

AGREEMENT NO. 21-45
BETWEEN THE
CITY OF MONTCLAIR
AND
EXECUTIVE MANAGEMENT EMPLOYEES
(DEPARTMENT HEADS)

July 1, 2021 - June 30, 2022

Revised August 2021

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ARTICLE 1: PREAMBLE

It is the intent and purpose of this Agreement to set forth the understanding of the parties regarding, but not limited to, matters relating to the wages, hours, and terms and conditions of employment between executive management employees, as represented by the City Manager, and the City of Montclair (City).

All terms of this Agreement shall be adopted in full by the City Council. Upon such adoption, all terms and conditions of this Agreement shall become effective without further action by either party.

ARTICLE 2: SAVINGS CLAUSE

If any section, subsection, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be illegal or unconstitutional, such decision shall not affect the validity of the remaining portions of this Agreement.

ARTICLE 3: CITY RIGHTS

- A. Except as otherwise specifically provided, the City has and retains the sole and exclusive rights and functions of management, including, but not limited to, the following:
1. To determine the nature, standards, and extent of services to be performed, as well as the right to determine and implement its public function and responsibility.
 2. To manage all facilities and operations of the City, including the methods, means, and numbers and kinds of personnel by which the City operations are to be conducted.
 3. To contract and/or transfer out work.
 4. To direct the working forces, including the right to hire, assign, promote, demote, or transfer any employee.
 5. To assign work to and schedule employees in accordance with requirements as determined by the City, and to establish and change work schedules and assignments upon reasonable notice.
 6. To discharge, layoff, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees in accordance with applicable law.
 7. To determine policies, procedures, and standards affecting the selection, training, and promotion of employees.
 8. To establish, assess, and implement employee performance standards, including, but not limited to, quality and quantity standards; the assessment of employee performances; and the procedures for said assessment.
 9. To establish and enforce dress and grooming standards.
 10. To determine time, reasons, methods, and means to relieve its employees from duty because of lack of work, lack of funds, or other lawful reasons.
 11. To maintain the efficiency of governmental operations.
 12. To determine safety, health, and property protection measures.
 13. To determine methods of financing.

14. To determine style and/or types of City-issued wearing apparel, equipment, or technology to be used.
 15. To determine and/or change the facilities, methods, technology, means, organizational structure, and size and composition of the work force, and allocate and assign work by which the City operations are to be conducted.
 16. To determine and change the number of locations, relocations, and types of operations, means, methods, processes, equipment, and materials to be used in carrying out all City functions including, but not limited to, the right to transfer work out of the unit, contract for, or subcontract any work or operations of the City.
 17. To establish, modify, determine, or eliminate job classifications.
 18. To take all necessary actions to carry out its mission in emergencies.
 19. To exercise complete control and discretion over its organization and the technology of performing its work.
 20. To take such other and further action as may be necessary to organize and operate the City in the most efficient and economical manner and in the best interest of the public it serves.
- B. Executive management recognizes that the City has and will continue to retain, whether exercised or not, the unilateral and exclusive right to operate, administer, and manage its municipal services and work force, performing those services in all respects subject to this Agreement.

ARTICLE 4: EXECUTIVE MANAGEMENT/EXEMPT EMPLOYEES

In accordance with Resolution No. 761, the City Manager and the City Council have designated the following positions as falling within the scope of executive management, and, in accordance with the provisions of the Fair Labor Standards Act (FLSA), have designated the following positions as exempt from the minimum wage and overtime requirements of FLSA:

- Director of Administrative Services/Human Resources
- Director of Community Development
- Director of Economic Development/Housing
- Director of Finance
- Director of Human Services
- Director of Information Technology
- Director of Public Works/City Engineer
- Executive Director of Public Safety/Police Chief

Persons employed in these positions may belong to employee associations; however, they may not be represented by or act as representatives of such associations at meet and confer sessions. They are also subject to other constraints or privileges which are assigned to management personnel.

Other classifications may be designated as executive management from time to time, as determined appropriate by the City Manager and City Council.

ARTICLE 5: PAYROLL DEDUCTIONS

Based on its ability to comply, City to provide payroll deductions of membership dues, insurance premiums, deferred compensation, etc., upon the written authorization of employees in this group, on forms provided by the City. The providing of such service by the City shall be contingent upon and in accordance with the provisions of applicable administrative procedures.

Employees shall indemnify the City and any department of the City and hold it harmless against any and all claims, demands, suits, or other forms of liability that may arise out of, or by reason of, any action taken by the City, or any department of the City, for the purpose of complying with payroll deduction provisions.

ARTICLE 6: COMPENSATION

Section 6.01. Wages

Employee wages are adopted by a City Council resolution. The monthly salaries specified in the salary resolution determine an employee's hourly pay rate and represent the employee's "current rate of pay," or "base pay."

Salary Adjustments for 2021-22

For Fiscal Year 2021-2022, the City will provide executive management employees a 4 percent salary adjustment effective August 2, 2021.

Section 6.02. Medicare

City contributes 1.45 percent of covered payroll toward Medicare coverage for employees hired after March 31, 1986. A 1.45 percent deduction will be made from employees' earnings, in conformance with applicable law. In compliance with H.R. 3128, all full-time, part-time, temporary, and seasonal employees hired after March 31, 1986, must participate in the Medicare program.

Section 6.03. Salary Advancement

Salary adjustments are granted to the City Manager in compliance with the individual employee agreement/contract entered into between the City and City Manager.

Salary adjustments of up to 5 percent per year are granted to department heads for continued meritorious and efficient service, and after continued improvement in assigned tasks, in conjunction with performance appraisal procedures. Recommendations are initiated by the City Manager.

When an employee is denied a merit increase, the employee shall be informed of such and the reasons therefor. The employee may be reconsidered for adjustment at any subsequent time recommended by the City Manager. Denial or postponement of a merit increase shall not change an employee's anniversary date or future pay review date.

If, for whatever reason, an employee not on probation is unable to perform his/her assigned duties because of absence from work for a period in excess of 45 consecutive calendar days, the evaluation period shall be automatically extended for a similar period of time; provided, however, the City Manager may evaluate the employee's past performance and submit to the City Personnel Committee a separate, written recommendation justifying/granting a merit increase and not extending the evaluation period for a period of time equal to the period of absence. If the period of absence exceeds 90 consecutive calendar days, the employee's performance evaluation and anniversary date will be extended for a similar period of time (also see *Article 22: Performance Appraisal*).

If, for whatever reason, an employee on probation is unable to perform his/her assigned duties because of absence from work for any period of time, his/her probation period, merit increase, and anniversary date shall be extended for the same length of the absence (also see *Article 21: Probation* and *Article 22: Performance Appraisal*).

Section 6.04. Education Grant Program

Employees are encouraged to attend education courses that relate to their jobs and advance their academic level. Insofar as possible, and within budgetary considerations, the City makes available to employees an Education Grant Program. Courses eligible for consideration under the Education Grant Program shall be:

1. Any course specifically related to an employee's occupation, provided such course, or a similar course of the same general course description and at the same academic level, has not previously been taken by said employee; further provided that the taking of such course holds out a reasonable promise of improving employee's general job knowledge; and further provided that if said employee demonstrates a proclivity for taking courses on a regular basis, such courses, when considered as a whole, must be part of an integrated and structured student study plan through an accredited institution of learning leading toward a curriculum certificate or advanced degree; or
2. Any course advancing an employee's academic level, provided the course is part of an integrated and structured student study plan through an accredited institution of learning leading toward an advanced certificate or degree; further provided said employee affirms his/her intention to complete the certificate or degree program; and further provided that the certificate or degree program must bear a reasonable relationship to the nature of the job duties performed by said employee, or will assist in advancing the employee within his/her job area with the City.

The City will reimburse for tuition, books, parking, and classroom/lab supplies in an amount not to exceed \$2,400 per fiscal year for course work initiated on or before June 30, 2018, and \$2,500 per fiscal year for course work initiated on or after July 1, 2018, per employee for qualifying course work recently completed at an accredited academic institution; e.g., 2-year college, 4-year college or university, post-undergraduate college or university. The Education Grant Program is not intended to reimburse for the full cost of an employee's education; rather, the program is intended to assist the employee with education-related costs accrued in the current fiscal year, or fiscal year just ending, in which the qualifying course(s) was/are completed.

An employee requesting an education grant shall be required to provide information concerning each course to be taken. The City Manager or his/her designee shall have final determination on whether or not a course qualifies under the Education Grant Program. All education grants must be approved prior to the first day of class by the City Manager or the City Council/Personnel Committee.

The education grant shall not be prepaid and shall be provided only if the employee completes each course while employed with the City with a grade of "C" or better. If, for whatever reason exclusive of retirement, an employee receiving an education grant leaves the City within 1 year from the date of completing the qualifying course work, the employee shall reimburse to the City the full value of the grant.

Each employee participating in the Education Grant Program must submit satisfactory proof of course completion to the City Manager or City Council/Personnel Committee. Any employee who fails to obtain a passing course grade of "C" or better, who fails to complete a course, or who fails to submit satisfactory proof of course completion shall be ineligible to receive an education grant. Any employee on academic probation or expelled from a school, course, or degree program shall be ineligible for an education grant until such time said employee can satisfactorily prove to the City Manager that the situation has been rectified.

Section 6.05. Uniform Program

The purpose of this uniform program is twofold: (1) to identify City employees who have direct contact with the public on a regular basis, and to enhance the image of City operations generally performed by City personnel in public view; and (2) to provide uniforms to those personnel who are required to perform duties that result in their clothing becoming excessively dirty or in duties that require identifying uniforms. Any uniforms and/or identifying patches, badges, etc., purchased by the City for an employee, must be returned to the City when an employee terminates City employment.

To make the program effective, all eligible employees shall be required, as a condition of their employment, to participate in accordance with this policy. All personnel required under the program to wear uniforms must comply with appropriate departmental rules and regulations; however, in no event shall departmental rules and regulations supersede instructions contained in this Agreement.

Police Department

All personnel required to wear uniforms must comply with the Police Department Policy Manual and the following provisions:

1. **Uniforms**

Employees shall be eligible for uniform replacement by receiving up to 2 complete uniforms per year on an as-needed basis. Replacement uniform items shall be issued only upon receipt by the department of the items to be replaced.

2. **Safety Equipment**

As necessary, the City will furnish the following safety equipment: (1) duty weapon, (2) leather gear, (3) baton, (4) flashlight, (5) mace, (6) handcuffs, (7) helmet, and (8) rain gear. The City will replace all safety equipment

as it wears out or becomes inoperable due to normal wear, damage, or theft, without negligence on the part of the employee. All safety equipment purchased by the City for use in accordance with this policy shall become the property of the City and shall be returned upon termination or reassignment to a position not requiring its use.

3. **Uniform Maintenance Provision**

The City shall reimburse the Police Chief for actual cleaning costs necessary to properly maintain and care for uniforms authorized by the department for wear by the employee. In order to receive this reimbursement, the Police Chief shall submit receipts for the actual costs incurred for cleaning his/her Police uniform.

Fire Department

All personnel required to wear uniforms must comply with the Fire Department Policy Manual and the following provisions:

1. Within 30 days after successful completion of the probationary period, employees will make arrangements with the department for purchase of the first complete dress uniform. This purchase, and all approved replacements thereafter, will be at City expense.
2. The City shall reimburse the Fire Chief for the actual cleaning costs necessary to properly maintain and care for uniforms authorized by the department for wear by the employee. In order to receive this reimbursement, the Fire Chief shall submit receipts for the actual costs incurred for cleaning his/her uniform.
3. Safety equipment, as required, will be furnished by the City.
4. Uniforms shall be worn in accordance with departmental regulations, and shall be appropriately maintained by the employee.

Section 6.06. Deferred Compensation Plan

A deferred compensation plan is available to all employees, providing tax-deferred savings and/or a retirement supplement. An employee may annually contribute to the City's designated deferred compensation plan up to the maximum amount allowed by federal and state law (elective deferral) through a payroll deduction program (also see *Section 7.01. Benefit Fund Contribution; Excess Funds to Deferred Compensation; Medical, Dental, and Optical Insurance*).

Department heads are eligible for consideration and possible inclusion in the City's deferred compensation program up to a maximum of 5 percent of base salary, upon recommendation and approval of the City Manager. Participation in this plan is not a right of employees, but is a benefit to be earned based on job performance; accordingly, the

City Manager may reduce the benefit below 5 percent or increase it up to 5 percent based on the employee's performance.

Pursuant to federal and state law and the City's deferred compensation plan, employees may take advantage of the 457 Deferred Compensation Plan "Catch-Up" provisions and allowances as defined in the City's Great West 457 Plan document. Employees may not make "Special Section 457 Catch-Up" contributions in the year they attain their Normal Retirement Age (NRA).

To the extent allowed by federal and state law and the City's deferred compensation plan, the City will allow, in 1 or more of the 3 calendar years ending prior to the calendar year of an employee's planned NRA (or alternate NRA), the conversion of accrued sick leave at a rate of 2 hours for 1 hour of cash contribution, at the employee's base rate of pay in effect at the time of conversion, to the City's 457 Deferred Compensation Plan.

Sick leave conversion contributions for the "457 Catch-Up" will normally be distributed over the 3 calendar years ending prior to the calendar year of an employee's planned NRA (or alternate NRA). However, based on the total amount of "457 Catch-Up" contributions available to the employee, accumulated sick leave hours, and the employee's designated NRA (or alternate NRA), "457 Catch-Up" contributions may occur over a shorter period of time prior to retirement; in no event, however, shall any contribution occur in the year the employee actually attains his/her NRA (or alternate NRA).

To be eligible to participate, the employee must be within 1 or more of the 3 calendar years ending prior to the calendar year of his/her planned NRA (or alternate NRA), have "457 Catch-Up" privileges available to him/her, be enrolled in the City-sponsored 457 Deferred Compensation Plan, and maintain a minimum of 192 hours of sick leave in his/her accrual account after conversion during each year of participation. For purposes of this paragraph only, sick leave hours used for the "457 Catch-Up" shall be the first earned with respect to accumulation. (For additional benefit conversion instructions, restrictions, and policies see *Article 13: Leaves, Section 13.01. Sick Leave.*)

Section 6.07. Repayment of Wages

In the event of an overpayment to an employee, the employee shall be obligated to repay the full amount of the overpayment to the City. The City shall support any claim of overpayment with appropriate documentation. If the overpayment occurred over a period of time, and the employee cannot make immediate and full repayment without suffering a verifiable hardship, the City Manager or his/her designee may authorize a repayment schedule (e.g., repaying the amount of the overpayment within the timeframe the overpayment was received). The City reserves the right to recoup such overpayment by any means the City deems reasonable, including, but not limited to, deductions from the employee's paycheck.

If, for whatever reason, an employee's personal liabilities including but not limited to educational fees, fines, clothing expenses, credit card charges, or any expenses of a personal nature are charged to the City, the employee shall be obligated to reimburse to

the City the full amount of the charges. The City will support any claim it presents for expenses due with appropriate documentation and payment due shall be reimbursed as soon as practical thereafter. In any event, an employee owing the City money shall pay to the City the full amount due prior to his/her separation from City employment or the City, at its discretion, may deduct the amount due from the employee's final payroll check.

Section 6.08. Return of City Property

In the event an employee leaves City service without returning all City-issued property, the City may deduct from the employee's final paycheck such amount as will fairly compensate the City for the value of the unreturned property. Such deduction is not meant to waive any other rights the City may have regarding obtaining the return of City property or seeking damages for the failure to return such property. This provision does not apply to the Employee Purchase Program (EPP) for computer systems, which is covered under a separate agreement between the employee and the City, except that an employee owing the City money as a result of his/her participation in the EPP shall pay to the City the full amount due prior to his/her separation from the City or the City, at its discretion, may deduct the amount due from the employee's final paycheck.

ARTICLE 7: MEDICAL, DENTAL, AND OPTICAL BENEFITS

The City makes available to employees a choice of group medical, dental, and optical insurance programs. The City also makes available for each employee, through a benefit fund, a monthly contribution toward the premiums for the City's selected health care plans. An employee may cover eligible dependents under these plans by paying, through a payroll deduction, any premium in excess of that paid by the City. The balance of the City's monthly benefit fund contribution not paid toward employee and dependent premiums for health care coverage will be deposited in a City-sponsored deferred compensation plan (also see *Section 7.01*).

The nature and extent of insurance coverage provided, as well as the City's contribution toward the benefit fund, will be reviewed periodically by the City Manager, representatives of employee organizations, and the City Council/Personnel Committee. Any costs in excess of the City's agreed-upon contribution toward the benefit fund will be paid by the employee including all copayments and deductibles required by the health care provider. The benefit fund contribution is not PERSable; i.e., it is not reported to CalPERS as income for purposes of determining an employee's compensation at any time, or for any employment- or retirement-related benefit or purpose.

Section 7.01. Benefit Fund Contribution; Excess Funds to Deferred Compensation; Medical, Dental, and Optical Insurance

Effective September 2021, the City agrees to contribute to a benefit fund from a rate of \$1,350 per month to a rate of \$1,400 per month, per employee. The City contribution will be directed to the employee-selected medical, dental, and optical plans sponsored/made available by the City. After deductions for medical, dental, and optical insurances, any remaining balance shall be deposited in the City-sponsored deferred compensation program or directed to dependent coverage at the employee's discretion. In the event that excess funds from the benefit fund are available, and the employee is not directing excess funds toward dependent coverage and employee is not participating in a City-sponsored deferred compensation plan, the employee will be automatically enrolled in, and excess funds shall be deposited with, the Great-West Daily Interest Guarantee Fund. Employees may change this investment option by contacting the City's Great-West Retirement Services representative or by going online to the company's website at www.gwrs.com—website changes require a Personal Identification Number (P.I.N.).

Implementation of a benefit fund for active employees shall not change, redefine, alter, or otherwise affect the City's contribution toward retiree-medical insurance or terms of the retiree-medical benefit as provided for in Section 7.03 and/or other relevant sections of this Agreement.

In order to maintain Internal Revenue Service bona fide status for City-provided health care plans, there shall be no payroll/income disbursement to the employee of any portion of the City's contribution to the benefit fund.

To satisfy participation requirements imposed by health care providers and brokers of health care plans, and to prevent the negative impact employee dropout would have on premium rates for City-provided health care plans, the City is restricted in its capacity to

allow less than 100 percent employee participation; therefore, at a minimum, each employee is required to maintain, or enroll in, "employee-only" coverage for City-provided medical, dental, and optical insurance plans; each employee shall also be responsible for paying any copayment, deductible, emergency room fee, and/or other associated costs related to health care.

Section 7.02. COBRA

Under the provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, employees and their families have the opportunity to temporarily extend health insurance coverages when the following specific situations occur:

Qualifying Events and Length of Coverage

1. Termination from employment (other than for gross misconduct) – 18 months.
2. Reduction of hours, which results in loss of eligibility - 18 months.
3. Death of an employee - 36 months.
4. Divorce or legal separation - 36 months.
5. Employee becomes eligible for Medicare - 36 months.
6. Dependent child reaches age of majority - 36 months.

Employees and dependents who are not covered under any other group insurance plans may continue coverage under the City's group plans in which they are enrolled at the time a qualifying event occurs. If continuation coverage is desired, employees and/or dependents must pay the full premiums, plus a 2 percent administrative fee.

It is the employee's obligation to notify the Administrative Services Department when any of the following occurs:

1. Your marriage is dissolved.
2. You become legally separated from your spouse.
3. A child stops being an eligible dependent under the plan.
4. You and/or an eligible dependent become eligible for Medicare or obtain coverage under another health plan.

Additional requirements and procedures are contained in materials provided to employees at time of initial employment and separation.

Section 7.03. Medical Insurance (Retirees)

A. Eligibility to participate under the terms of this section is not provided for those employees retiring under a disability pension, except as required by COBRA (*also see* Section 7.02. COBRA).

B. The City's contribution/reimbursement limit for a retiree's medical insurance is defined by the City's contribution/reimbursement limit in effect on the date of retirement, as established by the Agreement in place at the time of the employee's retirement. Notwithstanding any other provision in this Agreement, at no time shall the City's contribution/reimbursement toward retiree medical exceed the retiree-medical contribution/reimbursement cap in place in the Agreement in effect at the time of employee's retirement.

C. Normal Service Retiree Benefits – Retired on or after July 1, 2019:

1. For the employee with a minimum of 25 years of continuous, full-time service to the City (or employees with a minimum of 30 years of cumulative, full-time service to the City, of which a minimum of 10 years are continuous and contiguous to the date of retirement), and having attained the City-established minimum retirement age of 50, the City will contribute/reimburse up to \$551 per month toward premiums paid by the retiree for any health insurance premium and subject to additional terms as outlined in this Section.
2. For the employee attaining the age of 50, with a minimum of 48 consecutive months of City employment in a management position contiguous with the employee's date of retirement, who otherwise qualifies for and receives a normal service retirement pursuant to the provisions of this Agreement and any guiding procedures, rules, and regulations established by CalPERS, the City makes available the opportunity to continue comprehensive health benefits under the City's group plans and group rates upon retirement. Failure by the retiree and/or qualified dependent (spouse/domestic partner) to maintain his/her portion of premium payments/contributions for City-provided medical, dental, and/or optical insurance plans, or failure to maintain active enrollment in City-provided health insurance plans, shall disqualify the retired employee and/or his/her qualified dependent from eligibility to participate in, or receive this benefit. The City does not contribute to dental and/or optical insurance plans for retirees.
3. The retiree and/or his/her qualified dependent may enroll in the City-provided healthcare plans; however, only the retiree may continue enrollment in the City-provided dental and/or optical plans.
4. For the employee who was promoted in-house to a management position, but did not serve in the required 48 consecutive months of City employment in a management position contiguous to the employee's date of retirement, his/her retiree-medical benefit, if any, shall be based on the retiree-medical benefit available to the bargaining group that last represented the employee, provided

the employee meets the criteria necessary to qualify for the retiree-medical benefit available to members of that bargaining group.

5. Any portion of the medical premium that exceeds the City's contribution is the retired employee's responsibility to pay. The retiree and/or dependent is/are responsible for paying any co-payments required by the healthcare provider and/or any additional premium payments above the City's maximum monthly contribution. The retiree portion of the monthly contribution shall be paid during the first week of each month, with a grace period not to exceed 30 days. Late payments for healthcare coverage that exceed the 30-day grace period shall be cause for automatic disenrollment in the City's group health plans and the retiree shall be disqualified from participating in any of the retiree benefits as outlined in this Section. Conditions for healthcare coverage, enrollment, and processing procedures are established in accordance with legal requirements and conditions set by applicable health insurance carriers.
6. If the employee retires on or after the age of 50 (the minimum age of retirement from the City by this Agreement), but before reaching the age of the retiring employee's CalPERS retirement formula (e.g., age 60 under the 3% @ 60 retirement formula), then the monthly value of the contribution/reimbursement shall be up to \$451 per month, effective upon retirement until the retiree reaches the normal age of the applicable CalPERS retirement formula the employee retired under (e.g., when the employee reaches the age of 60 under the 3% @ 60 retirement formula), at which time and upon written request by the retiree to the City, up to \$551 per month toward the City-provided retiree medical contribution/reimbursement amount shall be restored from the date of the request forward.
7. Upon the retiree reaching the age of 65 (or at any time the retiree enrolls in Medicare prior to the age of 65), the retiree and/or his/her dependent is/are no longer eligible to remain on City-provided healthcare, dental, or optical plans and must shop for his/her/their own individual plan; however, at age 65, the retiree must integrate with Medicare Parts A, B, D, or Part C Medicare Advantage Plan. The City will reimburse the Medicare retiree up to \$551/month for any healthcare only premiums.
8. In the event the retiree moves outside of the coverage area of all City-provided Health Maintenance Organization (HMO) healthcare plans, the retiree may opt-out of participation of all City-provided healthcare, dental, and optical plans and shop for his/her own plans. The City will reimburse the retiree up to \$551/month (or pursuant to the limitations of Section 7.03.C.3.) for any healthcare-only premiums and, once the retiree has opted-out, he/she will not be permitted to re-enroll in any City-provided healthcare, dental, and/or optical plan. If the retiree elects to opt-out, the retiree's dependent will be automatically unenrolled from any City-provided healthcare plan.
9. If the retiree is entitled to receive a monthly reimbursement, as described in Section 7.03.C.7. or C.8. above, a reimbursement is only authorized for health insurance premiums, Medicare Part A, Part B, Part D, or Part C Medicare

Advantage, up to the limits as outlined in Sections 7.03.C.7. and C.8. above. The reimbursement shall not include copays, emergency medical care, ambulance services, cosmetic services, or other cost components that are outside of a monthly premium for medical insurance. To receive this reimbursement benefit, the retiree must submit the following documentation: (1) a completed Request for Reimbursement; (2) a copy of the health insurance payment slip (and other documentation) verifying that the retiree is covered under that particular health insurance plan; and (3) proof of payment. The Request for Reimbursement, payment slip, and proof of payment must be submitted to the City within 30-days of making such payment. Failure by the retiree to timely submit a request for reimbursement within 90-days, inclusive of the original 30-days, for which reimbursement should have been applied, shall disqualify the retired employee from eligibility to receive all retiree-medical benefits; however, under extraordinary circumstances, the City Manager may consider agreeing to a 180-day reimbursement grace period, inclusive of the original 30-days for which reimbursement should have been applied. "Extraordinary circumstances" shall be approved by the City Manager, and shall mean to exclusively include an extended hospital stay where the retiree was incapacitated and could not communicate an invoice for reimbursement to the City. An application for "extraordinary circumstances" shall not extend beyond 180 days.

10. Reimbursements will be made to retirees via Automated Clearing House (ACH)/direct deposit only, and any pending reimbursement held by the City and not received by the retiree as a result of the retiree's failure to set up ACH/direct deposit with the City shall be forfeited after 60 days.

11. The retiree and/or his/her dependents no longer authorized to remain on City-provided healthcare, dental or optical plans may be entitled to COBRA coverage, as provided by law, at the retiree's and/or dependent's sole expense.

D. Except as otherwise provided, any future retiree-medical reimbursement amount increases shall apply only to those employees who retire on or after the date the retiree-medical adjustment is effective.

E. Due to the potential for future changes to healthcare coverage at the state and/or federal level and mandates on the City imposed by such laws, the employee recognizes that upon and after retirement, these changes may affect retiree healthcare provisions, not including the monthly City contribution, and that the retiree shall work with the City to effectively implement mandated changes.

F. All retiree health care benefits, including any provided to the retiree's qualified dependent, provided pursuant to this Section, terminate upon the death of the retired employee or at any such time the retiree becomes ineligible as outlined in this Section.

G. For purposes of this section, a "qualified dependent" is, first, a spouse as defined by the California Family Code or a domestic partner as defined under Article 37 of this Agreement. To qualify for dependent coverage, the retiree and dependent must have legally established their marriage or domestic partnership on or before the last date the

retiree was employed by the City. Any marriage or domestic partnership entered into by the retiree on or after the date of his/her retirement shall not entitle his/her dependent to any healthcare coverage as outlined in this Section. If the retiree divorces or dissolves his/her marriage or domestic partnership with a qualifying dependent, the qualifying dependent shall no longer be eligible to remain on City-provided healthcare plans; however, the former dependent may be offered COBRA coverage, as provided by law, at the former dependent's sole expense. If the retired employee fails to notify the City of the divorce/dissolution within 60 calendar days of the date final judgment is entered, the retiree will be disqualified from all retirement benefits as outlined in this Section.

ARTICLE 8: LIFE AND ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE

Executive management receives, at the expense of the City, life insurance and accidental death and dismemberment insurance. The amount of insurance coverage shall be equal to twice the employee's annual salary (rounded to the nearest \$1,000). The amount of insurance coverage not to exceed \$400,000, shall be adjusted throughout the year to accommodate salary and/or step adjustments, as required.

Further, the City makes available to retiring employees the opportunity to continue life insurance benefits (to a maximum of \$20,000) under the City's group plan and group rate, at the employees' expense.

ARTICLE 9: LONG-TERM DISABILITY INSURANCE

The City provides long-term disability (LTD) income insurance for employees. This insurance is designed to provide long-term income to an employee off work due to a disability, injury, or illness. Policy provisions may change based on the LTD provider's contract requirements.

A. Nonwork-Related Disability, Injury, or Illness

Long-term disability insurance benefits are payable after 60 consecutive calendar days of total disability (the benefit waiting period) up to a maximum of 70 percent of the employee's current base salary (predisability earnings reduced by deductible income). The maximum LTD benefit amounts (effective June 1, 2010) follow:

<u>Current Base Salary/ Predisability Earnings Cap</u>	<u>Maximum Benefit Amount</u>
\$25,000 per Month	\$17,500 per Month

Prior to the start of the LTD insurance benefit, the City contributes to the eligible employee in the amount of 66 2/3 percent of the employee's base salary for the 41st through the 60th calendar days of the deductible period—that period defined as the first 60 consecutive calendar days that an employee is off work due to a nonoccupational-related disability, injury, or illness. During the first 40 consecutive days of total disability, the employee shall use available sick leave (or other leave time if sick leave is not available) to maintain his/her income and eligibility for City-provided benefits. During the 41st through the 60th calendar days of the deductible period, and during the period an employee is eligible to receive LTD insurance benefits, the employee shall use available sick leave (or other leave time if sick leave is not available) to supplement the LTD benefit at full salary.

Long-term disability insurance premiums are paid by the City; therefore, moneys received under this program are reportable as income and are taxable.

Notwithstanding any other statement or provision in this Agreement, the LTD benefits—including coverage features, the maximum benefit period, disabilities excluded from coverage, disabilities subject to limited pay periods, and other benefit conditions and exclusions—are defined in the City's LTD insurance policy and may dictate changes, variances, limitations, restrictions, subtractions of salary and benefits, and other requirements that may not be consistent with the provisions contained herein. In each and every instance, terms contained in the LTD policy shall supersede the provisions contained herein.

B. **Work-Related Disability, Injury, or Illness**

Safety employees who suffer a work-related disability, injury, or illness may be eligible for "4850" time for up to 1 year after the date of disability, injury, or illness. Temporary disability payments and/or LTD benefits may also be available after a 1-year waiting period from the date of disability, injury, or illness subject to approval of the application for coverage submitted by the employee. In no event, however, shall a safety employee suffering from a work-related disability, injury, or illness be eligible for LTD benefits until the 1-year waiting period has expired or concurrently collect LTD benefits and "4850" time benefits.

ARTICLE 10: RETIREMENT

The City is a member of the California Public Employees' Retirement System (CalPERS). All regular, full-time employees are required to become members of the system. For full-time employees, and except as otherwise provided for in this Article, the City pays the required CalPERS employer contribution rate, the Employer Paid Member Contribution (EPMC), to the extent agreed upon in this Agreement and the cost of administration. Employee contributions in excess of those paid by the City shall be withheld from the employee's salary up to the amount required by CalPERS or as required by the provisions of this Agreement.

The City's agreement with CalPERS provides for a retirement allowance based on each employee's 12 highest-paid consecutive months of service with the City. CalPERS determines the age and vesting requirements that establish when an employee can retire from the system under a normal service or industrial disability retirement. Generally, an employee must be at least 50 years of age with 5 or more years of CalPERS-credited service in order to retire with a normal service retirement through the CalPERS system based on the specific provisions of the service retirement formula in effect at the time of retirement.

Effective January 1, 2013, the Public Employees' Pension Reform Act (PEPRA) was implemented, which establishes a new benefit formula and final compensation period for new employees. In addition, PEPRA establishes new contribution requirements for employees hired on or after January 1, 2013, who meet the definition of new member.

The City's service retirement formulas are as follows:

1. **Nonsafety Employees**

a. **Employees Hired Before June 21, 2010**

Employees are covered by the CalPERS "3% @ 60" benefit formula. This plan provides 3 percent of pay at age 60 for each year of service credited with the City. Effective September 12, 2011, the City will contribute up to 2 percent of the member's required contribution (EPMC), and the employee will pay 6 percent of the member's required contribution.

b. **Employees Hired On or After June 21, 2010**

Employees are covered by the CalPERS "2% @ 60" benefit formula. This plan provides 2 percent of pay at age 60 for each year of service credited with the City. Effective September 12, 2011, the City will contribute up to 1 percent of the member's required contribution (EPMC), and the employee will pay 6 percent of the member's required contribution.

c. **Employees Hired On or After July 1, 2011**

Employees are covered by the CalPERS “2% @ 60” benefit formula. This plan provides 2 percent of pay at age 60 for each year of service credited with the City. Effective September 12, 2011, the employee will pay 7 percent of the member’s required contribution.

d. **Employees Hired On or After January 1, 2013**

Effective January 1, 2013, new members to CalPERS or an agency with CalPERS’ reciprocity will be subject to the provisions of the Public Employee’s Pension Reform Act of 2013 (PEPRA) and will receive the 2% @ 62 benefit formula. This plan provides 2 percent of pay at age 62 for each year of service credited with the City. Employees pay 50 percent of the normal cost rate on a pretax basis to be calculated by CalPERS. In addition, new members must be at least 52 years of age with 5 or more years of CalPERS-credited service in order to retire with a normal service retirement through the CalPERS system, and their retirement allowance will be based on the average of their last 3 years of compensation prior to retirement.

Employees who are current members of CalPERS or an agency with CalPERS’ reciprocity, or who have less than a 6-month break in service between employment in a CalPERS (or reciprocal) agency, or who have previously been employed by the City of Montclair will be enrolled in the 2% @ 60 formula. Employees under this formula pay 6 percent of the member’s required contribution on a pretax basis, as in item 1.b. above.

2. **Safety Employees**

a. **Employees Hired Before June 27, 2005**

Employees are covered by the CalPERS “3% @ 50” benefit formula. This plan provides 3 percent of pay at age 50 for each year of service credited with the City.

If, at any time, the City's annual CalPERS employer rate to provide the "3% @ 50" retirement plan is 17.00 percent or less of payroll for safety members covered under the annual CalPERS valuation for this plan, such employees will be required to concurrently pay 2 percent of the CalPERS EPMC rate (e.g., if the employer rate is 1.2 percent of payroll, the employee will pay 2 percent of the EPMC, and the employer will pay the 1.2 percent employer rate and 7 percent of the EPMC—based on an EPMC of 9 percent; if the employer rate is 8.5 percent of payroll, the employee will pay 2 percent of the EPMC, and the employer will pay the 8.5 percent employer rate and 7 percent of the EPMC—based on an EPMC of 9 percent). If the annual CalPERS employer rate for the CalPERS "3% @ 50" retirement benefit is above 17.00 percent of payroll for the safety members covered under the annual CalPERS valuation for this plan, such employees will be required to concurrently pay 3 percent

of the CalPERS EPMC rate (e.g., if the employer rate is 23 percent of payroll, the employee will pay 3 percent of the EPMC, and the employer will pay the 23 percent employer rate and 6 percent of the EPMC—based on an EPMC of 9 percent). Effective September 12, 2011, employees will pay an additional 6 percent of the member's required contribution. The employee contributions, as defined under this paragraph, shall automatically be deducted each payroll period.

b. **Employees Hired On or After June 27, 2005**

Employees are covered by the CalPERS "3% @ 55" benefit formula. This plan provides 3 percent of pay at age 55 for each year of service credited with the City. Effective September 12, 2011, the City will contribute up to 3 percent of the member's required contribution (EPMC), and the employee will pay 6 percent of the member's required contribution.

c. **Employees Hired On or After July 1, 2011**

Employees are covered by the CalPERS "3% @ 55" benefit formula. This plan provides 3 percent of pay at age 55 for each year of service credited with the City. Effective September 12, 2011, the employee will pay 9 percent of the member's required contribution.

d. **Employees Hired On or After January 1, 2013**

Effective January 1, 2013, new members to CalPERS or an agency with CalPERS' reciprocity will be subject to the provisions of the Public Employee's Pension Reform Act of 2013 (PEPRA) and will receive the 2.7% @ 57 benefit formula. This plan provides 2.7 percent of pay at age 57 for each year of service credited with the City. Employees pay 50 percent of the normal cost rate on a pretax basis to be calculated by CalPERS. In addition, new members must be at least 50 years of age with 5 or more years of CalPERS-credited service in order to retire with a normal service retirement through the CalPERS system, and their retirement allowance will be based on the average of their last 3 years of compensation prior to retirement.

Employees who are current members of CalPERS or an agency with CalPERS' reciprocity, or who have less than a 6-month break in service between employment in a CalPERS (or reciprocal) agency, or who have previously been employed by the City of Montclair will be enrolled in the 3% @ 55 formula. Employees under this formula pay 6 percent of the member's required contribution on a pretax basis, as in items 2.a. and 2.b. above.

In the case of a pending normal service retirement, the City requests that the employee submit a minimum 3-month written notice of his/her pending retirement to the City Manager, or City Council in the case of the City Manager.

Except as otherwise provided for in this Agreement for retiree-medical benefits and CalPERS-related retirement benefits, to retire from the City and be eligible for City-provided retirement benefits other than CalPERS retirement benefits, an employee must be at least 50 years of age with 25 or more years of continuous service to the City; e.g., to receive the 25-year-retiree-medical benefit, an employee must be at least 50 years of age and have a minimum of 25 consecutive years of service with the City.

If an employee should leave City employment prior to age 50 and is no longer eligible for membership in the CalPERS system, the member contributions will be paid to the employee by CalPERS after termination. An employee with 5 or more years of CalPERS-credited service may, however, leave the member contributions on deposit in the system, with interest, for future withdrawal.

A. Other CalPERS Retirement Benefits—Nonsafety Employees

1. The City provides employees with the optional "Increased Level 1959 Survivor Benefits."
2. When employees separate under a normal service retirement, they may receive credit for unused sick leave, at the employee's discretion (also see section on "Sick Leave").
3. For each nonsafety management employee, the City shall report the value of the EPMC as additional compensation, each pay period—the EPMC is currently up to 8 percent.
4. Employees may purchase up to 4 years of service credit for any continuous active military or merchant marine service completed prior to employment.

B. Other CalPERS Retirement Benefits—Safety Employees

For plans with less than 100 active safety members, CalPERS mandates participation in risk pools based on each qualifying agency's service retirement formula. Once a plan is in a risk pool, it will not be allowed to leave and become a stand-alone plan. CalPERS mandates certain contract provisions for plans participating in risk pools. Mandated benefits include:

1. Pre-Retirement Optional Settlement 2 Death Benefit—i.e., a death benefit payable to the spouse of an active member eligible to retire, equal to what the spouse would have received if the member retired, elected the 100 percent joint and survivor form of benefit, and then died.

2. The ability for employees who separate under a normal service retirement to convert unused sick leave to retirement service credit, at the employee's discretion (also see section on "Sick Leave").
3. The ability for members to convert, at their own expense, prior military service and prior public service to CalPERS retirement service.
4. The cancellation of any remaining payments owed by the member for the purchase of optional service credit upon the employment-related disability of the member (i.e., upon industrial disability retirement).
5. Local system service credit included in basic death benefit.

CalPERS-related benefits currently provided by the City for safety members include the following:

1. The City provides the optional "Increased Level 1959 Survivor Benefits" and the "Post-Retirement Survivor Allowance" for Fire safety employees and the "Third Level of 1959 Survivor Benefits" for Police safety employees.
2. Safety employees receive the optional "Military Service Credit as Public Service" benefit. Employees are allowed to purchase, at their expense, up to 4 years of CalPERS service credit for any continuous active military or merchant marine service prior to employment with the City. The employee must contribute an amount equal to the contribution for current and prior service that the employee and the City would have made with respect to that period of service. Employees' payments will be calculated by CalPERS.

ARTICLE 11: HOLIDAYS

Section 11.01. Holiday Leave

Holiday leave is provided by the City to allow employees the opportunity to celebrate recognized holidays. An employee celebrating a City-recognized holiday will not be permitted to use any City-provided leave time other than holiday leave. Except as otherwise provided for in this Agreement, each employee shall use holiday leave on City-recognized holidays. Holiday leave shall be earned as holidays occur, shall be used in the fiscal year it is earned, and shall not be carried over to the following fiscal year.

Employees shall receive the following days of paid holiday leave each year for a total of 104 holiday hours per year:

- New Year's Day (10 hours earned)
- Martin Luther King, Jr.'s Birthday (10 hours earned)
- Presidents Day (10 hours earned)
- Memorial Day (10 hours earned)
- Independence Day (10 hours earned)
- Labor Day (10 hours earned)
- Veterans Day (10 hours earned)
- Thanksgiving Day (10 hours earned)
- Christmas Eve Day (10/4 hours earned—one-half of the department heads will receive the full day off, the other half of the department heads will receive 4 hours off, as determined by the City Manager)
- Christmas Day (10 hours earned)
- New Year's Eve Day (10/4 hours earned—one-half of the department heads will receive the full day off [those who received 4 hours off on Christmas Eve Day], the other half of the department heads will receive 4 hours off, as determined by the City Manager)

In the event any of these holidays fall on a Sunday, the following Monday shall be considered as the holiday. If a scheduled holiday should fall on a Friday or Saturday, the preceding Thursday shall be considered as the holiday, or applicable hours shall be credited to employees' holiday banks. The City Manager may change the holidays on Christmas Eve and New Year's Eve to the working day immediately preceding or following the working day on which Christmas Day and/or New Year's Day will be celebrated.

In the event that the City returns to a 5-day, 40-hour workweek, Lincoln's Birthday, Columbus Day, and Friday After Thanksgiving will be reinstated as 8-hour holidays; Christmas Eve and New Year's Eve will be converted back to 4-hour holidays; and all other recognized holidays will be converted back to 8-hour holidays.

If, for reasons of protecting the public safety or welfare, or upon approval of the City Manager, an employee is required to work on a City-recognized holiday, earned holiday hours shall be credited to the employee's holiday accrual bank. Hours credited to the holiday accrual bank shall be equal to the actual time worked by the employee, but not greater than the maximum number of hours earned for the holiday.

Employees leaving City service with accrued holiday leave shall be paid the amount of accrued holiday hours to the date of termination. Payments for accrued holiday time shall be at the employee's current hourly rate of pay.

Section 11.02. Holiday Accrual Bank

A holiday accrual bank shall be used for recording holiday hours earned but not used. The maximum amount of holiday hours to be accrued at any given time shall not exceed 192. However, no employee shall lose earned holiday time because of the urgency of work.

Holiday leave shall be used in the year it is earned and shall not be carried over to the following fiscal year. On July 1 of each year, any remaining holiday leave accrual from the previous fiscal year will be forfeited. Holiday leave taken on a day other than an actual City-recognized holiday shall be granted at the discretion of the City Manager or City Council/Personnel Committee.

ARTICLE 12: VACATION

Section 12.01. Vacation Leave

Employees shall accrue annual vacation leave pursuant to the provisions of this section.

- A. Full-time, executive management employees shall be eligible for annual vacation leave as follows:

Continuous City Service	Hourly Biweekly/Annual Accrual	Maximum Allowable Accrual
0-5 years (0-60 months)	3.08 hours/80 hours	240 hours
6-10 years (61-120 months)	4.62 hours/120 hours	360 hours
11-15 years (121-180 months)	6.15 hours/160 hours	480 hours
16+years (181+months)	7.69 hours/200 hours	600 hours

- B. Vacations may be taken only after completion of 6 months of continuous service.
- C. Vacations may not be accumulated in excess of three times the amount accrued in any one year. Upon reaching the maximum allowable vacation accrual (based on years of service to the City), an employee will no longer earn additional vacation time until the vacation balance falls below the maximum allowable accrual. However, no employee shall lose earned vacation time because of the urgency of work.
- D. The time at which an employee may use vacation leave shall be determined by the City Manager or City Council/Personnel Committee with particular regard for the City's needs, but also, insofar as possible, considering the employee's wishes.
- E. If a holiday recognized by the City falls within the vacation period, it shall not be counted as a day of vacation.
- F. Employees may not work their vacation and receive double compensation for their work.
- G. Employees leaving City service with accrued vacation leave shall be paid the amount of accrued vacation hours to the date of termination. Payments for accrued vacation time shall be at the employee's current rate of pay.
- H. In accordance with Government Code Sections 53250 through 53252, titled Firemen's Vacations, the Fire Chief shall be granted a minimum of 15 consecutive calendar days annually.

Section 12.02. Vacation Buyback Option

Employees are eligible to convert City-provided-vacation leave hours to IRS-reportable compensation each fiscal year. Leave time converted to compensation is not PERSable. When employees convert vacation leave to compensation, a written request must be submitted to the City Manager/Personnel Committee for approval. Approved requests will be forwarded to the Finance Division for conversion of vacation leave to reportable compensation.

Only that portion of an employee's accumulated vacation that is in excess of his/her annual accumulation rate can be converted to reportable compensation; provided, however, that the amount of vacation leave that can be converted to reportable compensation shall not exceed the employee's annual accrual rate, up to a maximum of 140 hours.

ARTICLE 13: LEAVES

Section 13.01. Sick Leave

A. Accrual and Use of Sick Leave Hours

Employees shall accrue annual sick leave. Such leave shall not be considered a benefit that an employee can use at the employee's discretion, but shall be allowed only in the following cases: (1) actual sickness or disability of the employee; (2) medical and dental appointments; or (3) illness of a person in the employee's immediate family as provided for in this section.

Notwithstanding any definition or provision in this Agreement, members of "immediate family" shall be defined as follows:

1. Any lawful relative, by blood, marriage, domestic partnership, or legal status (including adoption or guardianship) who is currently a member of the employee's household (those who legally dwell together under the same roof as a family)—provided no judicial decree has divested the employee of his/her statutory relationship to any member of the household; the parent, grandparent, sibling, or child of the employee by blood or legal status, regardless of residence—provided no judicial decree has divested the employee of his/her statutory relationship to any of the aforementioned.
2. The parent, grandparent, sibling, or child of the employee's current legal spouse/domestic partner, by blood or legal status, regardless of residence—provided no judicial decree has divested the spouse/domestic partner of his/her statutory relationship to any of the aforementioned.

Further provided that the purpose of sick leave is to allow the employee time off to care for himself/herself during an illness or to directly provide primary responsibility for the care of the member of the employee's immediate family who is suffering from a serious health condition (an illness, injury, impairment, or physical or mental condition that involves continuing treatment by a health care provider) that significantly prevents a minimal level of self-care, that such time off shall include only incidental and minimal travel time related to the care of the ill person, and that such time shall be preapproved in writing by the City Manager or City Council/Personnel Committee.

Sick leave accrual shall begin on the first day of employment on the basis of 8 hours' pay for every completed month of service. Employees shall accrue a maximum total of 96 hours of sick leave per year. Sick leave is credited biweekly through the payroll system, and it may be taken after 2 months of service have been completed. The City Manager/City Council shall have the option of requesting a doctor's certificate if an employee is absent for more than 3 consecutive days on sick leave; in the case of suspected sick leave abuse (e.g., pattern of absences on the first or last days of

the workweek, or the day before/after a holiday; a history of exhausting available sick leave each year; etc.); or where the employee's fitness for duty is in question.

Except as otherwise provided for in item "C" of this section, accumulated sick leave is forfeited upon termination. However, credited sick leave from another agency will be deducted from a retiring employee's total accumulation for the purpose of calculating redemption.

The City may credit an employee who is coming from another governmental agency with one-half of the employee's accumulated sick leave, up to a maximum of 240 hours. The purpose of this provision is to facilitate lateral recruitment of experienced employees to the City of Montclair.

Effective April 1, 2015, executive management employees may accrue sick leave up to a maximum 1,250 hour sick leave accrual cap.

B. Annual Sick Leave Redemption Program

Sick leave may be accumulated indefinitely, or an employee may exercise the following option once a year (this option to be exercised automatically by the City unless otherwise advised by the employee): In order to encourage regular attendance at work, an employee may, during the month of December, convert one-half of the unused sick leave hours accrued between the last full pay period of November of one fiscal year to the last full pay period of November of the next fiscal year (hereafter called the "accrual period")—up to a maximum of 48 hours for nonshift employees and 67.73 hours for Fire shift employees—to cash, computed using the base salary rate in effect on the last day of the last full pay period of November of the calendar year in which the conversion is applicable. The balance of remaining sick leave time will be credited to the employee's sick leave accrual account. The above plan applies only to:

1. Persons having been employed on a full-time basis with the City for the 2 years that immediately precede the last day of the last full pay period of November of each year;
2. Employees who accrued and maintained a minimum of 1 year's accrued sick leave (96 hours for nonshift employees and 135.46 hours for shift employees) prior to the last day of the last full pay period of November of the preceding year (the accrual period); and
3. Employees who, in the 12-month period that immediately precedes the last day of the last full pay period of November of each year (the accrual period), did not use, either separately or in combination, sick leave, FMLA, IOD, LTD, pregnancy leave, and/or leave without pay that, in total, is greater than 94 hours for nonshift employees and 133 hours for Fire shift employees.

Employees who have reached the 1,250 sick leave cap during the accrual period will remain eligible to participate in the Sick Leave Redemption Program as set forth in this section. These employees will be eligible to convert one-half of the unused sick leave hours that they would have been eligible to accrue before reaching the cap during the preceding "accrual period" (the last full pay period of November of one fiscal year to the last full pay period of November of the next fiscal year), up to a maximum of 48 hours, to cash, computed using the base salary rate in effect on the last day of the last full pay period of November of the calendar year in which the conversion is applicable.

C. **Redemption of Sick Leave Hours Upon Retirement**

Employees retiring from the City under a normal service retirement as established under the terms of this Agreement may redeem unused sick leave at the time of retirement by selecting one of the conversion methods authorized in this subsection—all conversions are computed using the base pay in effect for the applicable conversion period. Credited sick leave from another agency will be deducted from a retiring employee's total sick leave accumulation for the purpose of calculating the redemption. To qualify for use of this benefit, an employee must have at least 25 years of continuous service with the City [15 years for those employees grandfathered under the 15-year retiree-medical benefit (also see *Section 7.03. Medical Insurance (Retirees). A. Fifteen-Year Retiree-Medical Benefit*)] and be at least 50 years of age or, in the case of option "C.3." of this subsection, be within 1 or more of the 3 calendar years ending prior to the calendar year of his/her planned Normal Retirement Age (NRA).

1. Unused sick leave may be redeemed during the final pay period prior to retirement for a lump-sum cash settlement paid at the rate of 2 hours of accumulated sick leave redeemed for 1 hour of wages at the employee's current base rate of pay. Applicable payroll taxes would apply.
2. The City's CalPERS contract provides an option for normal service retirees to receive additional time-in-service credit by converting sick leave at the rate of 8 hours of sick leave accrual for .004-year-of-service credit.
3. Pursuant to federal and state law and the City's deferred compensation plan, employees may take advantage of the 457 Deferred Compensation Plan "Catch-Up" provisions and allowances as defined in the City's Great West 457 Plan document. Employees may not make "Special Section 457 Catch-Up" contributions in the year they attain their Normal Retirement Age (NRA).

To the extent allowed by federal and state law and the City's deferred compensation plan, the City will allow, in 1 or more of the 3 calendar years ending prior to the calendar year of an employee's planned NRA (or alternate NRA), the conversion of accrued sick leave at a rate of 2 hours for 1 hour of

cash contribution, at the employee's base rate of pay in effect at the time of conversion, to the City's 457 Deferred Compensation Plan.

Sick leave conversion contributions for the "457 Catch-Up" will normally be distributed over the 3 calendar years ending prior to the calendar year of an employee's planned NRA (or alternate NRA). However, based on the total amount of "457 Catch-Up" contributions available to the employee, accumulated sick leave hours, and the employee's designated NRA (or alternate NRA), "457 Catch-Up" contributions may occur over a shorter period of time prior to retirement; in no event, however, shall any contribution occur in the year the employee actually attains his/her NRA (or alternate NRA).

To be eligible to participate, the employee must be within 1 or more of the 3 calendar years ending prior to the calendar year of his/her planned NRA (or alternate NRA), have "457 Catch-Up" privileges available to him/her, be enrolled in the City-sponsored 457 Deferred Compensation Plan, and maintain a minimum of 192 hours of sick leave in his/her accrual account after conversion during each year of participation. For purposes of this paragraph only, sick leave hours used for the "457 Catch-Up" shall be the first earned with respect to accumulation. Contributions made pursuant to this paragraph shall be reported as City contributions and shall not be fully vested with the employee until the actual date of retirement. (For additional deferred compensation policies and restrictions, also see *Section 6.06 Deferred Compensation Plan.*)

An employee leaving City service by means other than normal service retirement shall be required to reimburse to the City all cash contributions to the deferred compensation plan that were converted from accrued sick leave; reimbursement to be enforced by agreement with the administrator of the City-sponsored deferred compensation plan. In the event that such action for reimbursement cannot be effected through the deferred compensation plan administrator, the employee grants to the City the right to withhold payment on other leave balances due to the employee at the time of separation. The City retains the right to pursue other legal remedies appropriate to recovering disbursed moneys. Moneys not recovered by the City shall be reported to the Internal Revenue Service as a benefit conversion to cash subject to personal income taxes.

It is the employee's responsibility to select one of the options defined herein and notify the Administrative Services Department of his/her choice in a timely manner sufficient to allow implementation. If option "C.3." is selected, remaining sick leave in the employee's accrual bank will be converted to a cash settlement in the final pay period prior to retirement pursuant to the provisions contained in option "C.1."

Section 13.02. Bereavement Leave

In the event death occurs in an employee's immediate family, the employee shall be entitled to no more than 40 consecutive hours of bereavement leave, with pay, to attend the funeral and/or make arrangements regarding the funeral.

Members of "immediate family" shall be defined as any lawful relative, by blood, marriage, domestic partnership, or legal status (including adoption or guardianship) who is currently a member of the employee's household (those who legally dwell together under the same roof as a family)—provided no judicial decree has divested the employee of his/her statutory relationship to any member of the household; the parent, grandparent, child, grandchild, or sibling of the employee by blood or legal status, regardless of residence—provided no judicial decree has divested the employee of his/her statutory relationship to any of the aforementioned; or the parent, grandparent, child, grandchild, or sibling of the employee's current legal spouse/domestic partner, by blood or legal status, regardless of residence—provided no judicial decree has divested the spouse/domestic partner of his/her statutory relationship to any of the aforementioned.

All bereavement leave requires prior approval by the City Manager.

Section 13.03. Family and Medical Care Leave

A. Statement of Policy

In accordance with the Federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA), the City will provide family and medical care leave and military family leave for eligible employees, as defined.

B. Definitions

1. 12-Month Period

A rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.

2. Child

A person under the age of 18 years of age, or 18 years of age or older, who is incapable of self-care because of a mental or physical disability. An employee's child is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster, or step-child, a legal ward, the child of a domestic partner, or a child of a person standing in *loco parentis* (in place of a parent).

A child is "incapable of self-care" if he/she requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living—such as, caring for, grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.

3. **Parent**

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. The term does not include parents-in law.

4. **Spouse**

A husband, wife, or domestic partner as defined or recognized under California law.

5. **Servicemember's "Next of Kin"**

A covered servicemember's "next of kin" is the servicemember's nearest blood relative, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority:

- a. Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions;
- b. Brothers and sisters;
- c. Grandparents;
- d. Aunts and uncles;
- e. First cousins; and
- f. Another blood relative specifically designated by the covered servicemember for the purpose of military caregiver leave under FMLA.

6. **Serious Health Condition**

An illness, injury, impairment, or a physical or mental condition that involves one of the following events:

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

serious health condition of more than 3 consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves the following events:

- Treatment 2 or more times by a health care provider, by a nurse or a 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
 - Treatment by a health care provider on at least 1 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.
2. Any period of incapacity due to pregnancy or for prenatal care.
 3. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one that falls into the following categories:
 - 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;
 - Continues over an extended period of time, including recurring episodes of a single underlying condition; and
 - May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, and epilepsy). Absences for such incapacity qualify for leave even if the absence lasts 1 day.

4. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by a health care provider.
5. 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 3 consecutive calendar days in the absence of medical intervention or treatment.

7. **Military Family Leave Entitlements**

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the armed forces, including the National Guard or Reserves, in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the armed forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his/her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

8. **Health Care Provider**

Anyone in one or more of the following occupations:

- a. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;
- b. Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction,

including another country, who directly treat or supervise treatment of a serious health condition;

- c. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct subluxation as demonstrated by X-ray to exist) authorized to practice in California or performing within the scope of their practice as defined under California State law;
- d. Nurse practitioners, nurse midwives, and clinical social workers who are authorized to practice under California law and who are performing within the scope of their practice as defined under California law;
- e. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
- f. 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.

C. Reasons for Leave

1. Leave is only permitted for the following reasons:

- a. The birth of a child or to care for a newborn of an employee;
- b. The placement of a child with an employee in connection with the adoption or foster care of a child;
- c. Leave to care for a child, parent, or a spouse who has a serious health condition; or
- d. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position.
- e. Leave because of a qualifying exigency arising out of the fact that a child, spouse, or parent is on active duty or call to active duty status in support of a contingency operation as a member of the armed forces, including the National Guard or Reserves; or
- f. Leave because of a serious injury or illness of a child, spouse, parent, or next of kin is a covered servicemember.

2. Except as otherwise provided for in this Agreement (*Article 34: Outside Employment*), no employee shall engage in, seek, pursue, or otherwise use FMLA leave time for outside employment, or otherwise obtain FMLA leave by fraudulent means. An employee seeking, pursuing, or otherwise engaging in outside employment while on FMLA leave, or otherwise obtaining FMLA leave by fraudulent means shall be subject to disciplinary action, up to and including discharge from City employment.

D. **Employees Eligible for Leave**

An employee is eligible for leave if the employee:

1. Has worked for the City for at least 12 months; and
2. Has worked for the City for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

E. **Amount of Leave**

Eligible employees are entitled to a total of 12 workweeks of unpaid leave during any 12-month period. As of January 2008, FMLA was amended to include a special leave entitlement that permits eligible employees to take up to 26 weeks of unpaid leave to care for a covered servicemember during a single 12-month period. No more than 26 workweeks of leave may be taken within any single 12-month period.

1. **Minimum Duration of Leave**

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

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

2. **Spouses Both Employed by the City**

In any case in which a husband and wife, or domestic partner, both employed by the City are entitled to leave, the aggregate number or workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child (i.e., bonding leave), and the aggregate number of workweeks of leave to which both may be entitled may be limited to 26

workweeks in a single 12-month period to care for a covered servicemember. This limitation does not apply to any other type of leave under this policy.

F. **Employee Benefits While on Leave**

Leave under this policy is unpaid. While on leave, employees will continue to be covered by the City's group health insurance to the same extent that coverage is provided while the employee is on the job. However, employees will not continue to be covered under the City's life insurance plan while on leave. Employees may make the appropriate contributions for continued coverage under the preceding benefit plan by payroll deductions or direct payments made to these plans. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave. If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City shall have the right to recover its share of health plan premiums for the entire leave period unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition which would entitle the employee to leave, or because of circumstances beyond the employee's control. The City shall have the right to recover premiums through deduction from any sums due the City (e.g., unpaid wages, vacation pay, etc.).

G. **Substitution of Paid Accrued Leaves**

If an employee requests leave for any reason permitted under this policy, he/she must exhaust all accrued leaves (except sick leave and compensatory time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act) in connection with the leave. The exhaustion of accrued leave will run concurrently with the leave under this policy. Notwithstanding the above, if an employee requests leave for his/her own serious health condition, in addition to exhausting accrued leave, the employee must also exhaust accrued sick leave.

If an employee takes a leave of absence for any reason which is FMLA/CFRA qualifying, non-FMLA/CFRA leave shall run concurrently with the employee's 12-week FMLA/CFRA leave entitlement.

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

H. **Medical Certification**

Employees who request leave for their own serious health condition or to care for a child, parent, or a spouse who has a serious health condition, must provide written certification from the health care provider of the individual requiring care. If the leave

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

1. **Time to Provide Certification**

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

2. **Consequences of a Failure to Provide an Adequate or Timely Certification**

If an employee provides an incomplete medical certification the employee will be given a reasonable opportunity to cure any such deficiency. However, if an employee fails to provide a medical certification within the time frame established by this policy, the City may delay the taking of FMLA/CFRA leave until the required certification is provided.

3. **Questions Regarding the Validity of a Certification**

a. **Employee's Own Serious Health Condition**

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

b. **Serious Health Condition of a Family Member**

The certification for a family member will be deemed sufficient if it includes all of the following:

1. The date on which the serious health condition commenced;
2. The probable duration of the condition;
3. An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care; and

4. A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

4. **Recertification**

Upon expiration of the time period which the health care provider originally estimated that the employee needed for his/her own serious health condition, the City may require the employee to obtain recertification if additional leave is requested.

5. **Intermittent Leave**

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, 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 be best accomplished through an intermittent or reduced leave schedule.

I. **Employee Notice of Leave**

If possible, an employee must provide at least 30 days' advance notice for foreseeable events, such as the expected birth of a child or planned medical treatment for the employee or family member. For events which are unforeseeable, the employee must notify the City, at least verbally, as soon as he/she learns of the need for the leave.

The employee shall consult with the City and make a reasonable effort to schedule any planned medical treatment or supervision so as to minimize disruption to the City's operations. Any such scheduling, however, shall be subject to the approval of the health care provider of the employee or the employee's child, parent, or spouse.

If an employee fails to give 30 days' notice for a foreseeable leave with no reasonable excuse for the delay, the City may delay the taking of FMLA leave until at least 30 days after the date the employee provides notice to the City of the need for FMLA leave.

J. **Reinstatement upon Return from Leave**

1. **Right to Reinstatement**

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment and salary step held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to

reinstatement, benefits, and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and the City, the employee will be reinstated within 2 business days, where feasible, after the employee notifies the City of his/her readiness to return.

2. **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.

3. **Fitness-for-Duty Certification**

As a condition of restoration of an employee whose leave was due to the employee's own serious health condition, not intermittent, and which made the employee unable to perform his/her job, the employee must obtain and present a fitness-for-duty certification from the health care provider that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.

K. **Required Forms**

Employees must fill out the following applicable forms to be eligible for leave under this policy:

1. "Family Care/Medical Leave Request Form" provided by the City (note: employees will receive a response to their request from the City, which will set forth certain conditions of the leave);
2. Medical certification—either for the employee's own serious health condition or for the serious health condition of a child, parent, or spouse;
3. Authorization for payroll deductions for benefit plan coverage continuation; and
4. Fitness-for-duty certification to return from leave.
5. Certification of qualifying exigency for military family leave; and
6. Certification for serious injury or illness of covered servicemember for military family leave.

Section 13.04. Pregnancy Leave

- A. Except as provided herein, an employee disabled because of pregnancy, childbirth, or a related medical condition shall be entitled to the same benefits as are provided to other employees who are temporarily disabled for medical reasons.
- B. An employee disabled because of pregnancy, childbirth, or a related medical condition shall be entitled to take up to 4 months of leave of absence due to such disability. The employee may utilize any accrued vacation time or other paid leave during the otherwise unpaid portion of any pregnancy leave.
- C. Any employee who plans to take any pregnancy disability leave shall give the City reasonable notice of the date the leave will commence and the estimated duration of any leave.
 - 1. The City reserves the right to require written confirmation from the employee's physician or other licensed health care practitioner that she is or will be disabled by pregnancy, childbirth, or related medical conditions before granting pregnancy disability leave.
 - 2. The City reserves the right to require written verification from the employee's physician or other licensed health care practitioner that her disability has ceased before the employee returns to work.
- D. When the employee is ready to return from pregnancy leave (of 4 months or less), the employee shall be entitled to return to her original position unless either:
 - 1. The job ceases to exist because of legitimate business reasons unrelated to the employee's pregnancy disability leave; or
 - 2. Each means of preserving the job for the employee would substantially undermine the City's ability to operate safely and efficiently.

If the employee cannot return to her original position because of either of the foregoing reasons, she shall be entitled to a substantially similar position unless either:

 - 1. There is no substantially similar position available; or
 - 2. A substantially similar position is available, but filling the available position with the returning employee would substantially undermine the City's ability to operate safely and efficiently.
- E. When a female employee returns from pregnancy leave, the City will provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for her infant child. Any time required to express breast milk beyond the employee's normal break time is unpaid. The City will also make reasonable efforts

to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private (also see *Article 37: Lactation Accommodation*).

Section 13.05. Jury Duty

Executive management employees requested to serve on jury duty shall notify the City Manager or City Council/Personnel Committee. While serving on jury duty, an employee shall receive regular salary from the City and, also, shall remit to the City all per-diem compensation received as a result of serving on jury duty. In cases where the employee's personal car is used, mileage reimbursement need not be remitted to the City. In appropriate cases, the City may request that an employee be excused from serving because the employee's duties are such that it would be in the best interests of the City to request such an exemption. The City Manager will request an exemption in only special circumstances, which are permitted by law and, in the City Manager's judgment, warrant this action.

Section 13.06. Military Leave

After 1 year of employment with the City, and except as otherwise provided for by action of the City Council as noted below, employees shall be eligible for up to a maximum of 30 days' paid annual military leave, as specified by the California Military and Veteran's Code. Employees anticipating taking military leave must submit a written request to the City Manager, with a copy of orders attached, at least 2 weeks prior to the first day of leave. Employees employed less than 1 year shall receive a leave of absence without pay.

In accordance with City Resolution No. 01-2364, and notwithstanding existing military leave provisions, the following military leave benefits are provided by the City. Continuation of wages, in whole or in part, for employees ordered to active military duty does not obligate the City to pay for medical, dental, optical, or life insurance; Workers' Compensation; or other claims related to death, illness, or injury incurred or aggravated during active military service.

1. Wages

For a period not to exceed 180 cumulative days in any 1 calendar year, military reservists employed by the City and ordered to military duty shall continue to receive his/her monthly wages from the City, provided that such wages are based on the employee's step rate and job classification at the time military duty began; and further provided that, after the first 30 calendar days of military service, combined monthly earnings for City and military service shall not exceed the employee's base monthly gross earnings with the City. Earnings for military service shall include base wages and all supplemental payments, including, but not limited to, the following allowances: housing, temporary duty, hazardous duty, combat, and flight pay. An employee ordered to military duty shall provide to the City copies of his/her monthly military pay statements for the purpose of verifying earnings for military service and

calculating wages due from the City. Such wages shall be paid in arrears for the military pay period just ending.

2. **Health Care Coverage**

An employee ordered to active military duty is covered immediately by the military's health care system, and the employee's dependents are provided health care under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). However, an employee on military leave may elect to continue health care coverage through the City for a maximum period of 18 months, as provided for under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). An employee who elects to continue such coverage while on active military duty shall be charged 102 percent of the full premium under the plan associated with such coverage. In the case of military reservists whose coverage under the employer health plan was terminated by reason of military service, the City will not impose an exclusion or waiting period in connection with the reinstatement of employer-provided health care coverage.

3. **Leave Accrual**

After the first 30 days of active military service in any one calendar year, employees shall not accrue City-paid vacation, holiday, or sick leave benefits or other forms of paid leave; provided, however, that any public employee on military leave for intermittent training periods shall continue to accrue the same vacation, sick, and holiday leave up to a maximum period of 180 cumulative days per calendar year as if the employee had not been on military leave.

4. **Retirement Benefits**

Retirement benefits continue to accrue for employees on military leave for training and for active duty up to a maximum period of 180 cumulative days per calendar year.

5. **Other Benefits/Supplemental Pay**

After the first 30 days of active military service, employees shall not be eligible to earn or receive other forms of City compensation including, but not limited to, education grants, acting pay, special additional pay, FLSA and regular overtime, deferred compensation, bilingual pay, training pay, life insurance, health insurance, and uniform allowance.

6. **Reemployment Rights**

Employees returning from military leave are entitled to reemployment rights if the following criteria are met:

- a. Advance written notice of such military service is provided to the City;

- b. The cumulative length of all absences from the City for reasons of military service does not exceed 5 years, unless otherwise provided for by law; and
- c. The returning employee on active military duty for less than 31 consecutive days submits a written request for reemployment no later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of military service; and no less than 14 days after the completion of service for an employee on active duty for more than 30 days but less than 181 days.

Section 13.07. Leaves of Absence Without Pay

Leaves without pay may be granted in cases where such absence would not be contrary to the best interest of the City. Such leave is not a right but a privilege granted for extraordinary reasons and shall not exceed 12 months.

An employee on leave without pay shall receive no compensation and shall accumulate no vacation or sick leave while on such leave. There shall be no loss of seniority rights. All leaves without pay shall be approved by the City Manager.

An employee returning to work from leave without pay shall be placed on the salary step achieved prior to such leave. If the leave exceeds 2 biweekly pay periods, the employee's anniversary date shall be postponed by the number of days of the leave.

Section 13.08. Injury on Duty/Workers' Compensation

California Workers' Compensation Law, a no-fault insurance plan paid for by the City and supervised by the state, covers an employee's medical expenses and salary while off work due to a job-related injury or illness. This protection begins immediately upon being hired by the City, and applies to first-aid-type injuries as well as serious accidents and illnesses.

A. Benefits

Specifically, the California Workers' Compensation Law guarantees an employee three kinds of benefits:

1. Medical care to cure the injury or illness, with no deductibles.
2. Rehabilitation services necessary to get an employee back to work.
3. Cash payments to replace lost wages; additional payments are made if the injury or illness is serious or results in death.

These benefits are established by the California State Legislature, and the amount of cash payments as well as when and how they will be paid are part of state law. Only the State Legislature can change the amounts.

As a supplement to required Workers' Compensation benefits, if an employee is unable to work for 3 or more calendar days, full salary continuance will be paid by the City for a maximum of 30 calendar days for nonsafety employees and for a period of up to 1 year for safety employees following an injury. Workers' Compensation wages (4850 time) paid to employees are fully exempt from income tax. The City will also coordinate Workers' Compensation payments with an employee's sick leave and vacation balances, to provide full salary continuance for as long a period as possible.

The City is self-insured for Workers' Compensation. All doctor bills, hospital expenses, etc., will be paid directly by our administrator on the City's behalf.

B. Reporting Requirements

Prompt reporting is the key to receiving Workers' Compensation benefits in a timely manner. Work-related injuries or illnesses should be reported to an employee's supervisor immediately. Supervisors act as the City's agent(s); therefore, notice to a supervisor of an injury or illness is viewed by law as notice to the employer, and failure by the supervisor to follow through with an accident report and/or direction for medical aid could place the City in a penalty situation.

Claims are established by the City's Workers' Compensation administrator, upon notification of injury or illness, usually through the "Employer's Report of Occupational Injury or Illness" (Form 5020), "Employees Claim for Workers' Compensation Benefits" (DWC Form 1), and "doctor's first report of injury or illness" forms. These three forms are completed only if an employee obtains medical attention; in cases of first-aid-type injuries or illnesses or damage to City equipment, only the City's "Supervisor's Report of Accident" form is required. Occupational illnesses or injuries should also be immediately reported to the Personnel/Risk Management Division. Most claims, if handled promptly and properly, will be resolved successfully and efficiently.

C. Medical Treatment

Of first priority is treatment of the injured/ill employee. When immediate medical treatment is not necessary, contact the Personnel/Risk Management Division prior to any treatment. Procedures for obtaining medical treatment for work-related injuries or illnesses are as follows:

1. First-aid-type illnesses or injuries can be treated at the Human Services Department clinic.
2. For more extensive injuries or illnesses, supervisors are to contact the Personnel/Risk Management Division for scheduling of a doctor appointment.

3. In emergency situations, employees may report to the emergency room at the local hospital, or another medical facility if closer, in order to obtain the best treatment available. After receiving medical care, injuries or illnesses should be reported to a supervisor as quickly as possible, so necessary follow-up examinations can be scheduled by the Personnel/Risk Management Division.
4. In cases where an employee does not realize an injury or illness has occurred until several hours or days after an incident, the employee should notify the immediate supervisor and the City will make a determination as to the appropriate procedure for treatment. If, however, an employee first realizes a work-related injury or illness has occurred on a weekend, holiday, or after normal work hours, and feels immediate medical attention is required, the employee may go to a free-choice physician or facility and report the incident to a supervisor on the first City working day thereafter.
5. If, for any reason, an employee wishes to change doctors, contact the Personnel/Risk Management Division. The City is as interested as you are in your prompt recovery and return to work!
6. Thirty days after reporting an injury or illness, employees may choose their own doctor. Report your choice of physicians to the Personnel/Risk Management Division as soon as you make it, so bills will be paid promptly.
7. Employees have the right to predesignate a treating physician to provide care in the event of an on-the-job injury or illness; however, the Personnel/Risk Management Division must be notified of the physician's name, in writing, before the injury or illness occurs. Designated physicians must be the employee's regular physician, maintain the employee's medical records, and be in accordance with California Labor Code, Section 4600, Note 73.
8. In the case of severe injury, illness, or death, the Personnel/Risk Management Division must be notified immediately.

Section 13.09. Management Leave

In lieu of overtime, executive management employees receive 100 hours of management leave during each full fiscal year of service to the City. Management leave must be used in the year it is earned and cannot be carried over to succeeding fiscal years. During the first pay period in July each year, management leave hours will be credited to the eligible employee's management leave account or other designated leave bank.

The City will "cash out" one quarter (1/4) of the employee's unused management leave balance remaining on the last day of the last full pay period in June of each year and

convert it to reportable compensation by paying the employee his/her hourly, regular rate of pay in effect at the time of the cash out.

A management employee newly hired into the organization shall not be eligible to receive management leave during the probation period. Managers appointed from within the organization are immediately eligible to receive management leave. Management leave credited to the leave account of a new employee completing probation and all other eligible management employees shall be prorated at the rate of 3.85 hours for each full pay period remaining in the current fiscal year. Conversely, a manager leaving the organization prior to the end of a fiscal year shall return back to the City 3.85 hours of management leave for each full pay period remaining at the time of separation in his/her final fiscal year of employment with the City. In the event that the employee, at the time of separation from the City, has a zero balance in his/her management leave bank a deduction for management leave time owed the City shall be made, in the following order: from the employee's accrued vacation leave bank; accrued sick leave bank; and/or as an equivalent hour-for-hour cash reimbursement to the City from the employee's final payroll disbursement.

ARTICLE 14: HOURS OF WORK, WORK PERIODS, AND PAY PERIODS

- A. The standard workday shall be 10 hours and the standard workweek shall be 40 hours. A 7-day work period shall be utilized commencing at 12:01 a.m. (0001) on a Monday and ending at 12:01 a.m. (0001) the following Monday.
- B. The pay period for all employees shall be biweekly. If a payday falls on a holiday, payday will (if possible) be the last working day prior to the holiday. From time to time, other pay periods and work hours, periods, and days may be designated by the City Manager or the City Council/Personnel Committee.

ARTICLE 15: AUTOMOBILE/MILEAGE ALLOWANCE AND AUTOMOBILE USE POLICY

A. Automobile/Mileage Allowance

1. Mileage Allowance

Department heads (as shall be approved in advance by the City Manager) who use their personal automobiles for City business may be reimbursed at a rate of 26 cents per mile. Prior to being eligible to receive mileage reimbursement, an employee must submit to the Administrative Services Department proof that their automobile(s) is/are insured under the minimum requirements set forth by state law (e.g., \$15,000 to \$30,000 liability coverage, plus property damage coverage).

2. Automobile Allowance

Department heads who have not been assigned a City-owned vehicle will receive a \$650 monthly automobile allowance in accordance with the City's "Automobile/Mileage Allowance" and City-owned-take-home vehicles policies. The automobile allowance is in lieu of providing a City-owned vehicle for the department head's business and personal use. If the department head is traveling by automobile and is in compliance with the "City of Montclair Travel Policy," the employee shall also be reimbursed for gasoline purchased for such travel.

B. Automobile Use Policy

Department heads are assigned take-home vehicles, upon approval by the City Manager and/or City Council. Should the take-home vehicle be abused, the City Manager will take immediate steps to eliminate the benefit to the employee involved.

1. Nonsafety Employees

City-provided vehicles for nonsafety department heads may be used in one of the methods described below:

- a. Use of City-provided vehicle will be restricted to business and commuting purposes; or
- b. Unlimited use of City-provided vehicle is permitted, provided the department head:
 - (1) Pays to the City \$.06 per mile for every mile driven in excess of 15,000 annually;
 - (2) Confines use of the vehicle to the greater Southern California area; and

- (3) The City-provided vehicle is not used on personal vacations.

2. **Safety Employees**

Unlimited use of City-provided vehicles is permitted, excluding personal vacations.

ARTICLE 16: ANNUAL AND BIENNIAL PHYSICAL EXAMS

The City shall provide an annual physical exam for employees over 45 years of age. The City shall provide biennial physicals for employees over 35 years of age. These physicals will be administered by a doctor designated by the City. The type of physical shall also be designated by the City.

ARTICLE 17: PREMIUM PAY PLAN

A. Introduction

The City provides bonus pay opportunities to department heads, in addition to its salary and benefit programs, through the Premium Pay Plan (PPP). The purpose of PPP is to serve as a vehicle for promoting higher levels of employee performance and to provide for the recognition of employees for short-term distinguishable contributions in accordance with the criteria that follows.

The PPP is designed to provide award opportunities for both individuals and work groups. Any employee, irrespective of position, duties, and degree of visibility, is eligible. A work group may be a crew, a company, a team, a task force, a squad, etc., in which the interdependency of its members is necessary to achieve results.

Any number of employees or work groups may qualify for a PPP award. Employees and work groups shall receive awards in accordance with the premium pay schedule outlined. Alternative forms of compensation to that of pay are prescribed and may be elected at the option of the employee.

Employees wishing to be considered for premium pay must complete the premium pay application form, which is available from the Administrative Services Department. The same form may be used by an employee who wishes to recommend another employee for consideration for premium pay. Similarly, any member of an employee group, or any nonmember, may submit an application on behalf of the group.

Applications for single-occurrence awards are reviewed by the Premium Pay Panel. The Panel is composed of three community representatives with experience in related fields, who serve at the pleasure of the City Council for alternating 2-year terms. The Panel sets its own rules of conduct, reviews the applications for conformity, and submits the successful ones to the City Council for its action. No additional evaluations are conducted by the City Manager. The Panel is staffed by an employee designated by the City Manager, and it may request more information and conduct such interviews as it deems appropriate. The Panel prepares a statement for publication, which outlines why the contributions of an employee or an employee group were distinguishable and warranted the award recommended.

In order for an employee or an employee group to receive premium pay, the following criteria must be met. The PPP provides a variety of awards for numerous worthwhile employee contributions; both the City and employees benefit mutually.

B. Criteria for Employees to Qualify for Premium Pay

The following criteria are set out as the basis upon which individuals and employee groups may receive premium pay or the equivalent. The City's compensation program is designed to ensure that employees have the potential of a salary which is internally justified, reflects the value of the job in the marketplace, and generally

provides salary increases based on satisfactory or better job performance. The Premium Pay Plan provides for the recognition of significant one-time contributions occurring no more than 1 year prior to the application. The examples provided are for illustration purposes only and should not be construed as limiting the opportunities.

1. **Applications on Behalf of an Individual Employee**

A contribution on behalf of an individual employee that qualifies for a premium pay award shall be for a single occurrence. The following criteria are applied to each instance.

The contribution was:

- Within 1 year of the employee's last annual performance/pay review date,
- Developed on the employee's own initiative, and
- Beyond normal job expectations

The contribution resulted in:

- Measurable improvement to the City's image and/or services; and/or
- Better use of manpower, materials, machinery, methods, and/or money.

Examples of employees who received awards are:

- (1) A park maintenance worker noted that a certain piece of playground equipment was hazardous when children bunched up. The child using the equipment would be run down by the next child in line. The employee constructed a turnstile in his garage at home, which was activated only after each child had completed the tour on the equipment; thus controlling the use of the equipment to one child at a time. He received a Level 1 award.
- (2) The City's receptionist found that people who came to City Hall were having difficulty finding various offices even with careful directions, signs, and maps. Citizens were frequently irritated at having to be shuffled from one office to another. After careful research of voluntary organizations—including youth groups and service organizations—the employee approached a senior citizen group because of its maturity and the availability of its members. On her own time she conducted a training program

for those who wished to serve as guides for visitors to City Hall. She developed a schedule with prescribed additional duties in much the same way as that found in hospitals. She received a Level 2 award.

- (3) A firefighter observed that the department's state-of-the-art training program provided extensive orientation for new fire personnel to the City, but other new City employees did not benefit from a similar process. Although he was not the department's training officer, he gained permission to modify the training materials and audiovisual aids to have broader application to other departments. During his unassigned duty time and days off he produced a video of the community that ultimately was not only used for new employees but for service organizations as well. He received a Level 2 award.
- (4) An accountant supervisor in the Finance Division learned that no tracking system existed for citizen complaints. Frequently, managers who had a need to know, citizens who initiated the complaint, and even Council members who reported problems, were uninformed as to how a complaint was handled. Having some computer programming experience, the employee generated a software program that recorded incoming complaints easily and quickly and listed all parties who needed to be informed of the problem, who was assuming accountability, and how the problem was handled. As a result, an intern was assigned to monitor the program and perform a telephone follow-up with the complainant, similar to that conducted by auto service and appliance repair organizations. He received a Level 1 award.

2. **Applications on Behalf of an Employee Group**

A contribution on behalf of an employee group for a premium pay award is for events requiring a "team" approach. The following criteria are applied.

The contribution was:

- Clearly one in which full participation by each member of the group was maintained and an interdependency existed in a "team" sense; and
- Beyond normal job expectations.

The contribution resulted in:

- Measurable improvement to the City's image and/or services; and/or

- Better use of manpower, materials, machinery, methods, and/or money.

Examples of employee groups that received awards are:

- (1) A tree maintenance crew had been working together for about 1 year. Each crew member was assigned specific tasks; e.g., trimming, feeding, maintenance, cleaning, equipment operations, etc. The demands for tree trimming were high. The City was receiving numerous citizen requests for special trimming, which in most instances were justified. The crew was being diverted from their regular schedule and getting behind. If one member was ill or on vacation the whole system suffered. One afternoon the equipment broke down and the crew members started talking about the situation. The group decided that if each member of the crew knew all the tasks required, a number of benefits would occur. The crew members began to teach each other their various responsibilities, and rotated assignments. Each member was able to help another who was overloaded or replace someone who was absent. Fatigue and boredom disappeared. The cooperative effort led to systematizing how certain tree varieties were approached. The foreman who supervised several crews found that he was relieved from direct supervision and was able to concentrate on citizen contacts. The crew not only caught up with its schedule, but expanded its operations so that the contract for outside services on the City's parks was not renewed. The crew received a Level 1 award.
- (2) A task force of representative employees from different departments, whose knowledge of the operations was essential, had been assigned to examine an increase in the City's accident level and develop a program of prevention. During the prior year, a variety of accidents had occurred that had no connection with each other. The incidents ranged from bruised thighs on desk corners to a tragic fatality in a drainage cave-in. The City's insurance premiums were likely to be affected. The group examined the evidence in some depth. It considered recommending a consultant and rejected the idea realizing that if the trend was to be reversed it would have to be done by employees. Working on that premise, the group decided that the best resources were the employees themselves. The process alone would have some benefit in raising the level of consciousness of employees. The task force began by talking to the victims and then expanded to others. Task force members visited accident sites in the City. The group divided its assignments so that each had an equal

workload and responsibility. The conclusion reached was that 80 percent of the accidents in the prior year could have been prevented. The group developed a system for categorizing the information into a manageable format. The task force assigned risk levels to representative work environments. Without identifying specific incidents and people, a monthly memorandum was published in which the number of days without accidents for each level was reported. An award system was developed on a graded basis to recognize employees who had no avoidable accidents. The most effective effort was the requirement that for every accident reported, the surviving victim reviewed the circumstances with other employees who had the same level of exposure. The result was that the following year accidents were reduced to below 20 percent. The City received national recognition for its safety record. The task force received a Level 2 award.

- (3) A Fire Department company believed that it had perfected its routine for gaining control of a fire scene to such a degree that no other company could beat it on time, performance, and safety. The members had observed companies in other agencies from time-to-time and believed that they did not match their level of accomplishment. The members believed that their high standard could be applied to the benefit of other companies. As a result, the members of the company challenged the other suppression companies to beat their record of performance. The other companies took up the challenge. Routines with simulated conditions were laid out with varying degrees of difficulty. Firefighters from other departments were invited to judge the events during regular shift hours. The initiating company prevailed as the members had expected. Their "secrets" to success were then shared with the other companies and the visitors. The members had developed a highly sophisticated systematic approach to a fire scene much like a football team facing an opponent which involved a system of signals. Once the signals were called by the fire captain, each member knew exactly what the "play" was. The members were able to adjust quickly to changing conditions. The visitors were very impressed not only with the company but with the department. The fire company received a Level 1 award.

C. **Schedule of Awards**

Awards for a single occurrence are assigned by the Premium Pay Plan Panel and recommended to the City Council in accordance with the following schedule. An award is made based on the value of the contribution to the City, and may be for one of two levels in the judgment and sole discretion of the Panel. All premium pay awards are made in one-time payments. Alternative compensation is available in lieu of direct payment, at the option of the recipient.

1. **On Behalf of an Individual Employee for a Single Occurrence**

Level 1: Ten percent of the prior month's base salary.

Level 2: Twenty percent of the prior month's base salary.

2. **On Behalf of an Employee Group**

Level 1: Five percent of the prior month's base salary for each employee.

Level 2: Ten percent of the prior month's base salary for each employee.

3. **Alternative Compensation Schedule**

Employees may, at their option, choose an alternative form of award to that of pay. Awards may be split between pay and the following options. Alternatives to premium pay may be paid on the basis of the following ratios.

a. **Deferred Compensation**

One dollar for every dollar awarded.

b. **Vacation**

One day for each 5 percent of monthly salary awarded, with a maximum of 5 days taken per year.

c. **Educational Expenses**

Two dollars for every dollar awarded for job-related programs in accordance with the City's Education Grant Program, except that there will be no annual maximum.

D. **Premium Pay Plan Application Forms**

The premium pay application form must be completed by employees wishing to be considered for premium pay. An application may be made on behalf of an individual or group of employees. An employee who wishes to recommend another employee or group of employees may use the same form. An employee or a group of employees who have received an award for premium pay for a single occurrence are not precluded from submitting another application for a single-occurrence award at any time. The application is submitted to the employee assigned to staff the Premium Pay Panel for processing. The Panel meets on an as-needed basis; the date of the next meeting can be obtained from the Administrative Services Department. Applicants are encouraged to provide as much information as possible. The Panel may request further information and/or conduct interviews accordingly.

ARTICLE 18: CLASSIFICATION PLAN

Each position with the City shall be allocated to its appropriate class on the basis of assigned job duties and responsibilities, so that the same qualifications may be reasonably required for and the same schedule of pay may be equitably applied to all positions in the same or similar classifications. Positions may, from time to time, be reclassified on the basis of changes in or a reevaluation of the job duties and responsibilities.

ARTICLE 19: MERIT SYSTEM

In keeping with sound public personnel practice, employment in the City shall be based on merit and fitness, taking into account such factors as individual performance, ability, aptitude, experience, training, education, character, personality, and physical fitness as the basis for selection and promotion. Original appointments are normally based on the results of open competitive examinations, which may be written, oral, physical, practical, or a combination thereof. (Note: Merit system principles such as competitive examinations, grievance procedures, etc. may be waived at the sole discretion of the City Manager in the case of part-time or contractual employees.)

The City hereby reaffirms its commitment to fair employment practices related to factors affecting ability to perform and the employment and advancement of persons in protected classes.

ARTICLE 20: APPOINTMENTS AND PROMOTIONS

A. Appointments

Appointments to vacant positions within the City shall be based on merit and fitness, as determined by competitive examinations and/or personal evaluations. The City Manager or designated representative shall coordinate the recruitment and selection procedures in cooperation with the departments involved. An eligibility list of qualified candidates shall be established.

B. Promotions

Vacancies in positions above the entry level may be filled by promotion whenever one or more qualified candidate is available. This shall not, however, be construed to prohibit lateral entry to a promotional position, should an individual outside the City possess higher qualifications than City employees who are eligible for the position. Qualifications may be determined by competitive examination—either open or closed—or by evaluation of the City Manager or City Council/Personnel Committee. When qualifications are determined by competitive examination, an eligibility list shall be established with the candidates placed according to their total rating in the examination.

The City Manager (or City Council/Personnel Committee if appointing a new City Manager) makes an appointment/promotion from among the established list of qualified candidates. All appointments for either original employment or promotion must be reviewed by the Personnel Committee.

Eligibility lists, unless exhausted, shall be valid for a minimum of 6 months, with the option of being extended with the approval of the City Manager. In the absence of an eligibility list and in cases of appointments and promotions where time is a factor, the City Manager may make a provisional appointment to a position for a period not to exceed 6 months.

The City may also establish programs—including trainee programs—designed to attract and utilize persons with minimal qualifications, but with potential for development, in order to provide career development opportunities among members of disadvantaged groups, handicapped persons, and veterans. Such programs may provide for regular appointment upon the satisfactory completion of the training period without further examination.

ARTICLE 21: PROBATION

Newly appointed, promoted, and reinstated department heads shall be subject to a 1-year probationary period; however, reinstated employees shall be subject to a 6-month probationary period if reinstatement is to the position last held. An employee shall pass probation upon the approval of the City Manager and concurrence of the Personnel Committee. Time in a "trainee" position shall not be counted as part of the probationary period when taken out of "trainee" position and placed in a "regular" position.

The probationary period may be extended for up to 6 months, upon the recommendation of the City Manager. If a probationary period is extended, the department head shall be notified of such extension, and the reason(s) for such extension, in writing, prior to the expiration of the original probationary period.

If, for whatever reason, an employee on probation is unable to perform his/her assigned duties because of absence from work for any period of time, his/her probation period, merit increase, and anniversary date shall be extended for the same length of absence (also see *Section 6.03. Salary Advancement* and *Article 22: Performance Appraisal*).

The work and conduct of probationary employees shall be subject to review and evaluation and, if found to be unacceptable, the probationer may be dismissed upon the recommendation of the City Manager.

Dismissals while an employee is on probation, or extensions of the probationary period, shall not be subject to further review or appeal. Employees on probation in promotional positions must be returned to their previous positions without the right of appeal, and must not be terminated without the right of a hearing as described under the section entitled "Disciplinary Action."

ARTICLE 22: PERFORMANCE APPRAISAL

Performance appraisal is the process of evaluating and recording the performance of each employee. The appraisal should be based upon results shown by the employee in carrying out assigned duties and responsibilities and should be used to help the employee to be aware of and to improve personal performance. The performance appraisal is best used:

1. To maintain a high level of efficiency or assist in raising efficiency by commending the employee.
2. To inform the employee of good performance, which may, in turn, lead to promotion and higher pay.
3. To indicate to the employee weak points and suggest the proper means of raising the employee's work performance to the acceptable level.
4. To encourage better working relationships and mutual understanding by letting the employee know where the employee stands with relation to the employee's supervisor's appraisal.

The City Manager is responsible for proper preparation of the department head performance appraisals. The City Council is responsible for preparation of the City Manager's performance appraisal, in accordance with any employee agreement between the City and the City Manager. The City Council and/or the City Manager should carefully consider each item on the appraisal sheet separately, in light of the column definition, and select the column that best describes the work of the employee in each category.

The performance appraisal shall be discussed with the employee to provide an awareness of those points on which performance is worthy of commendation, as well as those points in which improvement is needed. Special attention should be given to discussing specific ways in which the employee can improve job performance.

Performance appraisal forms are to be prepared at the end of the probationary period, annually, or more often if the City Manager/City Council so desires. Employees are eligible to receive detailed 3-year performance appraisals as an alternative to the normal comprehensive annual appraisals. Between evaluations, a shortened appraisal form or memorandum (indicating the employee's performance continues to meet and/or exceed expectations) will be submitted. If an employee's performance falls below acceptable levels, however, detailed annual appraisals will be completed until an acceptable level of performance is maintained for 2 or more consecutive years. Annual evaluations may also be completed for employees achieving major accomplishments, or whose performance shows significant improvement.

If, for whatever reason, an employee not on probation is unable to perform his/her assigned duties because of absence from work for a period in excess of 45 consecutive calendar days, the evaluation period shall be automatically extended for a similar period of time; provided, however, the City Manager may evaluate the employee's past

performance and submit to the City Personnel Committee a separate, written recommendation justifying/granting a merit increase and not extending the evaluation period for a period of time equal to the period of absence. If the period of absence exceeds 90 consecutive calendar days, the employee's performance evaluation and anniversary date will be extended for a similar period of time (also see *Section 6.03. Salary Advancement*).

If, for whatever reason, an employee on probation is unable to perform his/her assigned duties because of absence from work for any period of time, his/her probation period, merit increase, and anniversary date shall be extended for the same length of the absence (also see *Section 6.03. Salary Advancement and Article 21: Probation*).

These standards are minimum and appraisals may be required more frequently. Detailed evaluation procedures shall also be subject to department rules and regulations. Upon such evaluation, a completely prepared appraisal form is to be given to the employee with comments to aid the employee in understanding the evaluation.

Performance appraisal forms are to be signed by the employee and/or the City Manager/City Council. The original, signed appraisal form is forwarded to the Personnel Committee, or the City Council in the case of the City Manager, for review, and then is retained in the employee's official personnel file. A copy is given to the employee.

ARTICLE 23: TERMINATION OF EMPLOYMENT

An employee of the City may terminate employment voluntarily, either by resignation or retirement, or such termination may occur involuntarily as a result of administrative action for disciplinary reasons, failure to meet the minimum requirements of the job, or due to a reduction in workload or funds. Such termination may also be due to organizational adjustments, which are handled in accordance with the "Layoff Procedure." An employee absent from the job for 3 consecutive working days without authorization shall be considered as automatically resigned from City employment, unless the absence is the result of extraordinary circumstances.

In the case of voluntary resignation, the City requests that the employee give a minimum 4-week written notice to the City Manager, or City Council in the case of the City Manager. In the case of a pending normal service retirement, the City requests that the employee submit a minimum 3-month written notice of his/her pending retirement to the City Manager or City Council. In the case of involuntary termination of a department head for disciplinary reasons, or lack of adequate performance, the City Manager shall give the employee written notice, citing the reasons for such termination, and the employee shall have the right to appeal in the manner provided for in the section of this Agreement entitled, "Disciplinary Action." Except in those instances where an employee's performance is so egregious as to warrant immediate termination, termination for disciplinary reasons that relate to employee performance (e.g., inefficiency, incompetence, or inability to perform required work), shall be preceded by adequate discussion, warning, and corresponding opportunity for the employee to improve. In the case where immediate termination is considered necessary, an employee shall be immediately terminated or suspended pending an appeal if one is to be made. Terminated employees shall be required to comply with Section D of the "Layoff Procedure."

An employee who is terminated will not receive a final pay check until the employee has turned in all City-owned equipment, including City identification card; has cleared with the City Manager or City Council/Personnel Committee the disposition of any clothing, tools, or other working materials that have been provided by the City; and has completed all exit interviews and forms which may be required by the City. The exit interview and appropriate forms shall be made available to employees prior to the termination date.

In the event of termination resulting from organizational changes, department heads shall receive at least a 14-calendar-day written notice and shall also have the rights established in the sections of this Agreement entitled "Layoff Procedure" and "Disciplinary Action," as applicable. Termination may result from changes in duties or organization, abolition of position, or completion of work for which employment was made.

Newly appointed probationary employees are not subject to the provisions of this section and may be terminated without the right of appeal. Promoted employees not successfully completing the probationary period must be returned to their previously held City position without the right of appeal, and may not be terminated without the right of a hearing, as described under the Article entitled "Disciplinary Action."

To the extent permitted by law, any employment-related actions or suits against the City must be brought by the employee within 6 months of the date he/she terminates employment.

ARTICLE 24: REINSTATEMENT

An employee who terminates employment in good standing may be reinstated to a vacant position in the former job class within 1 year of the termination date without requalifying for employment by competitive examination. If the termination date is greater than 1 year, the employee may be required to qualify through competitive examination.

ARTICLE 25: LAYOFF PROCEDURE

Section 25.01. Layoff Procedure

The City Council and/or City Manager may abolish any position or employment, and the employee holding such position or employment may be laid off or demoted without disciplinary action and without the right of appeal, whenever in the judgment of the City Council and/or City Manager it becomes necessary for one or more of the following reasons: (1) due to lack of work, lack of funds, or other economic reasons; (2) because the necessity for a position no longer exists; and/or (3) as a result of a change in administration that affects implementation of the City's goals and/or policies, or results in an incompatibility of management styles. The City Manager may notify executive management employees, within a reasonable period of time, of any potential layoffs or work furloughs in order to discuss potential alternatives to layoffs or work furloughs. In addition, the following layoff procedures are intended to minimize the impact of staff reduction on City services and ensure that employees are treated fairly in the processing of layoffs.

- A. The City shall give employees proposed for layoff not less than a 14-calendar-day advanced written notice of separation and the reason therefor. No regular full-time employee shall be separated under the layoff procedure from a department while emergency, seasonal, probationary, part-time, provisional, or temporary employees are employed and serving in the same classification in the department.

- B. In each class within a department, employees shall be laid off according to employment status in the following order: temporary, provisional, probationary, and regular. Temporary, provisional, and probationary employees shall be laid off according to the needs of the service as decided by the City Manager or City Council/Personnel Committee. In cases where there are 2 or more regular employees in the class from which the layoff is to be made, the following criteria are the determining factors:
 - 1. Employees within each classification shall be laid off based upon the last rating in the class, provided such rating has been on file at least 30 calendar days prior to layoff as follows: First, all employees having ratings of improvement needed; second, all employees having ratings of satisfactory; third, all employees having ratings of very good; fourth, all employees having ratings of outstanding.

 - 2. Employees within each classification shall be laid off based upon valid indicators of ability to well serve the City, including but not limited to seniority, safety record on the job, amount of sick leave used during the immediate 2 past fiscal years, etc.

- C. Layoffs and demotions which result from a reduction in the work force shall be made without regard to an employee's race, color, marital status, national origin, religion, sex, age, citizenship, or physical handicap.

- D. An employee who is laid off shall not receive a final pay check until the employee has turned in all City-owned equipment, including City identification card, and has cleared with the City Manager or City Council/Personnel Committee the disposition of any clothing, tools, or other working materials that have been provided by the City, and has completed all exit interviews and forms which may be required by the City. The exit interview and appropriate forms shall be made available to employees prior to the layoff termination date.
- E. Employees shall not be terminated as a result of a layoff before they have been made a reasonable offer of reassignment if such offer is immediately possible.
- F. An employee designated to be laid off may bump into any vacant position available in the same class elsewhere in the City. If no such position exists, the employee may bump into the next lower classification within the same department, provided that the employee has previously held regular status in such classification with the City within the last 5 years, and provided that the employee notifies the City Manager in writing of the employee's intent to exercise the bumping rights at least 10 calendar days prior to the proposed layoff effective date; otherwise, bumping rights shall be waived and barred to the employee. Thereafter, an employee may bump into any position previously held in the City within the last 5 years provided the conditions noted above are met. An employee who is bumped shall be laid off according to the procedures outlined in this section and shall be considered laid off for the same reason as the person bumping and shall in the same manner be eligible to bump to a position in a class within the City in which the employee formerly held a regular position. Employees who have bumped down to a lower class due to a reduction in force shall not be laid off from the lower class until all employees in the lower class, not previously affected by a layoff, have been laid off.
- G. The intent of this paragraph is to avoid use of the layoff procedure by providing for voluntary transfers prior to layoffs. An employee in a classification in which a position has been designated for elimination may request a transfer to a vacant position in the same or a lower classification for which the employee is qualified. Such transfer shall be subject to approval by the City Manager. In cases where the transfer was necessitated by said proposed job elimination, the service time in the position to which the employee has transferred shall be credited to service time in the position from which the employee transferred. The salary step and range assigned to the transferred employee shall be in accordance with this Agreement (see Articles entitled "Transfer" and "Salary Advancement").
- H. The City Manager may approve the appointment of an employee who is to be laid off to an existing vacancy in a lower class for which the employee is qualified without requiring an examination, provided the City Manager or City Council/Personnel Committee so recommends.
- I. The names of regular employees who have been laid off or bumped down due to reduction in the work force shall be placed on an appropriate layoff re-employment list according to date separated or bumped down and shall be eligible for reemployment. The last employee laid off or bumped down shall be the first

employee on the list, with other employees listed in sequential order thereafter. Each employee on the layoff reemployment list shall remain on that list for 1 year, at which time the list expires unless extended by the City Manager. Names of employees not responding to written notification of an opening within 10 working days shall be removed from the reemployment list. The City Manager can extend the active period of the reemployment list or individual employee's eligibility on such list for a 6-month period as determined to be in the best interests of the City.

- J. Notice of recall from layoff shall be by return-receipt-requested mail and shall specify the date for reporting to work, which shall not be more than 21 calendar days from the date the notice is received. Notice shall be deemed to have been received when sent to the last known address on file with the City and attempted delivery or delivery is certified by the Postal Service. Upon receiving notice, the person on layoff shall have 5 calendar days to accept or decline the recall opportunity. An employee who fails to respond within the 5 calendar days, refuses recall, or fails to report on the prescribed date within the 21-calendar-day maximum thereby waives all further right to recall and reinstatement as an employee. Where recall is declined, the City will proceed to the next name on the reemployment list and follow the same notice and response procedure. This process will continue through the list until recall needs are met on the list or the list is exhausted.
- K. A person appointed from a reemployment list must serve a new probationary period if recall from such list occurs more than 90 calendar days after the effective date of layoff. The new probationary period in such circumstances shall be 6 months.
- L. Reemployed employees shall receive the following:
 - 1. Retention of full-time service seniority accrued at the date of layoff.
 - 2. The salary for the classification in effect as of the date of return, at the same step as the date of layoff.
 - 3. The accrual rate of vacation and sick leave in effect for the employee's seniority level and class at the time of rehire.
 - 4. All the benefits or programs in effect at the time of layoff shall be forfeited unless they are still applied to the classification or salary range at the time of rehire or provided to new hires as of that date.
- M. An employee who elects to resign in lieu of layoff, or while laid off, shall forfeit all rights to reemployment and is entitled only to those rights related to severance from City employment.

Section 25.02. Layoff Severance Package

If the City Council and/or City Manager determine it is in the best interest of the City to contract out services and, therefore, it becomes necessary to lay off an employee, the employee laid off will not be entitled to a layoff severance package. If, in the judgment of

the City Council and/or City Manager, it becomes necessary to lay off an employee: (1) due to the lack of work, lack of funds, or other economic reasons; (2) because the necessity for a position no longer exists; and/or (3) as a result of a change in administration that affects implementation of the City's goals and/or policies, or results in an incompatibility of management styles, the employee laid off shall be entitled to a layoff severance package.

- A. An employee laid off will be eligible to exchange 2 hours of accrued sick leave (up to a maximum of 200 hours) for 1 hour of salary (up to a maximum of 100 hours) at the pay rate earned on the last full day of employment (also see paragraph "E" below).
- B. An employee laid off shall also be entitled to receive up to 3 consecutive months of City-paid medical, dental, and optical insurance premiums at the rates paid on the employee's last full day of employment.
- C. A laid off employee, called to return to work within 3 months of the day of layoff, shall be entitled to reinstatement of his/her unused sick leave balance by reimbursing the full amount paid to the employee when such unused sick leave was redeemed.
- D. In the event an employee is laid off or terminated for reasons that are not due to disciplinary action or the employee's fault, failure, or inadequacies as an executive manager, and provided that such layoff or termination is taken at the direction of the City Council and/or City Manager, said employee shall be entitled to layoff severance pay at the following rate: 160 hours times the employee's hourly base salary at the pay rate earned on the last full day of employment; provided, however, the maximum payment under this paragraph shall not exceed \$10,000.

Layoff severance pay shall not be considered as vested earnings and employees shall accrue no other benefit or compensation related to the payment of severance pay.

As a condition of accepting severance pay, a laid off employee shall forfeit any property interest claim for current or future employment with the City (including that described in paragraph "C" of this section). A laid off employee who accepts severance pay shall also forfeit any property interest claim for employment with any third party who has entered into a contract-for-services arrangement with the City.

- E. Any employee with 15 years or more of continuous service who is designated for layoff and otherwise qualifies for retirement from the City may elect a normal service retirement in lieu of layoff. However, an employee electing a normal service retirement shall not be eligible for sick leave redemption as defined in paragraph "A" of this section; instead, such employee shall be reimbursed as specified under *Section 13.01. Sick Leave, C. Redemption of Sick Leave Hours Upon Retirement*, of this Agreement.

ARTICLE 26: DISCIPLINARY ACTION

A. Disciplinary actions are construed to include but are not limited to dismissal, demotion, reduction in salary, suspension, reprimand, or warning. Causes for disciplinary action against any employee may include, but shall not be limited to, the following:

1. Insubordination
2. Dishonesty
3. Being Under the Influence of Intoxicants (Including Alcohol, Narcotics, or Controlled Substances) While on Duty or City Property
4. Unlawful Use of Narcotics or Drugs
5. Bringing Unauthorized Intoxicants (Including Alcohol, Narcotics, or Controlled Substances) into and/or Consuming them in City Facilities, on City Property, and/or While on Duty
6. Discourteous Treatment to the Public and/or Other Employee(s)
7. Misuse or Abuse of Public Property or Equipment
8. Violation of City or Departmental Policies, Ordinances, Rules, and Regulations
9. Neglect of Duty
10. Carelessness or Inattention to Duty
11. Failure to Prepare and/or Maintain Prescribed Records (e.g., Concealing, Misusing, Mutilating, Falsifying, or Removing)
12. Theft of City Property or Property of Others While on Duty or on City Property
13. Incompetence
14. Unexcused or Excessive Absences (Including Tardiness)
15. Conviction of a Felony or of a Misdemeanor Involving Moral Turpitude
16. Falsification of any City Report or Record (Including Application Form)

17. Outside Employment Which is Incompatible With the Employee's Position and Which Has Not Been Specifically Authorized by the City Manager or City Council
 18. Incompatibility with the City Manager's and/or City Council's (1) management styles, (2) implementation of City's goals and/or policies, and/or (3) purpose as a result of a change in City administration.
 19. Other Acts Which are Incompatible With Service to the Public-- Including Any Conduct or Behavior, Either On or Off Duty, Which Causes Discredit or Would Reasonably Tend to Cause Discredit to Fall Upon the City, its Officers, Agents, or Departments
- B. The City Manager, or the City Council in the case of the City Manager, may initiate disciplinary action against any employee supervised. The normal procedure for disciplining an employee shall progress in the following order:
1. **Warning**

Telling an employee that, unless the employee's behavior or productivity improves, disciplinary action will be taken. The warning may be given in a private interview. A record of each official warning will be kept by the City Manager or City Council.
 2. **Reprimand**

A formal record of an interview with an employee who has been informed that more serious disciplinary action will be taken unless there is immediate and permanent improvement in the employee's productivity and/or behavior. A copy of this record of reprimand must be given to the employee, a copy retained by the City Manager, or City Council in the case of the City Manager, and a copy sent to the Administrative Services Department for inclusion in the employee's official personnel file.
 3. **Suspension**

The temporary separation of an employee from City service without pay. The employee must be interviewed by the City Manager, or City Council in the case of the City Manager, and served with a written notice of suspension. A copy of the suspension notice should be retained by City Manager, or City Council in the case of the City Manager, and a copy sent immediately to the Administrative Services Department for inclusion in the employee's official personnel file.

4. **Salary Reduction**

A reduction in pay. The employee must be interviewed by the City Manager, or City Council in the case of the City Manager, and served with a written notice of reduction. A copy of the notice of reduction shall be sent immediately to the Administrative Services Department for inclusion in the employee's official personnel file.

5. **Demotion**

A reduction from one class to another class for which a lower maximum rate of compensation is established. The employee must be interviewed by the City Manager, or City Council in the case of the City Manager, and served with a written notice of demotion. A copy of the notice of demotion shall be sent immediately to the Administrative Services Department for inclusion in the employee's official personnel file.

6. **Dismissal**

The termination of a regular employee from employment. The employee must be interviewed by the City Manager, or City Council in the case of the City Manager, and served with a written notice of dismissal. A copy of the notice of dismissal shall be sent immediately to the Administrative Services Department for inclusion in the employee's official personnel file.

This procedure will afford due-process-of-law protection to the employee. One or several of these steps may be eliminated from the disciplinary process, depending upon circumstances and the severity of the act that warrants discipline.

C. **Notification of Disciplinary Action/Predisciplinary Review (Skelly Rights)**

Discipline may not be implemented prior to fully affording an employee the written notice-of-intent-to-discipline memorandum and opportunity to respond orally or in writing (predisciplinary review) pursuant to *Skelly v. State Personnel Board [1975] 15 Cal.3d 194* (item 2. *Disciplinary Actions Other than Warnings, Reprimands, and Suspensions Without Pay of 40 Hours or Less*, below), except for the following: (1) under extraordinary circumstances requiring immediate removal (e.g., imminent threat to health or safety of the employee, other employees, or the public); and (2) in the case of warnings, reprimands, and suspensions without pay of 40 hours or less (item 1. *Warnings, Reprimands, and Suspensions Without Pay of 40 Hours or Less*, below).

1. **Warnings, Reprimands, and Suspensions Without Pay of 40 Hours or Less**

A regular employee against whom the disciplinary action of oral warning, written reprimand, or suspension without pay of 40 hours or less is instituted shall be given written notice (via a written summary of the oral-warning meeting,

a written reprimand, or a written notice of suspension, whichever applies) from the City Manager (or City Council in the case of the City Manager). These 3 disciplinary actions may be implemented immediately and do not require a 7-day notice-of-intent memorandum. Any documents or materials giving rise to a disciplinary action will be identified in the City Manager's/City Council's written notification of disciplinary action (if voluminous, the documents will be made available for the employee's inspection upon the employee's request or copies thereof will be provided with the notice when there are only a few).

The written summary of the oral-warning meeting, the written reprimand, and the written notice of suspension (whichever applies) will inform the employee of the following items: (1) the ground or grounds for the disciplinary action; (2) the employee's acts or omissions that form the basis for the discipline; and (3) his/her right to respond to the City Manager, City Council, or designated representative either orally (in a disciplinary review meeting) or in writing within 7 calendar days of receiving the City Manager's/City Council's written notice of discipline. Although a disciplinary review meeting before the City Manager, City Council, or designated representative is not designed to be a formal evidentiary hearing, the employee may be represented by legal counsel or other individual of his/her choice at such meeting.

A regular employee against whom the disciplinary action of oral warning, written reprimand, or suspension without pay of 40 hours or less is instituted has the choice of 2 options.

Option I

An employee may elect to waive a disciplinary oral or written review, if desired. If an employee does not respond to the City Manager, City Council, or designated representative either orally (in a disciplinary review meeting) or in writing within 7 calendar days of receiving the City Manager's/City Council's disciplinary action, the disciplinary action taken by the City Manager, City Council, or designated representative becomes final. The employee's rights [as provided in item C. *Notification of Disciplinary Action/Predisciplinary Review (Skelly Rights)*, above] and appeal rights (as provided in item D. *Right of Appeal*, below), are deemed waived and the process is concluded.

Option II

If an employee does respond to the City Manager, City Council, or designated representative either orally (in a disciplinary review meeting) or in writing within 7 calendar days of the City Manager's/City Council's disciplinary action, the City Manager, City Council, or designated representative, as he/she deems appropriate, shall implement, modify, or not implement the disciplinary action based upon his/her review of available pertinent written and oral input and shall notify the employee of said decision.

1. **All Management Employees Except Fire**

An employee who is subject to a disciplinary action may submit an appeal to the City Manager, or City Council in the case of the City Manager, within 10 calendar days following receipt of the City Manager's, City Council's, or designated representative's "Skelly" determination, as provided in item *D.1. Right of Appeal*, below.

Nothing contained herein shall be construed to waive any rights an employee may have pursuant to California Government Code Section 3300 *et seq.* of the Public Safety Officers Procedural Bill of Rights Act (PBOR).

2. **Fire Management Employee**

An employee who is subject to a disciplinary action may submit an appeal to the City Manager's or designated representative's "Skelly" determination, as provided in item *D.2. Right of Appeal*, below.

Nothing contained herein shall be construed to waive any rights an employee may have pursuant to California Government Code Section 3250 *et seq.* of the Firefighters Procedural Bill of Rights Act (FBOR).

2. **Disciplinary Actions Other than Warnings, Reprimands, and Suspensions Without Pay of 40 Hours or Less**

A regular employee against whom disciplinary action (other than warnings, reprimands, or suspensions without pay of 40 hours or less which may be implemented immediately and do not require a 7-day notice-of-intent memorandum) is instituted shall be given a written notice-of-intent memorandum from the City Manager/City Council at least 7 calendar days prior to the effective date of the disciplinary action. Any documents or materials giving rise to a disciplinary action will be identified in the City Manager's/City Council's written notification of disciplinary action (if voluminous, the documents will be made available for the employee's inspection upon the employee's request or copies thereof will be provided with the notice when there are only a few).

The written notice-of-intent-to-discipline memorandum will inform the employee of the the following items: (1) intended disciplinary action; (2) the ground or grounds therefore; (3) the employee's acts or omissions that form the basis for the proposed discipline; and (4) his/her right to respond to the City Manager, City Council, or designated representative either orally (in a predisciplinary review meeting) or in writing prior to the intended effective date of the disciplinary action pursuant to *Skelly v. State Personnel Board [1975] 15 Cal.3d 194*, within 7 calendar days of the City Manager's/City Council's written notice-of-intent-to-discipline memorandum. Although a predisciplinary review meeting

before the City Manager, City Council, or designated representative is not designed to be a formal evidentiary hearing, the employee may be represented by legal counsel or other individual of his/her choice at such meeting.

A regular employee against whom disciplinary action (other than oral warning, written reprimand, or suspension without pay of 40 hours or less) is instituted has the choice of 2 options.

Option I

An employee may elect to waive the above predisciplinary oral or written review, if desired. If an employee does not respond to the City Manager, City Council, or designated representative either orally (in a predisciplinary review meeting) or in writing pursuant to *Skelly v. State Personnel Board [1975] 15 Cal.3d 194*, within 7 calendar days of receiving the City Manager's/City Council's written notice-of-intent-to-discipline memo, the disciplinary action proposed by the City Manager, City Council, or designated representative becomes final. The employee's Skelly rights [as provided in item C. *Notification of Disciplinary Action/Predisciplinary Review (Skelly Rights)*, above] and appeal rights (as provided in item D. *Right of Appeal*, below), are deemed waived and the process is concluded.

Option II

If an employee does respond to the City Manager, City Council, or designated representative either orally (in a predisciplinary review meeting) or in writing pursuant to *Skelly v. State Personnel Board [1975] 15 Cal.3d 194*, within 7 calendar days of the City Manager's/City Council's written notice-of-intent-to-discipline memo, the City Manager, City Council, or designated representative, as he/she deems appropriate, shall implement, modify, or not implement the disciplinary action based upon his/her review of available pertinent written and oral input and shall notify the employee of said decision.

1. All Management Employees Except Fire

An employee who is subject to a disciplinary action may submit an appeal to the City Manager, or City Council in the case of the City Manager, within 10 calendar days following receipt of the City Manager's, City Council's, or designated representative's "Skelly" determination, as provided in item D.1. *Right of Appeal*, below.

Nothing contained herein shall be construed to waive any rights an employee may have pursuant to California Government Code Section 3300 *et seq.* of the Public Safety Officers Procedural Bill of Rights Act (PBOR).

2. **Fire Management Employee**

An employee who is subject to a disciplinary action may submit an appeal to the City Manager's or designated representative's "Skelly" determination, as provided in item *D.2. Right of Appeal*, below.

Nothing contained herein shall be construed to waive any rights an employee may have pursuant to California Government Code Section 3250 *et seq.* of the Firefighters Procedural Bill of Rights Act (FBOR).

D. 1. **Right of Appeal—All Management Employees Except Fire**

Employees shall have the right to appeal a disciplinary action taken under this section, except for warnings. There is no right of appeal for a warning. Appeals shall be processed in accordance with the grievance procedure specified in Article 28 (i.e., *Article 28: Complaint/Grievance Procedures, D.2.a.*), provided, however, that appeals of reprimands may be processed only so far as the City Manager, or City Council in the case of the City Manager (i.e., only through *Article 28: Complaint/Grievance Procedures, D.2.b.*). In the case of suspensions, reductions in pay, demotions, and dismissals, the appeal shall be filed directly at the City Manager, or City Council in the case of the City Manager, level of the grievance procedure (i.e., *Article 28: Complaint/Grievance Procedures, D.2.a.*). Such appeal must be submitted to the City Manager, or City Council in the case of the City Manager, within 10 calendar days of receipt of the disciplinary action.

2. **Right of Appeal—Fire Management Employee**

Employees shall have the right to appeal a disciplinary action taken under this section, except for warnings. There is no right of appeal for a warning. An appeal of a punitive action (i.e., dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment) will be processed in accordance with *Article 27. Appeal of Punitive Action*.

ARTICLE 27: APPEAL OF PUNITIVE ACTION

A. Statement of Purpose

The following appeal procedures are adopted pursuant to California Government Code Section 3254.5 of the Firefighters Procedural Bill of Rights Act (FBOR) and shall apply to any administrative appeal of a punitive action that is required to be afforded to a "firefighter" under the Act. Only "firefighters" (as defined below) are afforded the rights delineated in this article.

B. Definitions

1. The term "firefighter" means a regular employee who is considered a "firefighter" under Government Code Section 3251(a): i.e., "any firefighter employed by a public agency, including, but not limited to, any firefighter who is a paramedic or emergency medical technician, irrespective of rank." The FBOR and, therefore, Article 27 do not apply to an employee "who has not successfully completed the probationary period established by his or her employer as a condition of employment."
2. The term "punitive action" means any action defined by Government Code Section 3251(c): i.e., "any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment."

C. Appeal of Punitive Action Involving Written Reprimand; Transfer for Purposes of Punishment; and Demotion, Suspension, or Reduction of Pay of 56 Shift Hours or 40 Hours or Less

Pursuant to California Government Code Section 11445.2, the following informal hearing procedure shall be utilized for an appeal by a regular employee of a punitive action involving a written reprimand; transfer for purposes of punishment; and demotion, suspension, or reduction of pay of 56 shift hours or 40 hours or less.

1. Notice of Appeal

Within 10 calendar days of receipt by an employee of notification of punitive action from the City Manager (as set forth in Article 26.C.), the employee must notify the City Manager in writing of his/her intent to appeal the punitive action (as set forth in Article 26.D.2.). The notice of appeal shall specify the action being appealed and the substantive and procedural grounds for the appeal.

2. Presiding Officer

In an informal hearing, the City Manager or his/her designee shall be the presiding officer. The City Manager or his/her designee shall conduct the informal hearing in accordance with these procedures (as set forth in

Article 27.C.). The determination of the City Manager or his/her designee shall be final and binding.

3. **Burden of Proof**

The City shall bear the burden of proof at the hearing.

- a. If the action being appealed does not involve allegations of misconduct against the employee, the limited purpose of the hearing shall be to provide him/her the opportunity to establish a record of the circumstances surrounding the action. The City's burden of proof will be satisfied if the City establishes by a preponderance of the evidence that the action was reasonable. The City's burden of proof may be satisfied even though reasonable persons may disagree about the appropriateness of the action.
- b. If the punitive action involves charges of misconduct, the City shall have the burden of proving by a preponderance of the evidence the facts that form the basis for the charge and that the punitive action was reasonable under the circumstances.

4. **Conduct of Hearing**

- a. The formal rules of evidence do not apply, although the presiding officer will have discretion to exclude evidence that is incompetent, irrelevant, or cumulative, or the presentation of which will otherwise consume undue time.
- b. The parties may present opening statements.
- c. The parties may present evidence through documents and testimony.
 1. Witnesses shall testify under oath.
 2. Subpoenas may be issued pursuant to Government Code Section 11450.05 through Section 11450.50.
 3. Unless the punitive action involves a loss of compensation, the parties will not be entitled to confront and cross-examine witnesses.
- d. Following the presentation of evidence, if any, the parties may submit oral and/or written closing arguments for consideration by the presiding officer.

5. **Recording of the Hearing**

If the punitive action involves the loss of compensation, then the hearing shall be stenographically recorded by a certified court reporter. If the punitive action does not involve the loss of compensation, then the hearing may be tape

recorded. The per diem cost of the court reporter shall be equally borne by the parties. The cost to receive a transcript of the hearing shall be borne by the party requesting the transcript.

6. **Representation**

An employee may be represented by a representative or an attorney of his/her choice at all stages of the proceedings. All costs associated with such representation shall be borne by the employee.

7. **Decision**

The decision shall be in writing pursuant to Government Code Section 11425.50. The decision shall be served by first class mail, postage prepaid, upon the employee as well as his/her attorney or representative, shall be accompanied by an affidavit or certificate of mailing, and shall advise the employee that the time within which judicial review (filing a petition for a writ of mandate) of the decision may be sought is governed by Code of Civil Procedure Section 1094.6.

D. **Appeal of a Punitive Action Involving Discharge, Demotion, Suspension, or Reduction of Pay for More than 56 Shift Hours or 40 Hours**

1. In those instances where the procedures in Government Code Section 11400 *et seq.* are inapplicable to an administrative appeal (i.e., a punitive action involving a discharge, demotion, suspension, or reduction of pay for more than 56 shift hours or 40 hours), the administrative appeal shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the California Government Code.

2. **Notice of Discipline as Accusation**

The final notice of discipline that is issued at the conclusion of predisciplinary procedures shall serve as the accusation as described in Government Code Section 11500 *et seq.* The notice shall be prepared and served in conformity with the requirements of Government Code Section 11500 *et seq.*

a. Pursuant to Government Code Section 3254(f), the discipline shall not be effective sooner than 48 hours of issuance of the final notice of discipline.

b. The notice shall be prepared and served in conformity with the requirements of Government Code Section 11500 *et seq.* The notice shall include a post card or other form entitled Notice of Defense which, when signed, will acknowledge service of the accusation and constitute notice of defense under Government Code Section 11506.

c. The accusation shall include or be accompanied by a statement to employee (respondent) stating that the employee may request an appeal

hearing by filing a Notice of Defense form as provided in Government Code Section 11506 within 15 calendar days after service of the accusation and that failure to do so will constitute a waiver of the employee's right to a hearing. The statement to employee shall be prepared in conformity with the requirements of Government Code Section 11505.

- d. A copy of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall be provided to the employee concurrently with the notice of discipline.

3. **Administrative Law Judge**

Pursuant to California Government Code Section 11512, appeals shall be heard by the City Council or an administrative law judge. If the City Council hears the appeal, an administrative law judge will preside over the hearing, rule on the admission and exclusion of evidence, and advise the City Council on matters of law. The City Council shall exercise all other powers relating to the conduct of the hearing.

4. If an appeal hearing is heard by an administrative law judge, he/she shall advise the City Council with an advisory decision. The City Council shall make the final decision.

5. **Time and Place of Hearing**

Pursuant to Government Code Section 11508, a hearing shall be conducted at City Hall or another location designated by the City Council, at a time to be determined by the City Council.

6. **Notice of Hearing**

Notice of the hearing will be provided to the parties pursuant to Government Code Section 11509.

7. The burden of proof and production of evidence shall be borne by the City. The standard of proof shall be by a preponderance of the evidence.
8. Judicial review of the City Council's decision may be had pursuant to Government Code Section 11523 (employee must file a petition for a writ of mandate with the superior court in accordance with the provisions of Code of Civil Procedure Section 1094.5).

ARTICLE 28: COMPLAINT/GRIEVANCE PROCEDURES

A. Statement of Purpose

1. To promote improved employer-employee relationships.
2. To afford employees a systematic means of obtaining expeditious resolution of problems after every reasonable effort has failed to resolve them through discussions.
3. To provide that grievances shall be settled as near as possible to the point of origin.
4. To provide that the grievance procedure shall be as informal as possible.

B. Definitions

1. Days

Calendar days unless otherwise stated.

2. Employee

Any regular, full-time person employed by the City, except those persons elected by popular vote.

3. Representative

A person who at the request of the employee or supervisor is invited to participate in the grievance conferences.

C. Complaint Procedure

1. A complaint is an allegation or charge by an employee that a wrong has been committed.
2. An employee who has a complaint should first try to resolve it through discussion with the City Manager, or City Council in the case of the City Manager, without undue delay, but in no event later than 15 calendar days after the wrong has been committed.

D. Grievance Procedure

1. A grievance is a formal written allegation by an employee that the employee has been adversely affected by a violation of a specific provision(s) of this Agreement. Actions to challenge or change the policies of the City as set forth in the rules and regulations or administrative regulations and procedures, so long as these are consistent with the terms of this Agreement, must be

undertaken under separate legal processes. Other matters for which a specified method of review is provided by law are not within the scope of this procedure.

2. **Formal Steps**

- a. An employee may submit the grievance, in writing, to the City Manager, or City Council in the case of the City Manager, within 10 calendar days after the occurrence of the act or omission giving rise to the grievance. The grievance shall include the specific section(s) of this Agreement alleged to have been violated, a clear, concise statement of the nature of the grievance, and the remedy sought.
- b. The City Manager, or City Council in the case of the City Manager, shall, within 10 calendar days of receipt of the grievance, provide the employee with an opportunity to discuss the grievance. The City Manager, or City Council in the case of the City Manager, shall render a determination within 10 calendar days after receiving the appeal, or if a meeting is held with the grievant, within 10 calendar days after the date of such meeting.

3. **Advisory Arbitration**

- a. If the employee is not satisfied with the determination of the grievance by the City Manager, or City Council in the case of the City Manager, the employee may submit the grievance, excluding warnings and reprimands, to advisory arbitration. If the employee determines to pursue the grievance to advisory arbitration, he/she must so notify the City Manager, or City Council in the case of the City Manager, within 10 calendar days after the date of the decision. In the event that the employee makes a timely request for arbitration, the parties shall request a list of arbitrators from the California State Conciliation Service or any other entity the parties mutually agree upon.
- b. The arbitrator shall be selected by the following procedure: The employee and the City's representative shall select the arbitrator from the list by eliminating names until one name remains. The one remaining name shall be the arbitrator.
- c. Once the arbitrator has been selected, hearings shall commence at the convenience of the arbitrator. The jurisdiction of the arbitrator shall be confined to a determination of the facts and the interpretation of the provisions of this Agreement. The arbitrator will have no power to add to, subtract from, or modify the terms of this Agreement, or the ordinances, written policies, rules, regulations, and/or procedures of the City.
- d. Each party shall bear the full costs for its representation in the arbitration. The cost of the arbitrator shall be divided equally between the City and the employee. If either party requests a transcript of the proceedings, that

party shall bear the full costs for that transcript. If the parties mutually request a transcript, the total cost of the transcript shall be divided equally between the parties.

- e. After the conclusion of the hearing and any post-hearing briefs which may be filed, the arbitrator shall render an advisory decision, in writing, to the parties. If either party is dissatisfied with the arbitrator's decision, the party may appeal the matter to the City Council for its review. Such appeal must be in writing and set forth the basis for the appeal. The appeal must be submitted within 10 calendar days following receipt of the arbitrator's decision.
- f. If the grievance is appealed to the City Council, the City shall provide the City Council with a copy of the record, including any transcript, if any, made of the hearing, for City Council's review. Both parties shall have the right to present written argument in support of their positions. Such written argument shall be presented to the City Council not less than 5 days prior to any scheduled meeting. Both parties shall also have the right to present oral arguments in support of their positions. The lengths of oral arguments shall be determined by the City Council. Procedures for consideration of the appeal shall be determined by the City Council. The City Council shall consider the appeal at a regular, adjourned, or special meeting of the City Council. Following consideration of the appeal, and not later than the second regularly scheduled meeting thereafter, the City Council shall render its decision in writing. The City Council's decision shall be final.

E. General Provisions

- 1. The time limits specified above may be extended to a definite date by mutual agreement of the employee and the reviewer concerned.
- 2. The employee or the reviewer may request the assistance of another person (i.e., a representative of the employee's or reviewer's own choosing) at any level of review. Each party must be so notified if such is the case.
- 3. The employee and the employee's representative may be privileged to use a reasonable amount of work time, as determined by the City Manager, or City Council in the case of the City Manager, in preparing and conferring about the appeal.
- 4. The employee shall have the right to be present at all formal discussions outlined in this procedure.
- 5. Throughout the grievance procedure, the employee shall be given at least 2 working days' notice of any meeting requiring the employee's appearance. This provision may be waived by mutual agreement.

6. All communications, notices, and papers required to be in writing shall be served personally or by United States mail (return receipt requested), as specified in the foregoing procedures.
7. Any grievance should be treated as confidential information by all parties concerned until after the final decision has been rendered.
8. Employees shall be assured freedom from reprisal for using the grievance procedure.
9. In order to strengthen the efficiency and effectiveness of the formal grievance process and to promote the principles of Section A (2), the parties may consolidate or group grievances for the purposes of processing through the formal grievance procedures provided the grievances are reasonably similar with respect to general nature, alleged violations, and alternative remedies. Prior to determining the appropriateness of consolidating grievances, consideration shall be given to the confidentiality of the parties involved in the interest of reasonably protecting information of a personal nature.
10. Failure by the employee to meet any of the timelines specified herein shall constitute a withdrawal of the grievance.

ARTICLE 29: SERVICE AWARD PROGRAM

The City provides a service award program for its employees to honor their continuous service to the City and the community and to recognize their meritorious service. Under this program, employees can receive an award for each 5 years of continuous service after the first 10 years of continuous employment. In order for an employee to be eligible to receive a service award, and except as otherwise established in this section, the employee must be a full-time regular employee with the City on the employee's anniversary date. The anniversary date is generally defined as the anniversary of the employee's date of appointment as a regular, full-time employee with the City.

Effective July 1, 2014, the City shall amend the employee Service Award Program as indicated in the following table. A service award is presented to the employee for each 5 years of completed service to the City after the first 10 years of continuous employment. To be eligible for the specified service award, and except as otherwise provided for in this section, an employee must have completed the specified years of full-time, continuous service with the City that are contiguous to and immediately precede, his/her anniversary date.

<u>Years of Service</u>	<u>Award</u>
10	\$ 500
15	\$ 1,000
20	\$ 1,500
25	\$ 2,000
30	\$ 2,500
35	\$ 2,500
40	\$ 2,500

Eligible employees must have received "meets standards" or higher for all rating categories in each annual performance evaluation issued during the eligibility period. An employee receiving less than "meets standards" ratings shall have his/her eligible anniversary date changed by adding an additional year for each performance evaluation issued during the eligibility period in which 1 or more ratings appear that were below "meets standards." The anniversary date of an employee shall not be changed for failure of the supervisor to issue a performance evaluation for a rating period. In the absence of any one of the evaluations due during the eligibility period, the City Manager or City Council/Personnel Committee shall conclude that "meets standards" would have applied for each rating category.

If in the future the service award amounts increase, the City Manager reserves the right to implement the provisions and intent of this paragraph in full or in part. The service award for eligible management employees shall be prorated based on consecutive years of service to the City and consecutive years of service in the management group; e.g., an employee with 30 consecutive years of service, of which 1 full year is served as a management employee shall have the 30-year service award prorated to \$2,100; with 2 full years as a management employee, the service award would be prorated to \$2,200; with 3 full years as a management employee, the service award would be prorated to \$2,300; with 4 full years as a management employee, the service award would be prorated to \$2,400; and with 5 full years as a management employee, the service award would be equivalent to the maximum level indicated in this section for a management employee based on consecutive years of service to the City. Thereafter, having reached at least 5 full years of service as a management employee, the service award shall be paid at the maximum level indicated in this section for a management employee based on consecutive years of service to the City.

The City shall include an eligible employee's service award on a payroll in the month following his/her anniversary date, or as soon as practical thereafter. 90-8

An employee leaving full-time City employment, for whatever reason, prior to his/her eligible anniversary date shall be ineligible to receive the service award.

An employee leaving full-time City employment prior to his/her eligibility for a service award, for whatever reason, and returning after an absence of 30 days or more, but no more than 365 consecutive days, shall have his/her anniversary date permanently changed to reflect the number of days of absence plus 1 year. A person returning to City employment after an absence of more than 365 consecutive days shall be required to wait a minimum of 10 years from the date of rehire before service award eligibility is reestablished. Except as may otherwise be impacted by performance evaluations and other relevant provisions of this Agreement, the date of rehire shall be established as the base for determining the employee's anniversary date.

An employee placed off work for 30 days or more for disciplinary action (unless such disciplinary action is reversed on appeal) or leave without pay shall, for the purposes of this program, have his/her anniversary date permanently changed to reflect the number of days of absence.

An employee off work for LTD, Labor Code Section 4850 time, or any leave of absence where the employee's performance evaluation is delayed or otherwise cannot be issued pursuant to this Agreement, including *Article 24: Performance Appraisal*, shall, for the purposes of this program, have his/her anniversary date permanently changed to reflect the number of days of absence.

Part-time employees are not eligible for participation in the employee Service Award Program. In the event that a part-time employee becomes full-time, his/her part-time service shall not count towards full-time service under the meaning and terms of the employee Service Award Program.

The City's employee Service Award Program is not a longevity program. It is based on recognition of satisfactory service for the eligibility period. Monetary awards made under this program are subject to taxation and are not PERSable.

ARTICLE 30: WORK DISRUPTION

It is agreed and understood that there will be no strike, work stoppage, slow-down, refusal, or failure to fully and faithfully perform job functions and responsibilities, or other interference with the operations of the City by employees, including compliance with the request of other labor organizations to engage in such activity.

It is agreed and understood that any employee violating this Article may be subject to discipline up to and including termination. It is understood that in the event this Article is violated, that in addition to any other legal remedies available to it, the City shall be entitled, consistent with applicable law, and in addition to any other legal remedies available, to withdraw any rights, privileges, or services provided for in this Agreement or in City rules from any employee, if the employee violates the terms of this Agreement. It is agreed that no lockout of employees shall be instituted by the City during the term of this Agreement, unless such work disruptions occur.

ARTICLE 31: OUTSIDE EMPLOYMENT

A. Policy

A City employee shall not engage in any employment, activity, or enterprise which is inconsistent, incompatible, or in conflict with his/her duties, functions, or responsibilities as a City employee, or contrary to any employee agreement.

B. Authorization

1. Any officer or employee wishing to engage in any occupation or outside activity for compensation shall inform the City Manager or City Council of such desire, providing information as to the time required and the nature of such activity, and such other information as may be required. The City Manager or City Council shall determine whether or not such activity is compatible with the employee's City employment.
2. If the City Manager or City Council determines such activity is compatible, he/she may authorize the activity, in writing, with a copy to the Human Resources Manager.
3. Said authorization shall be valid only for the work and period prescribed herein.

C. Determination of Inconsistent Activities

In making a determination as to the consistency or inconsistency of outside activities, the City Manager or City Council shall consider among other pertinent factors whether the activity:

1. Involves the use (for private gain or advantage) of City time, facilities, equipment, and supplies, or the badge, uniform, prestige, or influence of one's City office or employment; or
2. Involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than the City for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his/her City employment or as a part of his/her duties as a City employee; or
3. Involves the performance of any act in other than his/her capacity as a City officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement by such officer or employee or the department by which he/she is employed; or
4. Involves conditions or factors which would probably directly or indirectly lessen the efficiency of the employee in his/her regular City

employment, or conditions in which there is a substantial danger of injury or illness to the employee.

D. **Revocation**

Permission for outside employment may be for any length of time deemed appropriate by the City Manager or City Council and included in the written authorization (see Section B.2.). All authorizations are subject to revocation by the City Manager or City Council.

E. **Use of City Equipment Prohibited**

1. No City-owned equipment, vehicles, instruments, tools, supplies, machines, or any other item which is the property of the City shall be used by any officer or employee while said officer or employee is engaged in any outside employment or activity, for compensation or otherwise, except upon prior written approval of the City Manager or City Council.
2. No officer or employee shall allow any unauthorized person to rent, borrow, or use any of the items mentioned in E.1. above, except upon prior written approval of the City Manager or City Council.

F. **Violations and Penalties**

Any violation of the provisions of this Article, shall constitute sufficient grounds for disciplinary action, up to and including dismissal.

ARTICLE 32: POLITICAL ACTIVITIES

No employee shall solicit political campaign funds or campaign for or advocate the election or nonelection of any political cause, measure, or candidate for national, state, county, or local office while on City time, during working hours, or in a City uniform whether on or off duty. Employees shall not disseminate political material of any kind while on duty, during work hours, or in a City uniform on or off duty.

ARTICLE 33: SEEKING NEW EMPLOYMENT

The City encourages individual initiative and does not wish to stand in the way of an employee applying for a position of advancement elsewhere. By applying for such a position, an employee in no way impairs job security in the City. However, job-hunting activities shall not interfere with an individual's City duties; time off for interviews will be charged against the individual. The City requires that department heads, if among the final contenders for a position, advise the City Manager of this fact on a confidential basis. At this level, the City requires a minimum of 4 weeks' notice of resignation, in order to permit the recruitment of a replacement.

ARTICLE 34: HARASSMENT IN EMPLOYMENT POLICY

A. Policy Statement

All employees are to be treated with respect and dignity. Harassment of an applicant or employee by a supervisor, management employee, or co-worker on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, pregnancy, sexual orientation, sex, or age will not be tolerated.

This policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leaves of absence, compensation, and training.

Disciplinary action up to and including termination will be instituted for behavior described in the following definition of harassment.

B. Definitions

Harassment includes, but is not limited to:

1. Verbal Harassment

For example, epithets, or derogatory comments or slurs on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, pregnancy, sexual orientation, sex, or age. This includes inappropriate sex-oriented comments on one's appearance, including dress or physical features, or race-oriented stories and jokes.

2. Physical Harassment

For example, assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement when directed at an individual on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, pregnancy, sexual orientation, sex, or age. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied job threats or promises in return for submission to sexual acts.

3. Visual Forms of Harassment

For example, derogatory posters, cartoons, or drawings related to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, pregnancy, sexual orientation, sex, or age.

4. **Sexual Harassment**

Unwanted sexual advances, requests for sexual favors, and other acts of a sexual nature where the following exist:

- a. Submission is made an explicit or implicit term or condition of employment;
- b. The submission to or rejection of the conduct is used as the basis for employment decision(s); or
- c. When the conduct is intended to or actually does, unreasonably interfere with an individual's work performance, or creates an intimidating, hostile, or offensive working environment.

Even though one incident of any of the conduct described above may not necessarily constitute a violation of state or federal law, one incident alone may constitute a violation of this policy.

C. **Complaint Procedures**

1. An employee who believes he/she has been harassed may make a complaint orally or in writing with any of the following:
 - a. Immediate supervisor;
 - b. Department head;
 - c. Human Resources Manager; or
 - d. City Manager.
2. Any supervisor or department head who receives a harassment complaint, observes, or otherwise learns of harassing behavior in the workplace should notify the Human Resources Manager promptly.
3. Upon receiving notification of a harassment complaint, the Human Resources Manager or designee will notify the complaining employee of his/her rights and the procedures available to redress any violation of the employee's rights to be free from harassment. The Human Resources Manager or designee will conduct an investigation which shall include the following:
 - a. Interviews with the complainant, the accused harasser, and any other persons the investigator has reason to believe have relevant knowledge concerning the complaint.
 - b. Review of the factual information gathered during the investigation to determine whether the alleged conduct

occurred and whether such conduct constitutes harassment under this policy based on the totality of the circumstances, including the nature of the verbal, physical, visual, or sexual conduct, and the context in which the alleged incident(s) occurred.

- c. Preparation of a written report setting forth the results of the investigation and the determination of whether or not harassment occurred. The results shall be reported to the appropriate persons, including the complainant, the alleged harasser, and the City Manager or City Council/Personnel Committee. If discipline is imposed, the type of discipline will not be communicated to the complainant.
- d. The City will make its best effort to protect the privacy of all individuals who are interviewed or consulted during the investigation process.

4. **External Complaint Procedure**

If an employee believes that he/she has been harassed as defined above, the employee may pursue a claim against the City with the Department of Fair Employment and Housing (DFEH) and the Fair Employment and Housing Commission (FEHC). The DFEH is the state administrative agency with jurisdiction to investigate and prosecute complaints of harassment. The FEHC is the state administrative agency with jurisdiction to adjudicate claims of harassment. The complaint procedures for these agencies are as follow:

- a. The employee must contact one of several DFEH district offices in person, by telephone, or in writing to schedule an intake interview.
- b. A DFEH consultant will conduct the interview and decide whether to accept the complaint. If the DFEH accepts the complaint he/she will draft the complaint and send it to the employee for verification and signature.
- c. The DFEH will then file the complaint and serve it on the employer. The complaint must be filed within 1 year of the alleged act of harassment. The DFEH will then request a response to the employee's allegations and answers to specific questions from the employer.
- d. The DFEH will then decide whether to close the case, attempt settlement, or proceed with investigating the allegations.
- e. If the DFEH investigates and determines that the claim has no merit, it will close the case and issue a right-to-sue letter to the employee.

- f. If the DFEH finds that there is merit and no settlement can be reached, it will issue an accusation which initiates the administrative proceeding before the Fair Employment and Housing Commission (FEHC).
- g. At any time after the complaint is filed, the employee may request a right-to-sue letter.

5. **Legal Remedies Available Through the FEHC**

If the FEHC finds that the employer engaged in unlawful harassment under the FEHA, it must state its findings of fact and determination. The FEHC must also issue and serve a cease and desist order on the employer.

The FEHC is authorized to provide the following types of relief to an aggrieved employee:

- a. The hiring, reinstatement, or upgrading of employees, with or without back pay.
- b. The payment of actual damages, as may be available in FEHA civil actions.
- c. Affirmative or prospective relief to prevent the recurrence of the harassment.
- d. A report to the FEHC regarding the manner of compliance with the FEHC's order.
- e. Administrative fine.

6. **How to Contact the DFEH**

An employee may contact the DFEH by telephone at 1-800-884-1684.

D. **Remedial Action**

- 1. If harassment occurred, prompt and effective remedial action shall be taken against the harasser. The action taken shall be commensurate with the severity of the offense.
- 2. Reasonable steps shall be taken to protect the complainant from further harassment.
- 3. Reasonable steps shall be taken to protect the complainant from retaliation as a result of communicating the complaint.
- 4. If appropriate, action shall be taken to remedy the victim's loss, if any, which resulted from the harassment.

E. **Other Provisions**

1. **Dissemination of Policy**

All supervisors and Human Resources Manager will take such steps as are necessary to make the policy against harassment and the procedures available for remedying any harassment known to all employees and regularly communicated to them.

2. If an employee who feels that he or she has been the victim of harassment is not satisfied with the results of the procedure outlined in subsections C and D above, he or she can institute the formal grievance procedure. The time limits specified in the formal grievance procedure will begin as of the date of notification to the complaining employee at the conclusion of the investigation or of final action taken.

3. The City's designated Equal Employment Opportunities/Affirmative Action Officer is City Manager Starr. If there are any questions regarding this policy, please contact City Manager Starr (909)/625-9405) or Human Resources Manager Charleston (909/625-9406).

ARTICLE 35: CREDIT UNION

Membership in a City-approved credit union is available to all employees. Repayment of loans or the establishment of a savings plan can be accomplished through automatic payroll deductions, with payment to the credit union. Additional information concerning the credit union and payroll deductions may be obtained from the Administrative Services Department.

ARTICLE 36: NEPOTISM, MARITAL STATUS, AND DATING POLICY

- A. No employee, prospective employee, or applicant shall be improperly denied employment or benefits of employment on the basis of marital status or relationship to another employee or official of the City. For the purpose of this Article, marital status is defined as an individual's state of marriage, non-marriage, divorce or dissolution, separation, widowhood, annulment, or other marital state. For purposes of this Article, relationship shall refer to marital status, dating situations, and relatives. For the purpose of this Article, a relative shall be defined as a member of the immediate family. Immediate family is defined to mean spouse, children, parents, brothers, sisters, grandparents, grandchildren of the employee, and the corresponding relationships by affinity.
- B. Notwithstanding the above provisions, the City retains the right:
1. To refuse to place one party to a relationship as defined in item "A" above under the direct or indirect supervision of the other party to a relationship. It is the Police Department's policy to refuse to place one party to a relationship under the "direct" supervision of the other party to a relationship.
 2. To refuse to place both parties to a relationship as defined in item "A" above in the same department, division, or facility where there is a potential for creating adverse impact on supervision, safety, security, or morale, or involves potential conflicts of interest.
 3. To disqualify one party to a relationship as defined in item "A" above for a position privy to confidential personnel matters who has a relative already in the City's employment when the relationship may compromise confidential information.
- C. For purposes of this Article, "relationship" shall refer to both marital status and relative, as defined in item "A" above.

ARTICLE 37: DOMESTIC PARTNER

Pursuant to federal and/or state law, and where necessary to implement the rights of domestic partners under such laws, gender-specific terms referring to spouses, children, and/or family members of married members as referenced in memorandums of understanding, employee agreements, policies, provisions, and procedures of the City related to City employees and their family members shall be construed to include domestic partners.

To establish a domestic partnership, the following criteria must be met:

1. Both persons share a common residence.
2. Both persons agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership.
3. Neither person is married or a member of another domestic partnership.
4. The two persons are not related by blood in a way that would prevent them from being married to each other in this state.
5. Both persons are at least 18 years of age.
6. Either of the following:
 - a. Both persons are members of the same sex.
 - b. One or both of the persons meet the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for aged individuals. Notwithstanding any other provision of this section, persons of opposite sexes may not constitute a domestic partnership unless one or both of the persons are over the age of 62.
7. Both persons are capable of consenting to the domestic partnership.
8. Neither person has previously filed a *Declaration of Domestic Partnership* with the Secretary of State pursuant to this section that has not been terminated under Section 299.
9. Both file a *Declaration of Domestic Partnership* with the Secretary of State pursuant to this section.

The City is prohibited from requiring proof of *Declaration of Domestic Partnership* for benefits eligibility if proof of *Marriage Certificate/License* for benefits eligibility is not required.

ARTICLE 38: LACTATION ACCOMMODATION

When a female employee returns from pregnancy leave, the City will provide a reasonable amount of break time to accommodate the employee desiring to express breast milk for her infant child. Any time required to express breast milk beyond the employee's normal break time is unpaid; the City may, with prior approval from employee's supervisor, allow the use of paid leave time to allow the female employee additional time beyond her normal break time to express milk. The City will also make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private (also see *Section 13.04. Pregnancy Leave*).

ARTICLE 39: ORGANIZATIONAL FRAMEWORK

Section 39.01. Personnel System

The City Council has, by Ordinance No. 114, delegated responsibility to the City Manager for the administration of the personnel system of the City. In accordance with this responsibility, the City Manager is responsible for the implementation and maintenance of the City's policies. The City Manager may, however, delegate responsibility for the day-to-day administration of the personnel system to the Director of Administrative Services and/or City department heads.

Section 39.02. Personnel Committee

The Personnel Committee shall include two members of the City Council and the City Manager. By Council policy, this Committee shall review actions of the City Manager and department heads in administering the City's personnel system—such as hiring, promotions, merit increases, layoffs, etc. In the day-to-day management of the personnel system, however, the decision of the City Manager is final until such decision has been approved by the Personnel Committee or successfully appealed through the City's grievance procedure.

Section 39.03. Employer-Employee Relations

Employer-employee relations in the City shall be governed by Chapter 10, Division 4, Title 1, of the Government Code of the State of California (Myers, Milias, Brown Act), as enacted by Resolution No. 761 and the Rules and Regulations to implement Employer-Employee Relations Resolution No. 761, adopted by the City Council of the City on November 3, 1969. Under the terms of this resolution, employees shall have the right to form, join, and participate in the activities of employee organizations, with the right of representation on all matters of employer-employee relations—including, but not limited to, wages, hours, and other terms and conditions of employment. Employees shall also have the right to refuse to join or participate in the activities of employee organizations.

The City Manager or designated representative(s), shall represent the City and meet and confer, in good faith, with recognized employee organizations, and meet and discuss with department heads regarding matters within the scope of representation. These and all other matters of employer-employee relations that fall within the scope of Resolution No. 761 and employee representation shall be governed by the procedures set forth in this resolution.

Section 39.04. Individual Representation

In accordance with Montclair Resolution No. 761, any employee who wishes may be represented individually for purposes of discussing wages, hours, and other terms and conditions of employment. So that this might be done in an orderly and logical manner, the procedure set forth below is that which should be followed by those persons who wish to represent themselves.

1. Any employee wishing to be represented individually (as opposed to being represented by an employee organization), must indicate a desire to do so in writing and forward the notice to the City Manager or designated representative.
2. Any employee who indicates a desire to be represented individually in connection with any matter relating to wages, hours, or other terms and conditions of employment must submit the items for discussion in writing to the City Manager or City Council/Personnel Committee through the appropriate channels within the City.
3. The City Manager or City Council will review the requests and discuss them with the employee.
4. If the employee and City Manager or City Council are in agreement, the City Manager or City Council may then represent the employee's interest in discussing the proposals and requests.
5. The City Manager or City Council, within a reasonable amount of time, will make a determination regarding the employee's request.
6. All proposals and/or requests from employees who wish to meet and confer individually must be received by the City Manager or City Council prior to April 15 of each year to be considered for implementation in the next fiscal year.

Section 39.05. Affirmative Action/Equal Opportunity Policy

A. Council Policy Statement

The City Council is committed to the concept of equal opportunity employment as a necessary element of the City's merit system principle. This commitment will be supported by positive efforts to ensure equal employment opportunity for protected classes in both recurring City employment and in promotional opportunities at all job levels. These objectives are realized by the implementation of an affirmative action/equal opportunity program.

B. Implementation of Plan

The plan is implemented as follows:

In accordance with the City's personnel policy, the City Manager has delegated the responsibility for the day-to-day administration of the

personnel system to the Director of Administrative Services. Therefore, implementation responsibility of the City's affirmative action/equal opportunity program is hereby assigned to the Director of Administrative Services. It shall be the responsibility of the Director of Administrative Services to assume the duties of Affirmative Action Officer for the City.

The Affirmative Action Officer shall provide for effective communication and implementation of the requirements of this plan with department heads. The plan will be implemented consistent with federal requirements and guidelines. It shall be the Affirmative Action Officer's responsibility to monitor the implementation and progress of this plan and report compliance, success, or deficiencies to the City Manager on an annual basis.

The affirmative action/equal opportunity program does not mean the City will accept employees who do not perform satisfactorily. It will be expected that any new employees hired will progress to full qualifications within the probationary period. If this is not the case, the employees will be subject to discipline.

Selection, employment, and promotion in the City will continue to be based upon such factors as individual performance, ability, aptitude for the position applied for, experience, training, education, character, personality, and physical fitness. The affirmative action/equal opportunity program clearly manifests the intent of this City as an employer to obey all federal employment laws, and guarantee an equal opportunity for employment to all people.

The entire Affirmative Action Policy, adopted by the City Council on June 2, 1975, is on file in the Administrative Services Department.

Section 39.06. Disabled Nondiscrimination Policy

- A. It is the policy of the City that no qualified handicapped/disabled individual shall, solely by reason of his/her handicap/disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination in any program, activity, or employment opportunity offered by the City.

A "qualified handicapped individual" is defined as a handicapped/disabled person who, with or without a reasonable accommodation, can perform the essential functions of the job in question.

An individual with a disability is any person who has a physical or mental impairment that substantially limits the ability to perform a major life activity; for example, to care for oneself, perform manual tasks, walk, see, hear, speak, breathe, learn, or work; has a record of such an impairment; or is regarded as having such an impairment.

The judgment of whether any given person is "substantially limited" depends upon the nature and severity of that person's disabling condition. Temporary disabilities

(e.g., a broken limb or temporary illness) are not "substantially limiting" within the concept of a disabling condition.

Physical or mental impairments that fall within discrimination prohibitions include:

1. Any physiological disorder or condition; cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic, and lymphatic; skin; and endocrine; or
 2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; or
 3. Such diseases and conditions as orthopedic, visual, speech, hearing, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, emotional illness, drug addiction, and alcoholism.
- B. The City shall make all decisions concerning employment in a manner which ensures that discrimination on the basis of handicap/disability status does not occur or limit, segregate, and classify applicants or employees in any way that adversely affects their opportunities or status because of handicap/disability. Specifically, the City does not discriminate against qualified handicapped/disabled individuals in the following activities:
1. Recruiting, advertising, and the processing of applications for employment.
 2. Hiring, upgrading, promoting, award of tenure, demoting, transfer, layoff, terminating, right of return from layoff, and rehiring.
 3. Setting rates of pay or any other forms of compensation, and changes in compensation.
 4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
 5. Granting leaves of absence, sick leave, or any other leave.
 6. Providing fringe benefits available by virtue of employment.
 7. Selection and financial support for training, meetings, conferences, and other related activities.
 8. Employer-sponsored activities.

9. Any other term or condition of employment.
- C. The City shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped applicant or employee, unless the accommodation would impose an undue financial hardship, or would impose severe restrictions on affected programs, activities, or operations. Reasonable accommodations may include but are not limited to the following:
1. Making facilities used by employees readily accessible to and usable by handicapped/disabled persons; and
 2. Job restructuring, part-time or modified-work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices (e.g., telecommunication devices), or the provision of readers or qualified sign language interpreters. Accommodations shall be made in consultation with the handicapped/disabled individual.

The determination of whether an accommodation would impose an undue hardship on the operation of City programs or activities shall be made on a case-by-case basis, upon consideration of the following factors:

1. The overall size of the City government with respect to number of employees, number and type of facilities, and size of budget;
 2. The type, composition, and structure of the specific program or activity and the structure of the work force; and
 3. The nature and cost of the accommodation needed.
- D. The City does not use any employment test, selection criterion, or policy that screens out, or tends to screen out from consideration for employment, a handicapped/disabled individual, unless:
1. The test, selection criterion, or policy is shown to be directly related to the essential functions of the position in question; or
 2. Alternative job-related tests, criteria, or policies that do not screen out, or tend to screen out, handicapped/disabled individuals are shown not to be available.

The City shall select and administer tests using procedures that accommodate the special problems of disabled individuals (e.g., auxiliary aids such as readers or qualified sign language interpreters). The test results shall not reflect the applicant's or employee's impaired sensory, manual, or speaking skills, except where such skills are essential requirements of the job.

- E. The City shall not conduct a preemployment medical examination or make a preemployment inquiry of an applicant as to whether the applicant is a handicapped/disabled individual or as to the nature or the severity of the handicap/disability. The City may, however, make a preemployment inquiry into an applicant's ability to perform the essential functions of the job.

The City may condition an offer of employment on the results of a medical examination conducted prior to the prospective employee's entrance on duty, provided that:

1. All entering employees are subjected to such an examination; and
2. The results of the examination are not used as a means of discrimination against a qualified individual with a handicap.

In addition to the above policy, the City will comply with the Americans with Disabilities Act (ADA) and all other federal and state requirements.

Section 39.07. Communicable Disease Policy

- A. The City does not discriminate in its employment policies on the basis of exposure to contagious disease or infection, or the physical conditions produced by such disease or infection. The City is committed to a course of action which will prevent the spread of infectious diseases, including the Acquired Immune Deficiency Syndrome (AIDS virus), and reduce fears and dispel myths about the disease of AIDS. The following guidelines are intended by the City to balance the interests of persons suffering from such diseases with the interests of the City in protecting its employees from any dangers associated with those diseases.
- B. Employees are encouraged to inform the City of any contagious disease or infection which he/she considers to be a handicap or is legally a handicap as soon as an individual learns of his/her condition. No employee who is otherwise qualified to work may be discriminated against because of a physical handicap. Legal protections established for persons with disabilities shall extend to employees significantly impaired by contagious diseases or infections. Employees shall not be required to undergo testing for AIDS, ARC, or the HTLV-III antibody.
- C. An employee who has a contagious disease or infection shall be provided with continued employment in his/her present capacity unless the following factors demonstrate that, because of such disease or infection, the employee would cause a direct threat to the health or safety of other individuals or is unable to perform the duties of the job:
1. The nature of the risk; e.g., how the disease is transmitted.
 2. The duration of the risk; e.g., how long the carrier is infectious.

3. The severity of the risk; e.g., the potential degree of harm to third parties.
 4. The probability the disease will be transmitted.
 5. The physical condition of the employee; e.g., diagnosis, treatment, and prognosis of the condition.
 6. The job requirements and the expected type of interaction with others in the work environment.
- D. The condition and job assignment of an employee who has a contagious disease or infection shall be reevaluated on a regular basis. The City Manager, or designee, shall monitor changes in the state of medical knowledge about the contagious disease or infection, or changes in the employee's medical treatment or health status which might affect his/her assignment.
- E. The City shall provide reasonable accommodation to employees impaired by a contagious disease or infection, in a manner consistent with that provided for other medical problems. Employees may be reassigned or granted disability leave if they are unable to perform job responsibilities because of a contagious disease or infection, or if a contagious disease or infection endangers an employee's health or the health of others.
- F. If an employee has concerns about the presence of a person with the AIDS virus, or any other infectious disease, that individual should be directed to a knowledgeable counselor or medical health practitioner in the City's Employee Assistance Program (EAP) to help allay fears.

G. **Confidentiality**

Although medical personnel are required to report known AIDS cases to the local county health department within 24 hours, confidentiality of all medical conditions shall be maintained. There is no medical necessity to advise co-workers of the immediate presence of persons who have AIDS, AIDS Related Complex, or a positive HTLV-III antibody test. Disclosure of the result of a blood test to detect AIDS, without written authorization from the employee tested, can result in substantial monetary penalties under state law.

The City Manager shall ensure that all employees' rights to confidentiality are strictly observed. Medical records/information shall be disclosed only to the extent required or permitted by law. Only those persons with a clear need to know shall be informed of an employee's health condition.

Section 39.08. Bloodborne Pathogens Policy

A. Purpose

It is the intent and purpose of this policy to minimize or eliminate employee exposure to, and/or spreading of, communicable diseases.

B. Policy

1. The City shall accept the responsibility for the establishment of measures to protect "at risk" personnel (employees) from exposure to blood and other potentially infectious body fluids.
2. To assist personnel in making decisions concerning the use of protective equipment.
3. To protect the privacy rights of all personnel who in the line of duty may be exposed to or contract a communicable disease.
4. Each Department within the City with "at risk" personnel (employees) shall establish and implement procedures that are ". . . at least as effective" as the Department of Labor's Occupational Exposure to Bloodborne Pathogens. ("29 CRF Part 1910.1030" Occupational Safety and Health Administration.)

Section 39.09. Drug/Alcohol Abuse Policy

A. Purpose

It is the intent and purpose of this policy to eliminate substance abuse and its effects in the workplace; to protect the safety of employees, citizens, and property; to promote efficiency and productivity among City employees; and to prevent loss of public confidence and damage to the City's reputation.

The City's primary concern is to ensure employees are in a condition to perform their duties safely and efficiently. The City has no intention of unnecessarily intruding into the private lives of its employees, unless involvement with drugs and alcohol off the job affects job performance and employee safety. The presence and influence of drugs and alcohol on employees during working hours will not be tolerated.

Employees who think they may have an alcohol or drug usage problem are encouraged to voluntarily seek confidential assistance from the City's Employee Assistance Program (EAP) or other available sources. While the City will be supportive of those who seek help voluntarily, the City will be equally firm in identifying and disciplining those who continue to be substance abusers and do not seek help.

B. Policy

1. It is the City's policy that employees shall not report to work intoxicated or under the influence of alcohol or narcotics, prescribed or over-the-counter medications in excess of prescribed dosage, or other nonprescribed hallucinogenic substances, or become so intoxicated or influenced while on duty. In addition, employees shall not sell or provide any drugs or alcohol, while on duty or on City property, unless directly related to a legitimate criminal investigation or authorized City function.

While use of prescribed medications and drugs is not per se a violation of this policy, failure by the employee to notify his/her supervisor, before beginning work, when taking medications or drugs which could foreseeably interfere with the safe and effective performance of duties or operation of City equipment may result in discipline, up to and including termination. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from a qualified physician may be required.

2. The City reserves the right to search, without employee consent, all areas and property in which the City maintains control or joint control with the employee. In areas not jointly or fully controlled by the City, City may notify the appropriate law enforcement agency consistent with Government Code Section 3309. All searches shall be conducted in the presence of at least 1 representative of the City.
3. The City is committed to providing reasonable accommodation to employees whose drug or alcohol problem classifies them as handicapped under federal or state law.
4. An EAP has been established to assist those employees who voluntarily seek help for alcohol or drug problems. Employees should contact their supervisors, or an EAP counselor directly, for additional information.
5. Employees violating this policy shall be subject to disciplinary action, up to and including termination.
6. For purposes of this policy, "subject to duty" means "specifically assigned to an on-call status (e.g., standby, etc.)."

C. Application

This policy applies to all employees of the City. It applies at all times when employees are on City property, and when employees are off City premises but on duty and engaged in any activity where the employee is representing the City. Alcohol and all substances, drugs, or medications (legal or illegal) that could impair an employee's ability to effectively and safely perform the functions of the job, or increase the potential for accidents, absenteeism, substandard performance, and poor employee morale, are covered by this policy. In addition, certain employees

are covered by the Department of Transportation Drug Testing Rules. These rules and the specification of employees covered by these rules are set forth in a separate City Policy entitled "Drug and Alcohol Policy Pursuant to the Department of Transportation Regulations."

D. Employee Responsibilities

An employee shall:

1. Not report to work or be subject to duty while his/her ability to perform job duties is impaired due to on- or off-duty alcohol or drug use;
2. Not possess or use alcohol or impairing drugs (illegal drugs and prescription drugs without a prescription) during working hours or while on City property, unless authorized by the City Council, City Manager, or possessed/consumed as part of an official City function;
3. Not directly, or through a third party, sell or provide drugs or alcohol to any person or to any other employee while on duty;
4. Submit immediately to an alcohol/drug test if requested by his/her supervisor, when there is reasonable suspicion that he/she is under the influence of drugs or alcohol. Failure to submit to an alcohol/drug test, when so ordered by a manager or a supervisor, will be considered insubordination and grounds for termination;
5. Notify his/her supervisor, before beginning work, when taking any medications or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of City equipment; and
6. Provide, within 24 hours of request, evidence of a current valid prescription for any drug or medication identified when a drug/alcohol test is positive. The prescription must be in the employee's name.
7. Nothing herein shall be construed to waive any rights provided by law.

E. Management Responsibilities and Guidelines

1. Managers and supervisors are responsible for reasonable and consistent enforcement of this policy.
2. Managers and supervisors shall receive training as to how to effectively implement the provisions of this policy.
3. Managers and supervisors have the authority to order an employee to submit to a drug/alcohol test when there is a reasonable suspicion that an employee

is intoxicated or under the influence of drugs or alcohol while on the job or subject to being called. If reasonable suspicion exists, the manager or supervisor shall have the authority to order an employee, accompanied by a supervisor, to report immediately to a City-designated medical facility to be examined by a physician and to take an appropriate test for drug and/or alcohol use. The examination shall be conducted while the employee is "on the clock." The City shall bear the expense of the examination, and shall provide transportation to and from the medical facility and the employee's work station.

"Reasonable suspicion" is a belief, based on objective facts, sufficient to lead a reasonable prudent supervisor to suspect that an employee is under the influence of drugs or alcohol and the employee's ability to perform the functions of the job safely is impaired or reduced. Examples of factors which may constitute reasonable suspicion include, but are not limited to:

- a. Slurred speech;
 - b. Alcohol odor on breath;
 - c. Unsteady walking and movement;
 - d. An accident on or involving City property, when it appears the employee is at fault;
 - e. A physical or a verbal altercation initiated by the employee;
 - f. Unusual behavior for a particular employee;
 - g. Possession of alcohol or drugs; and/or
 - h. Information obtained from a reliable person with personal knowledge.
4. Any manager or supervisor requesting an employee to submit to a drug/alcohol test shall document, in writing, the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.
 5. Any manager or supervisor who encounters an employee who refuses an order to submit to a drug/alcohol test upon request shall remind the employee of the requirements and disciplinary consequences of this policy. If the employee continues to refuse an order to submit to a drug/alcohol test, the manager or supervisor shall prevent the employee from engaging in further work until he/she can be safely transported from the work site.
 6. Managers and supervisors shall not physically search employees and/or personal possessions without an employee's consent. All searches shall be conducted in the presence of the employee and at least two representatives for the City.

7. Managers and supervisors shall notify their department head, or designee, when they have a reasonable suspicion that an employee may have alcohol or illegal drugs in his/her possession, or in an area not jointly or fully controlled by the City, when an employee refuses to consent to a search. If the department head, or designee, concurs that there is reasonable suspicion of illegal drug possession, the department head shall notify the appropriate law enforcement agency.

F. Physical Examination and Procedure

The drug and/or alcohol analysis may test for any substance which could impair an employee's ability to effectively and safely perform the functions of his/her job, including, but not limited to, prescription medications, heroin, cocaine, morphine and its derivatives, PCP, methadone, barbiturates, amphetamines, and marijuana or other cannabinoids.

G. Results of Drug and/or Alcohol Test

1. If the drug/alcohol test is positive, the employee must provide, within 24 hours of receiving the test results, a valid current prescription for the identified drug(s). Prescriptions must be in the employee's name. If the employee does not have a valid prescription, or if the prescription is not in the employee's name, and if the employee has not previously notified his/her supervisor that he/she was/is using the prescription drug(s), a positive result from a drug and/or alcohol test may result in disciplinary action, up to and including discharge from City employment. The cut-off levels for initial screening tests and confirmation tests shall conform with standards established by Department of Transportation (DOT) drug and alcohol testing regulations, Subpart F, Fees, and other applicable sections and parts. By their reference, such standards shall be incorporated herein.
2. If any alcohol or drug test is positive, the City shall conduct an investigation to gather all the facts. The decision to discipline or discharge an employee will be carried out in conformance with the City's discipline procedures.
3. If the drug/alcohol test is positive, an employee may request an additional alcohol or drug test, through another source, at his/her own expense.

H. Confidentiality

Laboratory reports and test results shall be included in a separate confidential medical folder contained within the employee's personnel file. The reports and/or test results may be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without employee consent, may also occur when:

1. The information is compelled by law or by judicial or administrative process;

2. The information has been placed at issue in a formal dispute between the City and the employee;
3. The information is to be used in administering an employee benefit plan; or
4. The information is needed by medical personnel for the diagnosis or treatment of an employee who is unable to authorize disclosure.

Section 39.10. Civil Litigation Notification

If the City is notified by an employee that he/she has been named as a defendant in a civil action for conduct occurring within the course and scope of employment, the City shall, in turn, notify the employee of any rights he/she may have regarding representation and/or indemnification by the City. The notification shall include the mechanism by which an employee may request representation/indemnification and the time limits, if any, for such request.

ARTICLE 40: EFFECT OF AGREEMENT

A. Amendments

The provisions of this Agreement can be amended, supplemented, rescinded, or otherwise altered only by mutual agreement in writing, hereafter signed by the City Council and the designated representative of the City and the executive management employees.

- B. It is understood and agreed that the specific provisions contained in this Agreement shall prevail over employer practices and procedures, prior written agreements, and over state laws to the extent permitted by state law, and that in the absence of specific provisions in this Agreement such practices and procedures are discretionary.
- C. It is further understood and agreed that this Agreement shall be applied in conjunction with any individual employee agreement/contract entered into between the City and the City Manager.
- D. This Agreement constitutes the total and entire agreement between the parties and no verbal statements shall supersede any of its provisions.

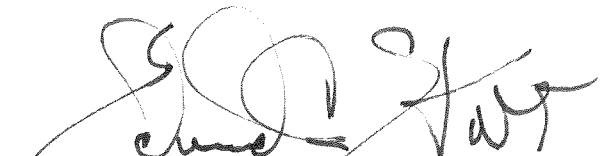
ARTICLE 41: TERM

Except as otherwise indicated herein, this Agreement shall be effective upon date of ratification by the City Council for the period July 1, 2021, through June 30, 2022. After June 30, 2022, the existing terms, conditions, and provisions shall remain in effect, and City and employees agree to abide by those terms, conditions, and provisions unless otherwise altered by the meet and confer process, or unless otherwise indicated in this Agreement.

IN WITNESS THEREOF, this Agreement is entered into this day, pursuant to the provisions of Government Code Section 3500, *et seq.*, for presentation to the City Council of the City of Montclair.

APPROVED

Dated: 08/16/2021



Edward C. Starr, City Manager
(Designated Representative for the
City's Unrepresented Managers)

Dated: _____



Bill Ruh, Mayor Pro Tem
Personnel Committee

Dated: 8/16/21



Tenice Johnson, Council Member
Personnel Committee