immediate family member of such a crime victim, including: a registered domestic partner; the child of the registered domestic partner; spouse; child; stepchild; brother; stepbrother; sister; stepsister; mother; stepmother; father; or stepfather of the crime victim is also entitled to leave from work to attend judicial proceedings relating to that crime. The leave is unpaid unless the employee elects to use accrued vacation, sick, or other paid leave, or compensatory time off. (Labor Code § 230.2.)

805.3.4 *Regarding Crime Victim/ Family Member Victims' Rights Proceedings Leave*

Any employee, including a temporary, seasonal, or extra help employee, who is a victim of a crime listed in Labor Code section 230.5(a)(2)(A), may take leave from work to appear in court to be heard at any proceeding in which the right of the victim is at issue, if the employee provides the employer reasonable advance notice. If advance notice is not feasible, the employee must provide the City, within a reasonable time after the leave is taken, certification from a police report, a district attorney or court, or from a health care provider or victim advocate, that the employee was a victim of any of the crimes listed in Labor Code section 230.5(a)(2)(A). An employee who is a spouse, parent, child, sibling, or guardian of such a crime victim is also a victim who is entitled to this leave if the above notice or certification requirements are met. The leave is unpaid unless the employee elects to use any accrued paid leave other than sick leave.

805.4 *Leave for Victims of Domestic Violence, Sexual Assault, or Stalking to Obtain Restraining Orders or Injunctive Relief*

Any employee, who is a victim of domestic violence, sexual assault, or stalking, may take leave from work to obtain or attempt to obtain any relief, including, but not limited to: a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety, or welfare of the employee or his or her child, if the employee provides advance notice of the need for leave. If advance notice is not feasible, the employee

must provide any of the following certifications within a reasonable time after the leave: a police report indicating that the employee was a victim; a court order protecting the employee from the perpetrator; evidence from the district attorney or court that the employee has appeared in court; or documentation from a health care provider or counselor that the employee was undergoing treatment for physical or mental injuries or abuse. The leave is unpaid unless the employee elects to use 2014 Healthy Workplaces sick leave (Labor Code § 246.5(a)(2)), accrued vacation or paid leave, or compensatory time off. (Labor Code § 230.5(f).)

805.4.1 *Leave for Victims of Domestic Violence, Sexual Assault, or Stalking to Obtain Medical Attention or Counseling or Safety Planning*

Any employee, who is a victim of domestic violence, sexual assault, or stalking, may take leave from work to attend to any of the following: obtaining medical attention or psychological counseling; obtaining services from a shelter, program or crisis center; or participating in safety planning or other actions to increase safety, if the employee provides advance notice of the employee's intention to take time off for these purposes. If advance notice is not feasible, the employee must provide any of the following to the City within a reasonable time after the leave: a police report indicating that the employee was a victim; a court order protecting the employee from the perpetrator; evidence from the district attorney or court that the employee has appeared in court; or documentation from a health care provider or counselor that the employee was undergoing treatment for physical or mental injuries or abuse. The leave is unpaid unless the employee elects to use 2014 Healthy Workplaces sick leave (Labor Code § 246.5(a)(2)), accrued vacation or personal leave, or compensatory time off.

805.5 *Bereavement Leave*

All employees may utilize paid bereavement leave to attend a funeral or memorial service, or to take care of family matters, that are related to the death of a member of immediate family. "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. Employees are entitled to up to five days for each death in the immediate family. An employee who utilizes bereavement leave shall notify his/her supervisor or department head of the intent to use such leave.

805.6 *Military Leave*

Military leave will be granted in accordance with state and federal law. An employee requesting leave for this purpose shall promptly provide the department head with a copy of the military orders specifying the dates, site and purpose of the activity or mission. Within the limits of such orders, the department head may determine when the leave is to be taken and may modify the employee's work schedule to accommodate the request for leave.

805.7 School-Related Leave

805.7.1 School or Licensed Day Care Activity Leave

Any employee who is a parent, guardian, stepparent, foster parent, grandparent, or person who stands in loco parentis to one or more children who are in kindergarten or grades 1 through 12, or who are in a licensed child care facility, shall be allowed up to 40 hours each school year, not to exceed one (1) workday in any calendar month of the school year, to: participate in activities of their child's school or licensed child care facility; find, enroll, or reenroll a child in a school or with a licensed child care provider; or to pick up a child due to a child care provider or school emergency. The employee must provide reasonable advance notice to his/her supervisor of the planned absence. The leave is unpaid unless the employee uses vacation, personal leave or compensatory time off. The employee must provide documentation from the school or licensed childcare facility as verification that the employee participated in school or childcare facility activities on a specific date and at a particular time. If both parents, guardians or grandparents having custody work for the City of Desert Hot Springs at the same City of Desert Hot Springs work site, only the first parent requesting will be entitled to leave under this provision. (Labor Code § 230.8.)

805.7.2 Child Suspension Leave

Any employee who is the parent or guardian of a child in grades 1 through 12 may take time off to go to the child's school in response to a request from the child's school, if the employee gives advance notice to his or her supervisor. A school has the authority to request that the parent attend the child's school if the child has: committed any obscene act; habitually used profanity or vulgarity; disrupted school activities; or otherwise willfully defied the valid authority of school personnel.

805.8 Paid Administrative Leave

The City has the right to place an employee on leave with full pay for non-disciplinary reasons at any time when the City Manager or Human Resources Director has determined that the employee's and/or City's best interests warrant the leave. The employee does not have a right to appeal the decision to be placed on administrative leave with pay.

805.9 Leave of Absence Without Pay Must Be Authorized By Law or These Policies

Unless authorized by law or a City policy, an employee is not entitled to a leave of absence without pay. An authorized leave of absence without pay is not a break in service for purposes of calculating seniority. Unless required by law, vacation leave credits, sick leave credits, increases in salary, all other paid leaves, holidays and fringe benefits and other similar benefits do not accrue to an employee on unpaid leave. Unless required by law, the City will not maintain contributions toward group insurance or retirement coverage for the employee on such leave. During the period of authorized

unpaid leave, all service and leave credits shall be retained at the levels existing as of the effective date of the leave.

805.10 Industrial Injury Leave

805.10.1 Employees Not Covered by Labor Code Section 4850

Employees, other than those covered by Labor Code section 4850, who are absent from work by reason of an injury or illness covered by Workers' Compensation, shall continue in pay status under the following provisions.

805.10.1.1 Coordination of Benefits

When the employee authorizes, the difference between the amount granted pursuant to such Workers' Compensation and the employee's regular pay will be deducted from the employee's accumulated sick leave, vacation, personal holidays, and compensatory time, if any. The employee will continue in pay status and receive his or her pay until his/her accumulated sick leave, and authorized compensatory time, personal holidays and vacation days, have been depleted to the nearest hour.

805.10.1.2 Accrual of Sick and Vacation Leave Continues While on Paid Leave

During the time the employee is in fully paid status while absent from work by reason of injury or illness covered by Workers' Compensation, he or she shall continue to accrue sick leave and vacation benefits as though he or she were not on leave of absence. The employee will not accrue sick leave or vacation benefits for any unpaid pay period or portion thereof.

805.10.1.3 Unpaid Leave and Continuation of Health Care Benefits

Any employee subject to this Policy who depletes his or her accumulated sick leave, compensatory time, personal holiday time and vacation days while absent from work by reason of an injury or illness covered by Workers' Compensation may receive an unpaid leave of absence and continuation of health care benefits consistent with state and/or federal law.

805.10.2 Employees Covered by Labor Code Section 4850

Sworn Police employees covered by Labor Code Section 4850 *et seq.* will be allowed up to one-year leave of absence for an industrial injury or illness without loss of salary in lieu of disability payments, consistent with state law. The employee will continue to accrue sick leave and vacation benefits while in paid status.

805.10.2.1 Coordination of Benefits after 4850 Leave

Whenever the injury or illness continues beyond the one-year 4850 leave period, and when the employee authorizes, the difference between the amount granted pursuant to such Workers' Compensation and the employee's pay may be deducted from the employee's accumulated sick and vacation leave, personal holidays, and compensatory time, if any. Thereafter, the employee may receive an unpaid leave of absence and continuation of health care benefits consistent with state and/or federal law.

805.11 *Time Off to Vote*

Any employee, if he or she does not have sufficient time outside of working hours to vote, may request up to two hours of paid leave either at the beginning or end of scheduled working hours to enable him or her to vote. The employee must request time off to vote from his or her supervisor at least two days prior to election day.

900 Resignation, Job Abandonment, Layoff, and Separation

901 *Resignation, Job Abandonment, Layoff and Separation*

901.1 *Types of Separation*

All separations of employees from positions in City employment are designated as one of the following types:

- Probationary Release;
- Release of temporary/ seasonal/ extra help employee;
- Resignation;
- Retirement;
- Job abandonment;
- Layoff;
- Non-disciplinary separation;
- Disciplinary separation.

901.2 *Probationary Release*

Probationary employees serving in their initial probationary period with the City may be released at any time during the probationary period as recommended by the Department Head, with approval of the Human Resources Director, without cause or reason or notice. A released probationary employee has no right to appeal or to submit a grievance.

901.3 *Release of Temporary/Seasonal/Extra Help Employees*

A temporary/ seasonal/ extra help employee may be separated at any time, without cause, and without right to any appeal or grievance.

901.4 *Resignation*

An employee who wishes to resign his or her City employment in good standing must submit written notice of resignation to the Department Head or Human Resources Director at least two weeks prior to the planned separation date. The written notice must state the reasons for the resignation. Failure to follow the aforementioned procedure may be cause for denying future employment with the City. A resignation becomes final when the Department Head or Human Resources Director accepts the resignation in writing. Once a resignation has been accepted, it is final and irrevocable. A resignation can be accepted by the Department Head or Human Resources Director even if it is submitted less than two weeks prior to the planned resignation date.

901.5 *Retirement*

An employee planning to retire may provide a written notice to the Department Head or Human Resources Director prior to the effective date of the retirement. A notice of retirement becomes final when the Department Head or Human Resources Director accepts the notice of retirement in writing. Once a notice of retirement has been accepted, it is final and irrevocable.

901.6 *Job Abandonment*

An employee is deemed to have resigned from his/her position if he or she is absent for five consecutive scheduled workdays/shifts without prior authorization and without notification during the period of the absence. The employee will be given written notice, at his or her address of record, of the circumstances of the job abandonment, and an opportunity to provide an explanation for the employee's unauthorized absence. An employee who promptly responds to the City's written notice, within the timeframe set forth in the written notice, can arrange for an appointment with the Department Head or Human Resources Director before final action is taken, to explain the unauthorized absence and failure of notification. An employee separated for job abandonment will be reinstated upon proof of justification for such absence, such as severe accident, severe illness, false arrest, or mental or physical impairment which prevented notification. No employee separated for job abandonment has the right to a post-separation appeal.

901.7 *Layoff*

Whenever, in the judgment of the City Council, a reduction in personnel is necessary for economic or operational reasons, any employee may be laid off or demoted for non-disciplinary reasons.

901.7.1 *Order of Layoffs*

Employees will be laid off in the inverse order of their seniority in their classification in the department. Seniority is determined based on the length of employment in the affected classification in the department, or higher classifications in the department. Length of employment includes all days of employment in attendance at work and on authorized

or legally protected leaves of absence. Length of service does not include unauthorized periods of leave or suspension or layoff. Within each classification, employees will be laid off in the following order: temporary; part-time; probationary; and for-cause status. If two or more employees in a classification to be laid off have the same length of employment, the employee to be laid off will be decided by lottery.

901.7.2 *Notification of Layoff*

Employees to be laid off will be given 21 calendar days' notice of layoff.

901.7.3 *Displacement*

For-cause employees who are noticed for layoff and who have held for-cause status in a lower classification within the same classification series in the same department, may displace employees in the lower classification provided that the employee seeking to displace has greater length of employment in the lower classification than the incumbent in the lower classification. Employees in lower classifications will be displaced in inverse order of their length of employment in the classification. Any employee who seeks to displace another must provide the Human Resources Director with written notice no later than five working days after the date of the notice of layoff.

901.7.4 *Transfer*

If a for-cause employee who is subject to layoff is qualified to perform the duties in a vacant position, the employee can provide a request to transfer in lieu of layoff to the Human Resources Director. If the Human Resources Director determines that the employee is qualified to perform the duties of the vacant position, the employee may be given the option to transfer to the vacant position. An employee who accepts a transfer will be paid the rate applicable to the position into which he or she transfers.

901.7.5 *Appeal*

An employee who has been noticed for layoff, and who has any questions or concerns about the layoff decision or process may make an appointment to be heard by the Human Resources Director for an informal pre-layoff review. The employee must request this appeal in writing within five workdays from the date of the notice of layoff. The Human Resources Director decision is final.

901.8 *Non-Disciplinary Separation*

Any employee separated because of an inability to accommodate after the reasonable accommodation and interactive process is concluded, will be given a written pre-separation notice of the reasons for the separation, the evidence supporting the decision to separate for non-disciplinary reasons, and an opportunity to respond before the separation takes effect. Any for-cause employee has the opportunity for a post-separation appeal as described in Policy 1002, Causes for Discipline and Procedures.

901.9 *Disciplinary Separation*

A for-cause employee may be separated for disciplinary reasons pursuant to the policy and procedures in Policy 1002, Causes for Discipline and Procedures.

901.10 *Return of City Property*

All City property in the employee's possession must be returned prior to separation, including keys, key fobs, identification cards, equipment, credit cards, gas cards, cell phones, pagers, uniforms and any other City equipment.

901.11 *Job References/Verification of Employment*

All reference inquiries and verifications of employment must be referred to and approved by the Human Resources Department. Unless the Human Resources Department receives a written waiver signed by the employee, the City will release only the employee's dates of employment, last position held, and final salary rate. Department heads and supervisors should not provide information in response to requests for reference checks or verification of employment, unless specifically approved by the Human Resources Director on a case-by-case basis.

1000 Discipline

1001 *Causes for Discipline and Procedures*

1001.1 *Causes for Discipline*

Employees may be disciplined for, including but not limited to, any of the following causes of discipline:

1. Violation of any department rule, City policy or City regulation, ordinance or resolution;
2. Absence without authorized leave or tardiness;
3. Excessive absenteeism and/or tardiness as defined by the employee's department head, and/or these Policies;
4. Use of leave from work in a manner not authorized or provided for under City policies;
5. Making any false representation or statement, or making any omission of a material fact;

6. Providing wrong or misleading information or other fraud in securing appointment, promotion or maintaining employment;
7. Unsatisfactory job performance;
8. Inefficiency;
9. Damaging any City property, equipment, resource, or vehicle, or the waste of City supplies through negligence or misconduct.
10. Insubordination; or insulting or demeaning the authority of a supervisor or manager; or refusing to perform assigned work, comply with a lawful order, or to accept a reasonable and proper assignment from an authorized supervisor.
11. Dishonesty;
12. Theft;
13. Violation of the City's or a department's confidentiality policies, or disclosure of confidential City information to any unauthorized person or entity;
14. Misuse or unauthorized use of any City property, including, but not limited to: physical property, electronic resources, supplies, tools, equipment, City communication systems, City vehicles or intellectual property;
15. Mishandling of public funds;
16. Falsifying or tampering with any City record, including work time or financial records;
17. Discourteous or offensive treatment of the public or other employees;
18. Abusive conduct, including malicious verbal, visual or physical actions, or the gratuitous sabotage or undermining of a person's work performance.
19. Conviction, meaning any judicial determination of guilt, of a crime that has a nexus to the employee's job duties;
20. Unapproved outside employment or activity, or other enterprise that constitutes a conflict of interest with service to the City;
21. Any conduct that impairs, disrupts or causes discredit to the City, to the public service, or other employee's employment;
22. Reckless or unsafe conduct; or violation of safety rules;
23. Working overtime without prior authorization or refusing to work assigned overtime;

24. Carrying firearms or other dangerous weapons while on duty when not required by job duties.
25. Horseplay or fighting.
26. Being under the influence of an intoxicating beverage or non-prescription drug, or prescription drugs non authorized by the employee's physician, while on duty or on City property.
27. Sleeping on the job;
28. Accepting bribes or kickbacks, or using your position for financial gain;
29. Failure to maintain or obtain minimum qualifications for a position, including required licenses or certificates;
30. Any other conduct of similar gravity to the causes for discipline enumerated above as determined by the City.
31. Intentionally misrepresenting time worked on official time records.

1001.2 Types of Counseling, Reprimands and Discipline

The following are types of counseling, reprimands and discipline which the City may impose:

- (a) **Counseling Memo:** A counseling memo will be provided to an employee to identify: a failure of appropriate conduct or performance issue; the performance the employee is to demonstrate in the future; and consequences for failure to correct the behavior or problem. A counseling memo will be retained in the supervisor's file until the completion of the evaluation year, and then documented in the performance evaluation, as the supervisor deems necessary. A counseling memo is not subject to the discipline or discipline appeal procedures described below. A counseling memo is not considered "punitive action" under the Public Safety Officers Procedural Bill of Rights Act (Government Code §3300, *et seq.*).
- (b) **Verbal Reprimand:** A verbal reprimand is a verbal direction from a supervisory employee to discontinue inappropriate conduct or to correct a performance issue. A verbal reprimand will be documented in writing and retained in the supervisor's file until the completion of the evaluation year and then documented in the performance evaluation, as the supervisor deems necessary. A verbal reprimand is not subject to the discipline or discipline appeal procedures described below.
- (c) **Written Reprimand:** A written reprimand is written direction from a supervisory employee to discontinue inappropriate conduct or to correct a performance issue. A written reprimand will be retained in the employee's personnel file and documented in the performance evaluation. Unless required by law, a written

reprimand is not subject to the discipline or discipline appeal procedures described below. The employee has the right to have his or her written rebuttal attached to the reprimand in the employee's personnel file, if the employee submits the rebuttal to the Human Resources Director within 14 days after the reprimand is received.

- (d) **Suspension Without Pay:** The City may suspend an employee from his/her position without pay for cause. Documents related to a suspension shall become part of the employee's personnel file when the suspension is final and documented in the performance evaluation. Some suspensions without pay are subject to the discipline and discipline appeal procedures as per the applicable MOU. Employees who are exempt from Fair Labor Standards Act (FLSA) overtime will only be suspended as authorized by the FLSA.
- (e) **Reduction in Pay:** The City may reduce an employee's pay or paid leave for cause. A reduction in pay for disciplinary purposes may take one of two forms: 1) a decrease in pay to a lower step within the salary range or 2) a decrease in pay paid to an employee for a fixed period of time. Documents related to a reduction in pay shall become part of the employee's personnel file when the reduction in pay is final and documented in the performance evaluation. A reduction in pay is subject to the discipline and discipline appeal procedures described below. Employees who are exempt from the Fair Labor Standards Act (FLSA) overtime requirements are not subject to pay reduction, except loss of accrued vacation, floating holiday, or administrative leave.
- (f) **Demotion:** The City may demote an employee from his or her position to a lower position for cause. Documents related to a demotion shall become part of the employee's personnel file when the demotion is final and documented in the performance evaluation. A demotion is subject to the discipline and discipline appeal procedures described below.
- (g) **Dismissal:** The City may dismiss an employee from his or her position for cause. Documents related to the dismissal shall become a part of an employee's personnel file when the dismissal is final. A dismissed employee is entitled to the discipline and discipline appeal procedures described below.

1001.3 Discipline Procedures

The following discipline procedures only apply to the City's for-cause employees. All employees other than for-cause employees, namely [temporary, seasonal, extra-help, at-will, probationary] employees, may be disciplined or separated at will, with or without cause, and without the disciplinary procedures listed below. Employees covered by the Peace Officer Bill of Rights have additional disciplinary protections spelled out their respective MOUs. The following discipline procedures apply only to suspension without pay for more than five (5) days, reduction in pay, demotion, or dismissal.

(a) “Skelly” Notice of Intended Disciplinary Action to Employee: A written notice of the intended disciplinary action shall be given to the employee, which will include the following information:

- The level of the intended discipline;
- The specific charges that support the intended discipline;
- A summary of the facts that show that the elements of each charge at issue in the intended discipline;
- A copy of all materials upon which the intended discipline is based;
- Notice of the employee's right to respond to the Department Head regarding the intended discipline within five calendar days from the date of the notice, either by requesting a Skelly conference, or by providing a written response, or both;
- Notice of the employee's right to have a representative of his or her choice at the Skelly conference; and
- Notice that failure to respond by the time specified constitutes a waiver of the right to respond prior to final discipline being imposed.

(b) **Response by Employee and Skelly Conference:** If the employee requests a Skelly conference, the Department Head or designee will conduct an informal meeting with the employee. During the informal meeting, the employee shall have the opportunity to rebut the charges against him or her and present any mitigating circumstances. The Department Head will consider the employee's presentation before issuing the disciplinary action. The employee's failure to attend the conference, or to deliver a written response by the date specified in the Skelly notice, is a waiver of the right to respond, and the intended disciplinary action will be imposed on the date specified in the Skelly letter.

(c) **Final Notice of Discipline:** After the Skelly conference and/or timely receipt of the employee's written response, the Department Head will: 1) take no disciplinary action; 2) modify the intended discipline; or 3) impose the intended disciplinary action. In any case, the Department Head will provide the employee with a notice that contains the following:

- The level of discipline, if any, to be imposed and the effective date of the discipline;
- The specific charges upon which the discipline is based;
- A summary of the facts that show that the elements of each charge at issue in the intended discipline;
- A copy of all materials upon which the discipline is based; and
- A reference to the employee's appeal right and deadline to appeal.

(d) **Delivery of the Final Notice of Discipline:** The final notice of discipline will be sent by mail method that verifies delivery to the last known address of the employee or delivered to the employee in person. If the notice is not deliverable because the employee has moved without notifying the City or the employee refuses to accept delivery, the effective date of discipline will be the date the post office or delivery service attempted delivery.

1001.4

Discipline Appeal Procedures

The following appeal procedures only apply to the City's for-cause employees. All employees other than for-cause employees, namely [temporary, seasonal, extra-help, at-will, probationary] employees, may be disciplined or separated at will, with or without cause, and without the disciplinary appeal procedures listed below. The following appeal procedures apply only to suspension without pay, demotion, reduction in pay or dismissal.

- (a) **Request for Appeal Hearing:** An employee may submit a written request for appeal to the Human Resources Director within seven (7) calendar days from: 1) receipt of the final notice of discipline; or 2) the date of attempted delivery by the post office or delivery service of the notice to the last known address of the employee. Failure to file a timely written request for an appeal waives the right to an appeal hearing and any appeal of the discipline.
- (b) **Appeal Hearing Officer:** The appeal shall be heard by an independent hearing officer to be selected by the City. The costs of the hearing officer shall be borne by the City.
- (c) **Date and Time of the Appeal Hearing:** Once the appeal hearing officer has been designated, the Human Resources Director will set a date for an appeal hearing. The employee shall be notified in writing at least 21 calendar days prior to the hearing of the scheduled date.
- (d) **Prehearing Notice of Witnesses and Evidence:** No later than 10 calendar days before the hearing date, each party will provide the other and the appeal hearing officer a list of all witnesses to be called (except rebuttal witnesses), and a copy of all evidence (except rebuttal evidence) to be submitted at the hearing. The City will use numbers to identify its evidence; the employee will use alphabet letters. Neither party will be permitted to call any witness or evidence that has not been listed, unless that party can show that the party could not have reasonably anticipated the need for the witness or exhibit.
- (e) **Subpoenas:** Upon the request of either party, and upon his or her own motion, the hearing officer will issue subpoenas to compel attendance at the appeal hearing. Each party is responsible for serving his/her/its own subpoenas. City employees who are subpoenaed to testify during working hours will be released with pay to appear at the hearing. City employees who are subpoenaed to testify during non-working hours will be compensated for the time they actually spend testifying.
- (f) **Continuances:** The appeal hearing officer may continue a scheduled hearing only upon good cause shown.
- (g) **Record of the Appeal Hearing:** The hearing shall be recorded, either electronically or by a court reporter, at the option of the City. If the City orders a transcript or makes a transcript of the recording, the City will notify the employee within three

days of ordering or making the transcript and will provide a copy of the transcript upon receipt of the costs of duplication.

(h) **Employee Appearance:** The employee must appear personally before the hearing officer at the time and place set for the hearing. The employee may be represented by any person he or she may select.

(i) **Conduct of the Hearing:**

1) **Sworn Testimony:** All witnesses shall be sworn in prior to testifying. The hearing officer or court reporter shall request each witness to raise his or her hand and respond to the following: "Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth?"

2) **Evidence:** Hearings need not be conducted according to technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner that the hearing officer decides is the most conducive to determining the truth. The rules dealing with privileges shall be effective to the same extent that they are recognized in civil actions. Irrelevant or unduly repetitious evidence may be excluded. The appeal hearing officer shall determine the relevance, weight and credibility of testimony and evidence.

3) **Exclusion of Witnesses:** During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing.

4) **Burden of Proof:** The City has the burden of proof by the preponderance of the evidence.

5) **Authority of Hearing Officer:** The appeal hearing officer shall not have the power to alter, amend, change, add to, or subtract from any of the terms of these Policies.

6) **Professionalism:** All parties and their attorneys or representatives shall not, by written submission or oral presentation, disparage the intelligence, ethics, morals, integrity or personal behavior of their adversaries or the appeal hearing officer.

(j) **Presentation of the Case:** The parties will address their remarks, evidence, and objections to the appeal hearing officer. The appeal hearing officer may terminate argument at any time and issue a ruling regarding an objection or any other matter. The appeal hearing officer may limit redundant or irrelevant testimony, or directly question the witness. The hearing will proceed in the following order unless the appeal hearing officer directs otherwise:

1) The City is permitted to make an opening statement;

- 2) The employee is permitted to make an opening statement;
 - 3) The City will produce its evidence;
 - 4) The employee will produce its evidence;
 - 5) The City, followed by the employee, may present rebuttal evidence;
 - 6) Oral closing arguments of no more than twenty (20) minutes may be permitted at the discretion of the appeal hearing officer. The City argues first, the employee argues second, and if the City reserved a portion of its time for rebuttal, the City may present a rebuttal.
- (k) **Written Briefs:** Either party may request to submit a written brief and/or a draft decision. The appeal hearing officer will determine whether to allow written briefs or draft decisions, the deadline for submitting briefs, and the page limit for briefs.
- (l) **Appeal Hearing Officer's Recommended Decision:** Within sixty (60) calendar days of the conclusion of the hearing, the appeal hearing officer shall make written findings and a recommended decision as to the discipline.
- 1) If the City Manager was not the appeal hearing officer or the *Skelly* officer he or she shall review the findings and recommendations of the appeal hearing officer and may then affirm, revoke, or modify the findings, recommendations, or disciplinary action taken. The decision of the City Manager is final. There is no process for reconsideration.
 - 2) If the City Manager was the *Skelly* officer, the City Council shall review the findings and recommendations of the appeal hearing officer and may then affirm, revoke, or modify the findings, recommendations, or disciplinary action taken. The decision of the City Council is final. There is no process for reconsideration.
- (m) **Proof of Service of the Written Findings and Decision:** The City will mail a copy of the final written findings and decision, along with a proof of service of mailing that confirms that each of the parties and each of the parties' representatives were mailed the final written findings and decision. It shall be the responsibility of the employee to inform the City of his/her address. A copy of the decision shall also be provided to the Human Resources Director.

1100 Miscellaneous Policies

1101 Confidential City Files

The City maintains a personnel file on each employee. Files are kept for at least three years after separation of employment. (Labor Code § 1198.5(c)(1).) A personnel file will contain only material that the City deems necessary and relevant or that is required by

law. Personnel files are the property of the City and access to the information they contain is restricted to protect employee privacy interests.

1102 Notification of Changes

Each employee is responsible to promptly notify the Human Resources Department of any changes in his or her contact and benefits information including; mailing address, telephone number, persons to contact in emergency, and number and names of dependents.

1103 Access to Applicant or Employee Medical Information

All medical information about an employee or applicant is kept in separate medical files and is treated as confidential. 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. (2 CA Code Regs § 11069(g)(1).)

1104 Employee Access to Personnel File

- (a) **Inspection of File:** A current employee may inspect his or her own personnel file, at reasonable times and at reasonable intervals, within 30 days of a written request. A former employee is entitled to inspect his or her personnel records one time per year. (Labor Code § 1198.5(d).) A current or former employee and/or his or her representative, who wishes to review his or her personnel file should make a written request to the Human Resources Department. (Labor Code § 1198.5(b)(2)(A).) The inspection must occur in the presence of the Human Resources Director or designee and: at a location where the employee works and at a time other than the employee's work time (Labor Code § 1198.5(b)(1)); or 2) at another agreed upon location without loss of compensation to the employee. (Labor Code § 1198.5(c)(2).)
- (b) **Copies:** A current or former employee is entitled to receive a copy of his or her personnel records within 30 days after the employer receives a written request. (Labor Code § 1198.5(b)(1).) A current or former employee who wishes to receive such a copy should contact the Human Resources Department in writing. The City may charge a fee for the actual cost of copying. (Labor Code § 1198.5(b)(1); 1198.5 (b)(2)(A).)
- (c) **Representative's Inspection:** If the current or former employee wishes to have another person/representative inspect his or her personnel file, he or she must provide the person/representative with written authorization. (Labor Code § 1198.5(e).) The Human Resources Department or the Police Support Services Manager will notify the employee and/or representative of the date, time and place of the inspection in writing.

- (d) **No Removal of File Documents:** No person inspecting a personnel file is permitted to add or remove any document or other item to/from the personnel file.

1105 Limitations on Access or Copying of Personnel File

Prior to making a copy of personnel records or allowing inspection, the City may redact the names of nonsupervisory employees. (Labor Code § 1198.5(g).) Under no circumstances will the City provide access or copying of the following categories of personnel file documents: records relating to the investigation of a possible criminal offense; letters of reference; ratings, reports, or records that were obtained prior to employment, prepared by identifiable examination committee members, or obtained in connection with a promotional examination. (Labor Code § 1198.5(h).)

1106 Limitations on Outside Employment

1106.1 No Outside Employment Without Prior Approval

An employee shall not engage in any paid or self-employment, activity, or enterprise which is inconsistent, incompatible or in conflict with his or her City duties, functions, responsibilities, or that of the department in which he or she is employed at the City. In order to avoid perceived or actual conflicts of interest that may arise from outside employment, all employees must obtain written approval from their Department Head prior to undertaking any outside employment as described in this Policy. (Gov. Code § 1126(a).)

1106.2 Authorization and Appeal Process

- (a) **Written Request:** Any employee who wants to undertake a paid outside employment, activity, or enterprise must submit a written request to his or her department head. The written request must include: the work hours and/or time required; job title or the nature of the activity; the work location; and the supervisor, manager and name of the employer or activity.
- (b) **Analysis and Decision:** The assigned Department Head will determine if the outside employment, activity, or enterprise is compatible with the employee's employment at the City. If the Department Head determines such activity is compatible, or would be if any conditions or restrictions applied, he or she will authorize the activity and specify the conditions/ restrictions in writing, give the employee the outside employment authorization, and provide a copy to the Human Resources Department to place a copy of the written authorization in the employee's personnel file.
- (c) **One Year Authorization:** An outside employment authorization is valid only up to one year. Should the employee continue the outside employment, activity, or enterprise for a longer duration, he or she must make another request following the process in this Policy.

- (d) **Appeal:** If the assigned Department Head denies an employee's outside employment request, the employee may submit a written notice of appeal to the City Manager or designee within 10 days after the date of the denial. The decision on appeal will be put in writing, provided within 10 days after the receipt of the appeal, and will be final.

1106.3 Prohibited Outside Activities

An employee's outside employment, activity, or enterprise may be prohibited if it:

- (a) involves the use for private gain or advantage of City time, facilities, equipment, and supplies, or the badge, uniform, prestige, or influence of the City or employment at the City;
- (b) involves receipt or acceptance by the employee of any money or other consideration from anyone other than the City for the performance of an act which the employee would be required or expected to render in the regular course of his/her City employment;
- (c) involves the performance of an act in other than his/her capacity as a City employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement by such employee or the department by which he/she is employed; or
- (d) involves time demands that would render the employee's performance of his or her regular City employment less efficient or dangerous to the employee.

1106.4 Changes in Outside Employment Status

The employee must promptly report in writing to their assigned Department Head any of the following changes that may occur during the year of an authorized outside employment: the outside employment ends; or the authorized employment changes as to the number of work hours, location, or types of duties.

1106.5 Revocation/Suspension of Outside Employment Authorization

Any outside employment authorization may be revoked or suspended during the year it is granted under the circumstances listed below. An employee may appeal the revocation or suspension as provided in this Policy.

- (a) The employee's work performance declines; or
- (b) An employee's conduct or outside employment conflicts with the conditions of the outside work authorization or is incompatible with the employee's work for the City.

1106.6 Use of City Equipment Prohibited

Under no circumstances may an employee use any City equipment, vehicles, tools, supplies, machines, or any other item that is City property while an employee is engaged in any outside employment, activity or enterprise.

1107 Limitations on Political Activity

1107.1 No Solicitation During Work Hours or City Offices

City employees or officers may not solicit or receive political funds or contributions to promote the passage or defeat of any ballot measure that would affect working conditions during the working hours of its officers and employees, or in City offices. (Gov. Code § 3209.)

1107.2 No Targeted Solicitation of City Officers or Employees

Officers or employees of the City, or candidates for elective office of the City may not directly or indirectly solicit political contributions from other officers or employees of the City unless the solicitation is part of a solicitation made to a significant segment of the public which may incidentally include officers from and employees of the City. (Gov. Code § 3205(c).)

1107.3 No Political Activity in Uniform

No City employee or official shall participate in political activities of any kind while in a City uniform or other City-issued clothing. (Gov. Code § 3206.)

1107.4 No Political Activity on City Property or Work Hours

City employees and officials are prohibited from engaging in political activity during working hours or on City property. (Gov. Code § 3207.)

1108 Prohibitions on Drugs and Alcohol In the Workplace

1108.1 Purpose and Scope

The purpose of this Policy is to promote a drug and alcohol-free workplace and to eliminate drug and alcohol-related inefficiencies and risks. This Policy applies to all City employees, whether they are on City property, or they are performing City -related business elsewhere, except as this Policy is superseded by a memorandum of understanding or federally mandated drug and alcohol policies. Compliance with this Policy is a condition of employment. Disciplinary action will be taken against those who violate this Policy.

1108.2 Drug- and Alcohol-Free Awareness Program

The City's employee assistance provider offers counseling and treatment of drug- or Alcohol-related problems. The employee assistance provider has information about: (a) the dangers of drug or alcohol abuse in the workplace; (b) the penalties that may be imposed for drug or alcohol abuse violations; (c) the City's Policy of maintaining a drug- and alcohol free workplace; and (d) any available drug or alcohol counseling, rehabilitation or employee assistance programs. (41 USC § 701(a)(1)(B) – federal contractors; 41 USC § 702(a)(1)(B) – federal grant recipients; Gov. Code § 8355(a)(2).)

1108.3 Prohibited Conduct

- (a) The manufacture, distribution, sale, dispensation, possession, or use of any controlled substance in either City workplaces or wherever City business is performed. (41 USC §§ 701-702; Gov. Code § 8355(a)(1).)
- (b) Working or being subject to call in if impaired by alcohol or any controlled substance.
- (c) An employee's failure to notify his/her department head before beginning work when taking medications or drugs which could interfere with the safe and effective performance of duties or operation of City equipment.
- (d) An employee's failure to notify the Human Resources Director of any criminal conviction for a drug violation that occurred in the workplace within five days after such conviction. (41 USC § 701-702.)
- (e) An employee's criminal conviction for a drug violation that occurred in the workplace.

1108.4 Drug and Alcohol Testing

The City has discretion to test applicants and employees for alcohol and drug use under the following circumstances. The City will use an outside laboratory to perform all testing.

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

(b) **Reasonable Suspicion Testing:** The City may require a blood test, urinalysis, or other drug and/or alcohol screening of those employees who are reasonably suspected of using or being under the influence of a drug or alcohol at work, under the following circumstances.

- 1) **“Reasonable suspicion”** to test exists if, based on objective factors, a reasonable person would believe that the employee is under the influence of drugs or alcohol at work. Examples of objective factors, include, but are not limited to: unusual behavior, slurred or altered speech, body odor, red or watery eyes, unkempt appearance, unsteady gait, lack of coordination, sleeping on the job, a pattern of abnormal or erratic behavior, a verbal or physical altercation, puncture marks or sores on skin, runny nose, dry mouth, dilated or constricted pupils, agitation, hostility, confused or incoherent behavior, paranoia, euphoria, disorientation, inappropriate wearing of sunglasses, tremors, or other evidence of recent drug or alcohol use. If City suspects drugs or alcohol may have played a role in an accident involving City property or equipment, that will also constitute reasonable suspicion.
- 2) **Document and Analysis:** In order to receive authority to test, the supervisor must record the factors that support reasonable suspicion in writing and analyze the matter with the Human Resources Director. Any reasonable suspicion testing must be pre-approved by the Human Resources Director.
- 3) **Testing Protocol:** If the documentation and analysis show that there is a reasonable suspicion of drug or alcohol abuse at work, and the Human Resources Director has approved, the employee will be relieved from duty, transported to the testing facility and to his or her home after the test. The employee will be placed on sick or other paid leave until the test results are received.

1109 Use of City Equipment or Resources

1109.1 Policy and Applicability

City equipment and resources may only be used to conduct City business, except for incidental personal use that is consistent with this Policy. As a result, City equipment and resources are non-public forums. Every City employee is required to adhere to this Policy.

1109.2 City Equipment or Resources

City equipment or resources is any City issued or funded item or resource, including, but not limited to: intellectual property (e.g., photographs, plans, drawings), vehicles, telephones, cell phones, pagers, tools, machines, supplies, copy machines, facsimile machines, desks, office equipment, computers (including hardware and software), file cabinets, lockers, Wi-Fi, internet, intranet, City network, data systems, routers, voice mail,

servers, and email or voice mail communications stored in or transmitted through City electronic resources or equipment.

1109.3 *No Expectation of Privacy*

The City periodically and without prior notice, monitors, reviews, accesses, or retrieves data from its equipment or resources, including electronic communications and content contained in or transmitted through City networks or electronic resources. City employees must provide the City with the employee's username or password for any City issued or funded equipment or resource. The existence of passwords or delete functions does not restrict the City's access. As a result, City employees have no expectation of privacy in their use of any City equipment or resources.

Personal Communication Device: Employee use of a personal communication device at work or for work-related business constitutes specific consent for access if the City is required to produce any information contained on those devices for litigation purposes, for public records requests or retention obligations, or for other legal obligations.

1109.4 *Appropriate Use Only -- No Misuse*

Employees may only use City equipment or resources in compliance with City policies. Except as authorized by this Policy, employees are expected to avoid any use or communication which is unrelated to City business, destructive, wasteful, or illegal. The City has discretion to restrict or rescind employee access to City equipment or resources. The following are examples of misuse of City equipment or resources:

- (a) Any use that violates applicable law and/or City policies, rules or procedures.
- (b) Exposing others to material, which is offensive, harassing, obscene or in poor taste. This includes information which could create an intimidating, offensive or hostile work environment.
- (c) Any use that may create or further a hostile attitude or give offense on the basis of race, color, religion, sex, gender, gender expression, gender identity, national origin, ancestry, citizenship, age, marital status, physical or mental disability, medical condition, genetic information, sexual orientation, veteran status or any other basis protected by law.
- (d) Communication of confidential City information to unauthorized individuals within or outside of City.
- (e) Unauthorized attempts to access or use City data or break into any City or non-City system.
- (f) Theft or unauthorized transmission or copying of paper or electronic files or data.
- (g) Initiating or sustaining chain/spam letters, e-mail or other unauthorized mass communication.

- (h) Misrepresentation of one's identity for improper or illegal purposes.
- (i) Personal commercial or business activities (e.g. "for sale" notices, personal ads, etc.).
- (j) Transmitting/accessing obscene material and/or pornography.
- (k) E-Commerce.
- (l) Online gambling.
- (m) Installing or downloading unauthorized software or equipment.
- (n) Violating terms of software licensing agreements.
- (o) Using City equipment or resources to access and/or use dating web resources, personal social media, or games of any type.
- (p) Any unauthorized access to City equipment or resources, including: using keys or key cards; using or disclosing the username or password of another person or employee to gain access to his or her email or other electronic resources; or making City equipment or resources available to others who would otherwise have no authorized access.
- (q) Using City equipment or resources to speak on the City's behalf without authorization.

1109.5 *City Email Address Must be Used for City Business*

The City's email system is an official communication tool for City business. The City establishes and assigns official email addresses to each employee as the City deems necessary. Employees must send all City communications that are sent via email to and from his or her official City email address. Employees are prohibited from using their City email address for non-City related business. Employees are also prohibited from using their private email address (such as Gmail, yahoo, MSN/Hotmail, etc.) when communicating City business via email. Should an email related to City business be sent to an employee's personal email account, the email should be immediately forwarded to the employee's City email account and responded to accordingly.

1109.6 *Incidental Personal Use of City Communications Equipment Permitted*

Employees may use City telephones, cell phones, internet access, and e-mail for incidental personal communications provided that the use:

- (a) Is kept to a minimum and limited to break times or non-working hours;

- (b) Does not interfere or conflict with City operations or the work performance of any City employees;
- (c) Allows the employee to more efficiently perform City work;
- (d) Is not abusive, illegal, inappropriate, or prohibited by this Policy (for example, no social media use, no electronic dating, no gaming); and
- (e) Clearly indicates it is for personal use and does not indicate or imply City sponsorship or endorsement.

1110 Social Media Policy

1110.1 Policy Statement

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

1110.2 Guidelines

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

(a) Know and follow the rules:

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

(b) Be respectful:

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

(c) Post only appropriate and respectful content:

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

1110.3 *Using Social Media at Work*

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

1111 *Policy Against Violence in the Workplace*

1111.1 *Safe and Secure Workplace*

The City is committed to providing a safe and secure workplace and will not tolerate acts or threats of violence in the workplace. (Labor Code § 6400.) The workplace includes any location where City business is conducted, including vehicles and parking lots. Any violation of this Policy may lead to criminal prosecution, and/or disciplinary action, up to and including termination.

1111.2 *Prohibited Behavior*

Employees are prohibited from participating in or promoting acts of intimidation, violence, threats, coercion, assault and/or abusive behavior toward any person while in the course of City employment. The City has zero tolerance for any conduct that references workplace violence, even if it was intended to be harmless, humorous, a prank, blowing off steam, or venting.

1111.3 *Workplace Violence*

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

- (a) Threats or acts of physical harm directed toward an individual or his/her family, friends, associates, or property.
- (b) The destruction of, or threat of destruction of City property or another employee's property.
- (c) Fighting, challenging another person to fight, or participating in dangerous or threatening horseplay.
- (d) Striking, punching, slapping, or assaulting another person.
- (e) Grabbing, pinching, or touching another person in an unwanted way whether sexually or otherwise.
- (f) Harassing or threatening phone calls.
- (g) Stalking.
- (h) Possessing a weapon(s) during work hours unless the City issues the weapon(s) for performance of the job. “Weapon” is defined as a firearm, chemical agent, club or baton, knife, or any other device, tool, or implement that can cause bodily harm if used as a weapon or displayed in such a manner to cause harm or threaten a person with harm.

1111.4 *Incident Reporting Procedures*

- (a) Employees must immediately report to their supervisor or department director whether they have been a victim of, or have witnessed, workplace violence. The supervisor or department director will immediately report the matter to the Human Resources Director.
- (b) The Human Resources Director or designee will document the incident, including the employee names(s), date/time, location, incident description, witness names and statements, description of unidentified parties, description of the act(s) and/or behavior arising from the incident, action taken, and provide any other relevant information regarding the incident.
- (c) The Human Resources Director will take appropriate steps to provide security, such as:
 - 1) Placing the employee alleged to have engaged in workplace violence on administrative leave, pending investigation;

- 2) Asking any threatening or potentially violent person to leave the site; or
- 3) Immediately contacting an appropriate law enforcement agency.

1111.5 Investigation

The Human Resources Director will see that reported violations of this Policy are investigated as necessary.

1111.6 Prevention

Each department head has authority to enforce this Policy by:

- (a) Training supervisors and subordinates about their responsibilities under this Policy;
- (b) Assuring that reports of workplace violence are accurately and timely documented and addressed;
- (c) Notifying the Human Resources Director and/or law enforcement authorities of any incidents;
- (d) Making all reasonable efforts to maintain a safe and secure workplace; and
- (e) Maintaining records and follow up actions as to reports of workplace violence.

1112 Appearance Standards

1112.1 Basis for Standards

These dress code, tattoo, and body piercing appearance standards are designed to promote the City's legitimate and non-discriminatory goals to promote workplace safety and a professional image that is consistent with the employee's job duties and level of public contact.

1112.2 Dress Code

Employees are required to dress appropriately for the jobs they are performing. The following dress code regulations shall apply to all City employees. If an employee has questions about how these standards apply to him or her, the matter should be immediately raised with his/her supervisor for consideration and determination. Department Heads are responsible for determining and enforcing the dress code for their respective areas of responsibility.

- (a) All clothing and footwear must be neat, clean, in good repair, and appropriate for the work environment and functions performed.
- (b) Prescribed uniforms and safety equipment must be worn.

- (c) Hair must be neat, clean and well-groomed.
- (d) Beards, mustaches, and sideburns must be maintained in neat and well-groomed fashion.
- (e) Jewelry that does not pierce the skin is acceptable except where it constitutes a health or safety hazard.
- (f) Good personal hygiene is required.
- (g) Dress must be professionally appropriate to the work setting, particularly if the employee has contact with the public at work.

1112.3 Tattoos

Employees are expected to project a professional appearance while at work and must abide by the standards below. If an employee has questions about how these standards apply to him or her, the matter should be immediately raised with his/her supervisor for consideration and determination. Department Heads are responsible for determining and enforcing the tattoo policy for their respective areas of responsibility.

- (a) No tattoos are allowed anywhere on the head, face, or neck.
- (b) Any visible tattoos shall not be obscene, sexually explicit, discriminatory to sex, race, religion, or national origin, extremist, and/or gang-related.
- (c) No visible tattoos shall be larger than 4 by 6 inches.
- (d) Any non-conforming tattoos will be covered with clothing, bandage or makeup while at work, or removed.

1112.4 Piercing

Employees are expected to project a professional appearance while at work and not endanger themselves or others with excessive body piercing. If an employee has questions about how these standards apply to him or her, the matter should be immediately raised with his/her supervisor for consideration and determination. Department Heads are responsible for determining and enforcing the piercings policy for their respective areas of responsibility.

- (a) No objects, articles, jewelry or ornamentation of any kind shall be attached to or through the skin if visible on any body part including the tongue or any part of the mouth except that one set of reasonably-sized pierced earrings may be worn in each lobe.
- (b) Any non-conforming piercing shall be removed, covered with a bandage, or replaced with a clear, plastic spacer.

1113 Employee Identification Badge Policy

1113.1 Statement and Policy

In an effort to improve customer service, provide a safe and secure environment to employees, and to allow for quick identification as a City of Desert Hot Springs employee, all City employees will be required to display their photo ID badge while on-duty.

1114 Visitor/Guest Policy

1114.1 Statement

This policy sets out the parameters for all employees who bring guests and have visitors at the City and assigns responsibility that the employee must take in doing so.

Although visitors and guests are welcome at the City, visitors and guests must not decrease productivity for both employees and co-workers or create a potential liability for the organization and risk of harm to the visitors and guests.

1114.2 Policy

The City discourages employees from being accompanied by visitors and guests including friends, family, or children while working due to safety and other workplace concerns. This does not eliminate short infrequent visits. Even during short infrequent visits, visitors and guests, must not be left unattended and must be closely supervised by the employee at all times.

If an employee is faced with an unusual circumstance regarding visitors or guests at work the employee should speak to their immediate supervisor.

1115 Smoking

1115.1 Statement and Policy

In compliance with AB 846, all employees are prohibited from smoking within 20 feet of any entrance or exit to any city facility, inside any City facility, or inside any City vehicle.

1115.2 Definitions

Smoke or smoking is defined as the smoking of any kind of lighted pipe, cigar, or cigarette, or use of an electronic cigarette*.

*As of June 2013, e-cigarettes are included in California's smoke free laws.

1116 Ethics Policy

1116.1 Statement and Policy

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

1117 Travel Policy

1117.1 Background

The City of Desert Hot Springs fully supports City staff and officials' attendance at meetings, seminars, conferences and training sessions to promote the opportunity to discuss the community's concerns with state and federal officials; participate in regional, state and national organizations whose activities affect the City; to improve staff and officials' technical & professional skill and information levels; and promote public service and morale. This policy is to provide guidelines to City staff and officials on the use and expenditure of limited City resources, as well as the standards against which those expenditures will be measured. The policy will supplement the definition of actual and necessary expenses for purposes of state laws relating to the use of public resources and federal and state income tax laws. Likewise, the City will reimburse all official travel and expenses incurred in conjunction with such offsite/"out of City" events.

1117.2 Policy

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

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

The following are examples of personal expenses that the City will not reimburse include, but not limited to;

1. Personal portion of any trip;
2. Political or charitable contributions or events;
3. Family expenses, including partner's expenses when accompanying official or City-related business, as well as children or pet related expenses;
4. Entertainment expenses (theater, movies, sporting events, or cultural events);

5. Non-mileage personal automobile expenses.
6. Personal losses incurred while on City business.

NOTE: Reimbursement requires receipts or other substantiating documentation.

To conserve City resources and keep expenses within community standards for staff and officials, expenditures should adhere to the following guidelines

1117.3 Transportation

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

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

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

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

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

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

1117.4 Lodging

Lodging costs will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. Reservations for lodging should be made by the employee in advance to ensure safe, clean, and quality accommodations at the most economical rate. Lodging costs should not exceed the group rate published by the conference sponsor for the meeting in question. Lavish or oversized accommodations cannot be justified. Accommodations should be identified at the earliest opportunity to

allow the City to pay for these expenses directly. When available, conference headquarter hotels are encouraged, as they eliminate transportation costs to and from meeting sites. Lodging expenses for non-authorized personnel are strictly prohibited and may not be submitted for reimbursement. Reimbursement for lodging shall be based on receipts submitted for the actual cost of the lodging, including taxes and service charges.

1117.5 Meals

When traveling less than 70 miles from the City on City business, meal expenses will be reimbursable. Meal expenses and gratuities should be moderate. When meals are offered as part of a "conference package", reimbursement will not be provided for meals taken in place of conference meals. When using a credit card for meals, names of guests must be written on the receipt. Likewise, reimbursement to the City from the employee for non-business guests must be made at the time the credit card receipts and reimbursement forms are submitted (before payment is made). Alcohol is not a reimbursable expense. If alcohol is consumed, a separate bar bill should be requested. This bill should not be part of reimbursement requested on the travel expense report.

Itemized receipts must be submitted with the expense report.

1117.6 Telephone/ Fax/ Wiring

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

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

1117.7 Spouse Travel

Spouses may accompany staff or officials to official functions, all expenses related will be incurred as a personal expense and not reimbursed by the City. City staff and officials must keep all spouse expenses incurred separated from City expenses and are not to be reimbursed.

1117.8 Lobby Expenses

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

1117.9 Other Expenses

Registration

Whenever practical, pre-registration should be used, and costs paid directly by the City in advance of the scheduled event. If pre-registration is impossible and the City official

or employee must pay registration costs, the actual cost of registration will be reimbursed upon submittal of a receipt from the conference sponsor.

Reimbursement Limit

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

Advance Per Diem

For purposes of this policy, advance per diem is that amount advanced to a City official or employee to cover meal and expenses incurred when traveling more than 70 miles from the City on City business. The per diem limit to be advanced is the same as the reimbursement limit defined above at \$75 per day and will generally be authorized only for multiple-day conferences. The maximum advance authorized shall not exceed \$400 and shall be approved by the appropriate Department Director as well as the Finance Director prior to a disbursement of funds. City staff will not be required to provide receipts. Elected City officials will need to submit receipts and any unused portion of the advance to the Finance Department within ten business days of returning, along with an expense report. Failure to provide receipts within ten days of returning will result in the official reimbursing the City for all funds advanced.

Airport Parking

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

Other

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

1117.10 *General Guidelines*

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

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

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

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

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

1117.11 *Travel Authorization*

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

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

1117.12 *Fair Labor Standards Act (FLSA)*

Compensation requirements with respect to time spent attending lectures, meetings, training programs, or similar activities during work time shall be counted as working time only if authorized in advance. No such authorization shall be given unless the activity is directly related to improving the employee's job performance.

Time spent attending the aforementioned activities shall not be counted as working time when such attendance is outside the employee's regular working hours except in situations where the employee is directed by the respective department director to attend such activity. In this case, employees who are entitled to overtime shall be compensated in accordance with these Rules and Regulations with respect to overtime.

1117.13 *Travel Time*

Time spent by an employee traveling between the employee's residence and regular workplace is not work time and shall not be treated as hours worked. In the event that an employee must travel outside the City, time spent traveling between the employee's home and assigned destination shall be treated as time worked only to the extent that it exceeds the amount of time normally taken by the employee to travel between his/her residence and regular City work place.

1117.14 *Compliance with Laws*

City staff and officials should keep in mind that some expenditure may be subject to reporting under the Political Reform Act and other laws. All City expenditures are public records subject to disclosure under the Public Records Act. As of January 1, 2006, Legislature enacted AB1234, which requires that cities establish expense reimbursement policies for staff and officials and provide mandatory ethics training for City staff and officials.

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

1117.15 *Violation of this Policy*

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following: 1) loss of reimbursement privileges, 2) a demand for immediate restitution to the City, 3) the City's reporting the expenses as income to the City staff or officials to state and federal tax authorities and 4) prosecution for misuse of public resources.

1117.16 *Definitions*

- (a) "Business Travel" means travel at which attendance of the participant is required to conduct specific City business.
- (b) "City" when used shall mean City of Desert Hot Springs.
- (c) "City Employee" is any person regularly employed by the City on a full-time basis, elected officials, and members of advisory commissions or boards.
- (d) "Commissioner" is any person appointed by the City Council to an officially established advisory board, commission, committee, or task force of the City.
- (e) "Conference Travel" is travel to attend meetings or conferences that are primarily for the educational or professional enrichment of the participant and not to transact specific business of the City, but for which the City will receive an indirect benefit.
- (f) "Staff or Official" is a member of the City staff or City Council.
- (g) "Actual and Necessary Expense" means the costs incurred involving a practical need based upon prevailing business practices.

1118 *Fraud Policy*

1118.1 *Purpose and Scope*

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

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

1118.2 Policy

The City of Desert Hot Springs is committed to protecting its revenue, property and other assets against the risk of loss or misuse. Accordingly, it is the policy of the City of Desert Hot Springs to identify and promptly investigate any possibility of fraudulent or related dishonest activities against the City and, when appropriate, to pursue legal remedies available under the law.

1118.3 Definitions

- (a) "Fraud" for purposes of this Policy, fraud is defined as misuse or attempt to misuse a City asset, to which the individual or person is not entitled, for personal gain or purposes unrelated to City business. Examples of fraud include, but are not limited to:
- Claim for reimbursement of expenses that are not job-related;
 - Forgery or unauthorized alteration of documents (checks, time sheets, independent contractor agreements, purchase orders, budgets, etc.);
 - Misappropriation of City assets (i.e., funds, securities, supplies, furniture, equipment, or other assets);
 - Improprieties in the handling or reporting of money or financial transactions;
 - Obtaining City funds or compensation through dishonesty;
 - Stealing or removing City assets;
 - Using City equipment, facilities, supplies or funds for purposes unrelated to City business;
 - Authorizing or receiving payment for goods not received or services not performed;
 - Computer-related activity involving unauthorized alteration, destruction, forgery, or manipulation of data or misappropriation of City-owned software;
 - Misrepresentation of information on documents; and
 - Any apparent violation of Federal, State, or Local laws related to dishonest activities or fraud.
- (b) "Employee" in this context, the term, "Employee" refers to any individual or group of individuals who receive compensation, either full or part-time, from the City. The term also includes any volunteer who provides services to the City through an official arrangement with the City or a City organization.
- (c) "Management" in this context, the term "Management" refers to any administrator, manager, department director, supervisor, or other individual who manages or supervises funds or other resources, including human resources.

(d) "Investigating Authority" in this context refers to the City Manager and/or any person or persons assigned by the City Manager to investigate any fraud or similar activity. If the City Manager is the subject of the investigation, the City Attorney will assign the person or persons to investigate any fraud or similar activities.

(e) "External Auditor" in this context refers to independent audit professionals who perform annual audits of the City's financial statements.

1118.4 Guidelines

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

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

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

The Investigating Authority, in conjunction with the City Attorney, has the primary responsibility for the investigation of all activity as defined in this policy. Great care must be taken in an investigation of suspected improprieties or wrongdoing to avoid mistaken accusations.

Decisions to refer a report to the City's Police Department and/or the District Attorney's Office and/or other appropriate investigative agency for initial investigation will be made by the City Attorney.

Employees, including City Council Members, will be granted whistle-blower protection when reporting suspected fraud in accordance with this policy. When informed of a suspected impropriety, neither the City nor any person acting on behalf of the City shall:

1. Dismiss or threaten to dismiss the employee;
2. Discipline, suspend, or threaten to discipline or suspend the employee;
3. Impose any penalty upon the employee; or
4. Intimidate or coerce the employee.

Violations of the whistle-blower protection will result in discipline up to and including dismissal.

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

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

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

If the investigation finds no fraudulent activities have occurred, the Investigating Authority shall retain the confidential complaint and investigation documents for a period of three (3) years. To the extent possible, the identity of an individual(s) alleging fraud and the identity of an individual alleged to have committed fraud shall be kept confidential. The individual alleged to have committed fraud will be notified of the outcome of the investigation.

1118.5 Procedures

Mayor, City Council and Commissioner Responsibilities

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

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

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

Management Responsibilities

Management is responsible for being alert to, and for reporting fraudulent or related dishonest activities in their areas of responsibility. Each manager should be familiar with the types of improprieties that might occur in his or her area and be alert for any

indication that improper activity, misappropriation, or dishonest activity is or was in existence in his or her department. When an improper activity is detected or suspected, Management should determine whether an error or mistake has occurred or if there may be dishonest or fraudulent activity.

If Management determines a suspected activity may involve fraud or related dishonest activity, they should contact the City Manager. Department directors should inform the City Manager. If the City Manager is suspected of fraud, the City Attorney should be informed.

Management should not attempt to conduct individual investigations, interviews, or interrogations. However, Management is responsible for taking appropriate corrective actions to ensure adequate controls exist to prevent reoccurrence of improper actions.

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

Management must give full and unrestricted access to all necessary records and personnel. All City furniture and contents, including desks and computers are open to inspection at any time. There is no assumption of privacy.

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

- Incorrect accusations;
- Alerting suspected individuals that an investigation is underway.
- Treating employees unfairly; and
- Making statements that could lead to claims of false accusations or other offenses.

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

- Make no contact, unless requested, with the suspected individual to determine facts or demand restitution. Under no circumstances should there be any reference to "what you did", "the crime", "the fraud", "the misappropriation", etc.;
- Avoid discussing the case, facts, suspicions, or allegations with anyone outside the City, unless specifically directed to do so by the City Attorney or the City Manager;
- Avoid discussing the case with anyone inside the City other than Employees who have a need to know, such as the City Manager, City Attorney or law enforcement personnel. If the City Manager is suspected of fraud, the case must only be discussed with the City Attorney;
- Direct all inquiries from the suspected individual, or his or her representative, to the City Manager and/or City Attorney. All inquiries by an attorney of the suspected individual should be directed to the City Attorney. All inquiries from the media should be directed to the City Manager. If the City Manager is suspected of fraud, all inquiries from the media should be directed to the City Attorney.

Employee Responsibilities

A suspected fraudulent incident or practice observed by, or made known to, an Employee must be reported to the Employee's supervisor for reporting to the proper Management official. When an Employee believes a supervisor or Management may be involved in the inappropriate activity, the Employee shall make the report directly to the next higher level of Management, the City Manager and/or the City Attorney.

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

Investigating Authority Responsibilities

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

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

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

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

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

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

City Attorney Responsibilities

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

1118.6 *Disciplinary Action*

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

Where fraud is suspected, the individual will be given notice of the essential particulars of the investigation following the conclusion of the investigation and prior to final disciplinary action. The individual against whom allegations are being made will be given the opportunity to respond.

1118.7 *Confidentiality*

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

1118.8 *Exceptions*

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

1118.9 Fraud Protection

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

1. All check stock has security features including watermarks and "void" pantographs (which display the word "void" when the check is photocopied).
2. All check stock is tested to validate the security features when it is received by checking the back of the stock for watermarks and making photocopies to ensure that the word "void" appears.
3. Check stock is secured in the Finance Department vault at all times when not in use.
4. Accounts payable check printing access is limited to the Senior Accountant, Management Analyst, and the Finance Director. Payroll check printing access is limited to the Senior Accountant, Management Analyst, and the Finance Director. Signatures are imbedded in the New World software program and must be changed by the software vendor. The Director of Finance must request a signature change.
5. Two signatures are required on all accounts payable checks.
6. Signature cards are updated immediately upon change of personnel.
7. Bank statements are reconciled as soon as they are received from the bank each month. The bank is notified immediately of any discrepancies.
8. Cancelled checks are available to view on the bank's website for up to seven (7) years. The City does not receive hard copies of the cancelled checks.
9. The payment process duties are segregated as follows:
 - Each department's assigned personnel process invoices for payment;
 - The Finance Director or staff member assigned by the Finance Director reviews all invoices processed for payment;
 - The Senior Accountant prints checks and creates the positive pay file (electronic fraud protection) for transmission to the bank. The Management Analyst mails checks to vendors. Any checks to be picked up by individuals are recorded in a "Check Pick Up" log by the Senior Accountant.
 - The Senior Accountant reconciles the bank account;
 - The Finance Director reviews the bank reconciliation;
 - All payroll changes are reviewed by an assigned Finance Department employee.

- The Finance Director reviews all payroll registers;
- The Payroll/Finance Technician sorts all checks and direct deposit advice forms by department and counts them.
- The Senior Accountant reconciles the payroll bank account.

10. The City does not use electronic fund transfers (EFTs) for any payments. We occasionally use outgoing wires for some of our debt service payments and for high dollar transactions when required.

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

1119 Affordable Care Act Safe Harbor Policy

1119.1 Purpose

The City of Desert Hot Springs is committed to ensuring compliance with the Patient Protection and Affordable Care Act enacted on March 23, 2010 and the Internal Revenue Code Section 4980H Shared Responsibility for Employers Regarding Health Care Coverage. This City will adopt the Look Back Measurement Method Safe Harbor provision of the Affordable Care Act beginning on July 1, 2014, in order to determine the full-time status of employees for purposes of the Assessable Payment, where Section 4980H defines "full-time" status as "an employee who is employed on average at least 30 hours of service per week".

1119.2 Policy

The City establishes the Look-Back Measurement Method Safe Harbor provision with regards to all ongoing employees as follows:

Standard measurement period:	July 1 through June 30 th
Administrative period:	July 1 - July 31
Stability period:	Twelve months following the administrative period

The City establishes the following periods for new, variable hour employees:

Initial measurement period:	Twelve months (beginning on the first of the month following the first date of employment)
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Administrative period:	One month following the initial measurement period
Stability period:	Twelve months following the administrative period

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

All non-fulltime hours worked will be measured over two periods; during the twelve-month period beginning on the first day of the month following the date of employment and then again during the standard measurement period. The initial measurement period and the standard measurement period will be applied to variable hour employees regardless of any break in service they may experience during the periods.

Allowable hours for all new, variable hour employees will be **less** than 1,560 hours in the first twelve months of employment and each fiscal year thereafter. Allowable hours for ongoing, variable hour employees will be **less** than 1,560 hours each fiscal year.

If a variable hour employee works more than the allowable number of hours, the City will offer medical coverage to the employee and the employee's qualified dependents equal to that offered to full time employees, during the administrative period for the term of the stability period.

If an employee's status changes from variable hour to full-time the City will offer medical coverage to the employee and the employee's qualified dependents effective on the first day of the month following the change of status date.

1119.3 Procedure and Guidelines

Human Resources is responsible for providing Employer Notifications to inform employees as required by the Department of Labor and in compliance with IRS Reporting requirements.

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

The City may amend this Administrative Order including, but not limited to, the measurement periods, administrative period and the stability period.