



## Americans with Disabilities Act and Reasonable Accommodation

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### **Purpose:**

To comply with the Americans with Disabilities Act (“ADA”), as amended by the ADA Amendments Act of 2008 (“ADAAA”), 42 U.S.C. §§ 12101 et seq., the California Fair Employment and Housing Act (“FEHA”), Cal. Gov’t Code §§ 12900 et seq., and any other applicable local, state and federal laws and regulations prohibiting employment discrimination against individuals with disabilities.

### **Applicability:**

This policy shall apply to all City departments, boards, commissions, committees, task forces, and other duly constituted bodies and offices operated by the City of Petaluma.

### **Policy:**

It is the policy of the City of Petaluma to prohibit disability discrimination in all employment practices, including job application procedures, hiring, advancement/promotion, discharge, compensation, job training and other terms, conditions and privileges of employment.

It is the City’s policy to provide reasonable accommodation for the known disability of an applicant or employee unless it would impose an undue hardship to the City or result in a direct threat to the applicant, employee, or others.

The City is committed to ensuring that applicants with disabilities have equal access to employment opportunities, and are provided necessary reasonable accommodations upon request including, but not limited to, employment information and testing in alternative formats, qualified readers and interpreters, and assistance with completing applications.

### **Definitions:**

Disability: The definition of a disability shall be construed consistent with state and federal law and includes, but is not limited to, the following:

*Mental Disabilities*: A mental disability includes any mental or psychological disorder or condition that limits a major life activity. A mental disability may include, but is not limited to: emotional or mental illness, intellectual or cognitive disability, organic brain syndrome, specific learning disabilities, autism spectrum disorders, schizophrenia, and chronic or episodic conditions such as clinical depression, bipolar disorder, post-traumatic stress disorder, and obsessive compulsive disorder.

*Physical Disabilities:* A physical disability may include, but is not limited to: any anatomical loss, cosmetic disfigurement, physiological disease, disorder or condition that affects a bodily system and limits a major life activity, and includes deafness, blindness, partially or completely missing limbs, mobility impairments, cerebral palsy, and chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, multiple sclerosis and heart disease.

*Medical Conditions:* A medical condition includes, but is not limited to, any health impairment related to, or associated with, a diagnosis of cancer or a record or history of cancer.

Medical conditions also include genetic characteristics, which can mean the following:

1. Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring; or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.
2. Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

The definition of a disability includes having a record or history of, or being regarded as having, or having had a disability, as defined by the ADA and FEHA. Impairments that require special education or related services may also be disabilities. Whether an individual is limited in a major life activity shall be determined without regard to any mitigating measures (such as medications, assistive devices, prosthetics, or reasonable accommodations), unless the mitigating measure itself limits a major life activity.

*Reasonable Accommodation:* Modifications or adjustments that are (1) effective in enabling an applicant with a disability to have an equal opportunity to be considered for a desired job, or (2) effective in enabling an employee to perform the essential functions of the job the employee holds or desires.

A reasonable accommodation may include, but is not limited to: temporary light duty; making facilities used by employees readily accessible to, and usable by, individuals with disabilities; job restructuring; part-time or modified work schedules; modification of work practices; reassignment or transfer to a vacant position, except when such preference would violate a bona fide seniority; change in or restructuring of work duties; acquisition or modification of equipment or devices; implementation of safety procedure(s); adjustment or modification of examinations, training materials or policies; the provision of qualified readers or interpreters; providing leave; additional training; modifying supervisory methods; telecommuting; and other similar accommodations for individuals with disabilities.

The City will engage in a timely, good faith interactive process with the applicant or employee to determine effective Reasonable Accommodations, if any, in response to a

request for reasonable accommodation by an applicant or employee with a known or defined disability.

*Essential Functions:* The fundamental job duties of the position the individual with a Disability holds or desires.

Factors to consider in determining essential functions may include but are not limited to:

1. Whether the position exists to perform that function;
2. The degree of expertise or skill required to perform the function;
3. The amount of time spent performing a function; and,
4. The consequences of not requiring an employee to perform the function.

*Undue Hardship:* An individualized assessment of current circumstances that show that a specific reasonable accommodation would fundamentally alter the nature or operation of the City or is unduly costly, extensive, substantial or disruptive.

Factors to consider in determining an Undue Hardship include but are not limited to:

1. The nature and cost of the accommodation needed;
2. The overall financial resources of the City involved in making the reasonable accommodation; the number of persons employed in the department or division, as well as the overall City; the effect on expenses and resources of the City ;
3. The overall financial resources of the City, the overall size of the City with respect to the number of employees, and the number, type, and location of its facilities;
4. The type of operation of the City, including the structure and functions of the workforce; and
5. The impact of the accommodation on the operation of the City.

*Direct Threat:* A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated by a reasonable accommodation.

*Interactive Process:* A timely, good faith communication with the applicant or employee and his or her designated representative, (if any), to explore whether or not he or she needs reasonable accommodation to perform the essential functions of the job and, if so, how the individual can be reasonably accommodated. The City will reasonably document these communications.

### **Fitness for Duty:**

The City may require an employee to submit to a fitness for duty examination to determine if the employee has a disability and is able to perform the essential functions of his or her job when there is significant evidence that (1) the employee's ability to perform one or more essential functions of his or her job has declined, or (2) could cause a reasonable person to question whether an employee is still capable of performing one or more of his or her essential job duties, or is still capable of performing those duties in a manner that does not harm him or herself or others. (Gov. Code § 12940(e) &(f).)

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

1. **Authorization for Use of Medical Information** - During the course of a fitness for duty examination, the City will not seek or use information regarding an employee's medical history, diagnoses, or course of treatment without an employee's written authorization.
2. **Role of Health Care Provider** - The City may request the applicant's or employee's health care provider to conduct a fitness for duty exam on the applicant or employee or may request a City-selected health care provider to do so at the City's expense. The City will allow an employee paid time off to attend the exam. The City will provide the health care provider with a letter requesting a fitness for duty examination and a written description of the essential functions of the job. The examination will be limited to determining whether the applicant or employee can perform the essential functions of the position and any work restrictions and/or functional limitations that apply to the applicant or employee. The health care provider will examine the applicant or employee and provide the City with non-confidential information regarding whether:
  - a. The applicant or employee has a disability within the meaning of the California Fair Employment and Housing Act;
  - b. The applicant or employee is fit to perform essential job functions;
  - c. Workplace restrictions or functional limitations that apply to the applicant or employee, and the duration of the work restrictions or functional limitations, if known; if the duration is unknown, an estimated duration of the work restrictions or functional limitations is provided;
  - d. There are any reasonable accommodations that would enable the employee to perform essential job functions; and
  - e. The employee's continued employment poses a threat to the health and safety of him or herself or others.

Should the health care provider exceed the scope of the City's request, without valid consent of the applicant or employee, the City will return the report to the health care provider and request another report that includes only the non-confidential fitness for duty information as requested. (2 Cal. Code Regs § 11069(c) & (d).) If an employee or applicant submits medical information to the City from his or her own health care provider, the City will not forward that information on to the health care provider who conducted the examination for the City, without the employee's or applicant's written authorization. Upon receipt of the written authorization, the City will request the City-paid health care provider to determine whether the information alters the original fitness for duty assessment.

**Interactive Process:**

The City will initiate the interactive process when:

- a. An applicant or employee with a known physical or mental disability or medical condition requests reasonable accommodation(s) (2 Cal. Code Regs § 11069(b)(1)); or;
- b. The City otherwise becomes aware of the need for an accommodation through a third party (e.g. a doctor’s note requesting an accommodation), by observation of the employee’s work (2 Cal. Code Regs. § 11069(b)(2)), or because the employee has exhausted workers’ compensation leave, Family and Medical Act leave, or other leave rights, but the employee and/or the employee’s health care provider indicate that further accommodation is still necessary for recuperative leave or other accommodation (2 Cal. Code Regs. § 11069(b)(3)); or;
- c. An employee disabled by pregnancy, childbirth or related medical conditions requests a reasonable accommodation or transfer based on the advice of her health care provider (2 Cal. Code Regs § 11040(a)(1)); or;
- d. An employee with a physical or mental disability, regardless of cause, fails to return to work following pregnancy disability leave (2 Cal. Code Regs § 11047); or;
- e. An employee-victim of domestic violence, sexual assault, or stalking requests a reasonable accommodation(s) for his or her safety at work (Labor Code § 230(f)(1)); or;
- f. An employee requests an accommodation to address a conflict between religious belief, observance, or practice and any employment requirement (Gov. Code § 12940(l)); or
- g. An employer is aware of the need for a reasonable accommodation for an employee’s or applicant’s religious beliefs, observances or practices. (2 Cal. Code Regs § 11060(b).)

**Reasonable Accommodation:**

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

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

### **Filing a Reasonable Accommodation Request:**

An employee and/or applicant may request a reasonable accommodation verbally or in writing. All requests for reasonable accommodation should be made through the Human Resources Department.

1. Upon request for a reasonable accommodation, the Human Resources Department shall provide the employee a Reasonable Accommodation Request Form.
2. The employee should complete and submit the form to the Human Resources Department.
3. It is the responsibility of the applicant to complete and submit a Request for Special Testing Accommodation to the Human Resources Department.

The City shall protect and maintain the privacy and confidentiality of medical information provided by, or on behalf of employees and applicants with disabilities, unless otherwise required by law.

Upon receipt of a completed Reasonable Accommodation Request Form, the Human Resources Department shall conduct an individualized analysis of the request. The parties shall, in good faith, promptly engage in the interactive process, to determine the appropriateness of the request and select and implement a reasonable accommodation.

1. Include a representative, designated by the Director of Human Resources, in all employee related interactive processes.
2. The determination as to whether or not an accommodation can be provided is made on a case-by-case basis. The Director of Human Resources and City Attorney, or their designees, must sign-off on all employee related denials of a requested accommodation.
3. During the interactive process, the department and employee requesting an accommodation will analyze the essential functions of the position in question, determine how the disability limits the performance of the essential functions of the position, identify accommodation options that overcome or eliminate those limitations, determine the effectiveness and feasibility of the proposed accommodations, and select a suitable accommodation with consideration for the employee's preference.
4. Although primary consideration should be given to the preferences of the employee in determining an appropriate accommodation, the City has the ultimate discretion to choose between effective accommodations and may choose the less expensive accommodation or the accommodation that is easier for the City to provide.
5. Materials, devices, and other goods or services being purchased in order to provide some form of accommodation shall follow the City's purchasing and contracting process.

### **Reasonable Medical Documentation:**

#### **1. Reasonable Medical Documentation of Disability:**

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

documentation; and 3) pursue the interactive process only to the extent that the request for reasonable accommodation is supported by the medical documentation provided. (2 Cal. Code Regs § 11069(c)(2) & (d).)

2. Medical Certification Indicating the Need for a Reasonable Accommodation or Transfer Due to Pregnancy or Related Conditions:

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

3. Certification of Victim Status:

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

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

4. Maintenance of Medical Records:

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

**Reporting a Violation:**

If, at the end of the process, the employee or applicant believes that he or she has not been properly accommodated or believes he or she is being discriminated against based on Disability,

the employee should be referred to the City's Human Resources Department for a description of his or her rights under the ADA, FEHA and City policies, as well as procedures for filing complaints of discrimination with the Equal Employment Opportunity Commission (EEOC) and Department of Fair Employment and Housing (DFEH).

In addition, any employee or applicant who feels this regulation is being violated may bring the matter to the attention of any of the individuals or offices listed below:

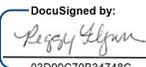
1. Department Director or other department appointing authority
2. Any supervisor (it is not necessary to follow the chain of command)
3. Human Resources Department

The employee or applicant may choose to file a complaint directly with the following external agencies (due to filing time limits, to protect legal rights it is always best to contact external agencies promptly when discrimination is suspected):

1. State of California Department of Fair Employment and Housing (DFEH)  
(800) 884-1684 or TDD (800) 700-2320
2. Federal Equal Employment Opportunity Commission (EEOC)  
(800) 669-4000 or TTY (800) 669-6820

*If this policy conflicts with current statutory or case law, the law prevails.*

Approved:

DocuSigned by:  
  
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\_\_\_\_\_  
Peggy Flynn, City Manager

4/21/2022

\_\_\_\_\_  
Date



## REASONABLE ACCOMMODATION REQUEST FORM

### EMPLOYEE REQUEST *(to be completed by employee)*

Employee: \_\_\_\_\_ Classification: \_\_\_\_\_

Phone: \_\_\_\_\_ Department: \_\_\_\_\_

Employee Email: \_\_\_\_\_

Supervisor: \_\_\_\_\_ Phone: \_\_\_\_\_

1. Do you have a disability, which requires a reasonable accommodation  Yes  No If yes, what is/are the specific limitation(s)? (Do not provide medical diagnosis or medical condition)

If your limitations are temporary, please indicate anticipated duration if known:

2. Please explain what, part(s) of your job are you having difficulty performing, because of your disability? Please include how your disability is impacting your ability to perform your job.

3. What accommodation are you requesting? Be as specific as possible. If equipment is requested, please specify brand, model number and vendor, if known:

4. How will this accommodation assist you in performing your job?

5. Have you had any accommodations in the past for the same limitation?  Yes  No  
If yes, what were the accommodations and how effective were they?

6. Please provide any additional information that might be useful in processing your request:

**Employee Certification**

I certify that the above information is true and correct to the best of my knowledge. I understand and agree that I will fully participate in the interactive process. I understand that if I do not provide sufficient information related to the request for a reasonable accommodation that the City may not be able to complete the process to determine if there is a reasonable accommodation for my disability.

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

\_\_\_\_\_  
Date