



# **CITY OF NEWPORT BEACH**

## **EMPLOYEE POLICY MANUAL**

**The Newport Beach City Council wants to express its appreciation for the Employees that provide such outstanding service to the people who live, work or visit this beautiful City. This Manual is the product of suggestions from many Employees and is another example of their hard work, their integrity and their values. This Manual also confirms the City Council's commitment to treat all Employees fairly, to provide a safe work environment and to give every Employee the opportunity for promotion and professional growth.**

*Disclaimer: All previous versions of the Employee Policy Manual are hereby revoked. For clarification of any contradictory information or interpretation, please contact Human Resources.*

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## **SECTION 1. GENERAL PROVISIONS**

### **1.0 Authority**

This Manual is promulgated pursuant to authority granted to the Newport Beach City Council by the California Constitution, the Newport Beach City Charter and the Newport Beach Municipal Code.

### **1.1 Title**

This document shall be known as the Employee Policy Manual of the City of Newport Beach and is referred to as the "Manual" in the text.

### **1.2 Scope**

The Manual establishes certain rules that are subject to the provisions of the Myers - Milias - Brown Act ("MMB") Government Code Section 3500 et seq. or what is commonly referred to as the "scope of representation." The City and all Recognized Employee Associations have, with respect to all matters addressed in this Manual that are within the scope of representation, met and conferred, in good faith, prior to City adoption of this Manual. The provisions of a Memorandum of Understanding ("MOU") with respect to any matter within the scope of representation shall prevail over the provisions of this Manual in the event of a conflict. The City Charter, Civil Service Ordinance and/or Civil Service rules shall prevail over the provisions of this Manual in the event of a conflict. The provisions of State or Federal law shall prevail over provisions of this Manual in the event of any conflict.

### **1.3 Purpose**

The purpose of this Manual is to establish a system of uniform and equitable personnel rules and procedures based on principles of fairness and merit that enhance the City's ability to deliver high quality and cost effective public services by maintaining a positive work environment. Some of the basic tenets of the City's personnel philosophy include:

- A.** Recruiting, appointing and promoting Employees on the basis of their relative ability, knowledge and skills.
- B.** Retaining Employees who satisfactorily perform their duties, making reasonable efforts to ensure that Employees have the skills and incentive to perform their duties in a satisfactory manner and using progressive discipline to correct or respond to unsatisfactory performance or misconduct.

- C.** Assuring impartial treatment of applicants and Employees in all aspects of personnel administration such as making all personnel decisions without regard to race, religion, creed, ethnicity, sex, age, marital status, sexual orientation, political affiliation, national origin, or physical or mental disability.
- D.** Rewarding Employees who, through their work and treatment of fellow Employees and/or the public, have demonstrated their value to the City by promotion, increases in compensation or other forms of recognition, subject to prudent fiscal policy and adequate fiscal resources.
- E.** Establishing and consistently applying rules of conduct, standards of performance and equitable disciplinary procedures, for both managers and their subordinates that promote public trust and confidence, create a good working environment, and ensure high productivity.
- F.** Ensuring that supervisory employees have the training, education and skills necessary to motivate, educate and evaluate subordinates as part of the City's overall program to provide high quality municipal services.

#### **1.4 Application**

This Manual shall apply to all Employees but does not apply to:

- A.** Elected officials.
- B.** Members of appointive boards, commissions and committees whether or not established pursuant to the Charter, ordinance or resolution.
- C.** Persons performing duties pursuant to contract but not occupying a Classification in the Classification Plan except to the extent provisions of this Manual are incorporated into the contract.
- D.** Volunteer personnel who receive no regular compensation other than reimbursement for expenses from the City.
- E.** Outside or independent contractors engaged to provide expert, professional, technical or other services.
- F.** Emergency Employees, including those hired to meet the immediate needs of an emergency condition such as fire, flood or earthquake.

This Manual applies to Provisional Employees whenever the provisions are expressly applicable (such as when specific provisions relate solely to Provisional Employees) or when this Manual refers to an Employee or Employees generally (as opposed to Regular Full Time Employee for example).

## **1.5 Adoption and Amendment of Rules**

- A.** The City Council has the authority to adopt this Manual pursuant to provisions of the City Charter and the Newport Beach Municipal Code subject to applicable provisions of State and Federal law. Amendments to this Manual proposed by any Recognized Employee Association may be submitted to the Human Resources Director who shall refer them to the City Manager for consideration and an appropriate response. Except as expressly provided in Subsection B, the City shall provide all Recognized Employee Associations with advance written notice and an opportunity to meet and confer concerning any proposed amendment to this Manual that affects matters within the scope of representation.
- B.** The City has adopted comprehensive personnel policies that are required by, or help implement, provisions of State and/or Federal Law. These comprehensive policies are summarized in this Manual and included in the Appendix. The City shall have the right, without meeting and conferring with any Recognized Employee Association or consulting with any unrepresented Employee, to modify these comprehensive policies and related provisions of this Manual whenever the modification is required, as opposed to permitted, by virtue of any amendment to any State or Federal law, rule or regulation, or a ruling of a court of competent jurisdiction that is binding on the City. The City will meet and confer prior to making any change in any policy in the Appendix that affects matters within the scope of representation when the change is permitted, as opposed to required, by any State or Federal law, rule or regulation or court ruling.
- C.** In cases of emergency when the City Council determines that amendment(s) to this Manual must be adopted without prior notice or meeting with any Recognized Employee Association as authorized by provisions of State law, the City shall provide notice and opportunity to meet at the earliest practical time following the adoption of the amendment(s). Amendments shall become effective upon adoption by the City Council.

## **1.6 Severability**

If any section, subsection, sentence, clause, phrase or portion of this Manual is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the decision shall not affect the validity of the remaining portions of this Manual. The City Council declares that it would have adopted each section, subsection, sentence, clause, phrase, or portion of this Manual irrespective of the decision of the court.



## 1.7 Department Procedures

Department Directors may promulgate rules or procedures that pertain to matters covered by this Manual or matters outside the scope of this Manual. Department rules or procedures shall not conflict with provisions of this Manual and, in the event of conflict, this Manual shall prevail. Department rules or procedures should generally relate to the specific and unique mission, role, duties or functions of the Department or its Employees. Department rules or procedures that pertain to matters covered by this Manual must be submitted to the City Manager for their review and approval before they become effective. The City shall meet and confer in good faith with respect, and prior, to the adoption of any Department rule or procedure that relates to matters within the scope of representation. This Manual does not affect, alter or supercede any existing Memoranda of Understanding or Department Policy in effect as of date of adoption provided the policy does not conflict with provisions of this Manual.

## SECTION 2. DEFINITIONS

### 2.0 Definition of Words and Terms

The words and terms used in this Manual shall be defined as follows:

- A. **Appointing Authority** shall mean the City Manager or their designee.
- B. **Appointment** shall mean the decision to employ a person in a Position or a decision to employ a person to perform work authorized in the annual budget.
- C. **Base Rate of Pay** shall mean an Employee's base compensation, salary or hourly rate of pay as specified in the Compensation Plan or relevant MOU.
- D. **Certification** shall mean the process by which the Human Resources Director identifies candidates for a Position who have successfully completed all preconditions to an Appointment by designating those candidates on an Eligibility List.
- E. **City Manager** shall mean the City Manager of the City or their designee.
- F. **Civil Service Employee** shall mean an Employee covered by the Civil Service System. The **Civil Service System** shall mean the system for personnel administration created by the City Charter, Ordinance No. 866 (Civil Service Ordinance) and the then current Civil Service Rules adopted by the Civil Service Board and approved by the City Council.
- G. **Classification** shall mean those Positions sufficiently similar in duties,

responsibilities, authority, and minimum qualifications to warrant application of common standards of selection and compensation including designation by a single title.

- H. **Classification Plan** shall mean the document prepared by the City Manager and approved by the City Council that, at a minimum, designates Positions, Classifications and Classification Series.
- I. **Classification Series** shall mean a group of Classifications that extend from an entry level to the highest level based on an increase in the number and/or complexity of duties, responsibilities, job requirements and/or authority.
- J. **Classification Specification** shall mean a written description of a Classification specifying the duties and responsibilities to be performed by all Positions in that Classification.
- K. **Crime of Moral Turpitude** shall mean a crime involving conduct that is contrary to justice, honesty, or good morals as that term may be defined in relevant statutory or decisional law.
- L. **Date of Hire** shall mean the date on which an Employee first reported for duty pursuant to the Employee's first Appointment to a Regular Full Time Position.
- M. **Day** shall mean a calendar day unless expressly stated otherwise.
- N. **Demotion** shall mean the voluntary or involuntary reduction of an Employee from their then current Classification to another Classification having a lower Base Rate of Pay or to a lower Step in their current Classification or the equivalent action if the Employee does not occupy a Position in a Classification.
- O. **Department Director** shall mean the Regular Full Time Employee who manages, and is primarily responsible for achieving the mission of, an established City Department.
- P. **Discipline** shall mean the discharge, demotion, reduction in step, pay, compensatory time or leave, suspension, transfer, reassignment, written reprimand, other action taken to correct an Employee's performance or as punitive action. Discipline does not include counseling or any notation of any discussion in a supervisor's log.
- Q. **Discharge** shall mean the involuntary separation of an Employee.
- R. **Employee** shall mean a person occupying a Position identified in the

Classification Plan or who is employed to perform work identified in the approved Annual Budget. The term Employee includes the following:

1. **Regular Full Time Employee** shall mean an Employee who has been appointed to a Regular Full Time Position and has completed their Probationary Period.
2. **Regular Part Time Employee** shall mean an Employee who has been appointed to a Regular Part Time Position and has completed their Probationary Period.
3. **Probationary Employee** shall mean an Employee who has been appointed to a Regular Full Time Position or Regular Part Time Position and has not successfully completed their Probationary Period.
4. **Provisional Employee** shall mean any person who, pursuant to an Appointment, contract or otherwise, performs work that is generally identified in the Annual Budget and is of limited duration or seasonal in nature.

References to Regular Employee(s) shall mean all Regular Full Time and Regular Part Time Employees. The term Exempt Employee shall mean an Employee who is qualified as exempt from overtime compensation pursuant to the Fair Labor Standards Act ("FLSA").

#### **S. Eligibility Lists**

1. **Open Eligibility List** shall mean a list of persons who have taken an Open Examination for a Classification and are eligible for Appointment to a Position in that Classification.
2. **Promotional Eligibility List** shall mean a list of Employees who have taken a Promotional Examination for a Classification and are eligible for Appointment to a Position in that Classification.
3. **Re-Employment List** shall mean a list of Employees who have been laid-off, reassigned or reduced in Classification in lieu of layoff, or were otherwise involuntarily separated from City service for reason(s) unrelated to performance and are eligible for rehire.

- T. Examination** shall mean any procedure used in the selection process to measure an applicant's abilities and suitability for a Position including oral interviews, written examinations, performance tests, evaluation of performance during Probation, and an evaluation of education and work experience relevant to the primary duties of the Position. Examinations include the following:
- 1. Open Examination** shall mean an Examination for a Classification that is open to all persons meeting the qualifications for the Classification.
  - 2. Promotional Examination** shall mean an Examination for a Classification that is open to any current Employee who meets the qualifications for the Classification.
  - 3. Continuous Examination** shall mean an Open Examination that is administered periodically and is open to all persons meeting the qualifications for the Classification.
- U. FLSA** shall mean the Fair Labor Standards Act and implementing regulations adopted by the Department of Labor.
- V. Human Resources Director** shall mean the Human Resources Director or similar position designated by the City Manager to perform the functions required by this Manual as well as the designee of the Human Resources Director.
- W. Immediate Family** shall mean an Employee's father, mother, brother, sister, wife, husband or child, and the Employee's spouse's mother, father, brother, sister or child.
- X. Layoff or Reduction in Force** shall mean the elimination of a Position or Positions due to reorganization, lack of work, reduction in services, privatization of services, or lack of funds.
- Y. Leave** shall mean the authorized absence of an Employee from their place of work.
- Z. Meet and Confer in Good Faith** shall mean that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the City of its final budget for the ensuing fiscal year.

- AA. Personnel Action Form** shall mean the form that is the official record of any action affecting or related to employment status including action taken with reference to Appointment, Promotion, Transfer, Layoff, Discipline, or any other matter affecting the compensation of the Employee.
- BB. Position** shall mean the year round employment of one person as specified in the Classification Plan and/or the budget and includes:
1. **Regular Full Time Position** shall mean the employment of one person who is scheduled to work at least forty (40) hours a week or the equivalent if scheduled other than on a weekly basis.
  2. **Regular Part Time Position** shall mean the employment of one person who is scheduled to work an established schedule of less than forty (40) but at least sixteen (16) hours a week or the equivalent if scheduled other than on a weekly basis.
  3. **Regular Position** shall mean both Regular Full Time Positions and Regular Part Time Positions.
- CC. Probationary Period** shall mean the period of time, subsequent to the Appointment of an Employee to a Regular Position, during which the Employee is required to demonstrate their fitness for, and ability to perform the duties of, the Position. A Regular Employee is considered to be “on Probation” during their Probationary Period.
- DD. Promotion** shall mean the Appointment of an Employee from a Position in one Classification to a Position in another Classification having a higher Base Rate of Pay or higher maximum Salary Range or any similar action.
- EE. Reclassification** shall mean a change in Classification of an Employee that is based on an evaluation of the duties and responsibilities he/she actually performs in relation to those of the Classification he/she occupies.
- FF. Recruitment** shall mean the process of attracting qualified persons to participate in a selection process for an Appointment to a Position in a Classification or employment.
- GG. Re-Employment** shall mean the Appointment of a former or current Employee, without examination, to the Position he/she occupied prior to separation, demotion, reassignment or transfer due to layoff or similar action and typically from a Re-Employment List.
- HH. Resignation** shall mean an Employee’s voluntary Separation.

- II. Safety Employee** shall mean an employee described in the definition of “local safety member” as defined in Section 20019 of the Government Code of the State of California or any successor section.
- JJ. Salary Range** shall mean those amounts, inclusive of and between the lowest Base Rate of Pay and the highest Base Rate of Pay for any Classification, that an Employee is capable of earning while he/she occupies a Position in that Classification.
- KK. Separation** shall mean the termination of an Employee’s employment with the City for any reason.
- LL. Step** shall mean one of the Base Rate of Pay increments within the Salary Range for any Classification.
- MM. Step Increase** shall mean a decision that an Employee’s performance merits a change from their current Step to the next Step or a higher Step in the Salary Range established for their Classification.
- NN. Supervisor** shall mean any Regular Employee with the responsibility for making decisions (using their independent judgment) assigning and directing the work, rewarding or disciplining, for adjusting grievances of another Employee or Employees and/or the person who prepares the Performance Evaluation of that Employee.
- OO. Suspension** shall mean a directive that an Employee not receive compensation for, and not perform, their normal duties during a defined period of time when he/she would otherwise be scheduled to work.
- PP. Transfer** shall mean the assignment or reassignment of an Employee from a Position in a Department to the same or similar Position in a different division in that Department or in another Department when there is a change in the Employee’s Position Control Number for purposes of budget and payroll. The term “transfer” shall not mean the reassignment of an Employee within a Department that is part of a standard rotation of personnel or in response to changes in the work of the Department when there is no change in the Employee’s Position Control Number.
- QQ. Vacancy** shall mean an authorized Position for which funds are available that is not occupied by a Regular Employee or a Probationary Employee.

- RR. Work Period** shall mean the standard Work Period for each non-exempt Employee Classification within a Department as established by the Department Director. As a general rule the standard Work Period is a fixed regularly recurring period of seven (7) consecutive 24-hour periods beginning midnight on Saturday. However the needs of the City and the desires of Employees differ greatly among various departments and schedules may be adjusted accordingly. The Department Director may establish different Work Periods for different Employees or Classifications. Work Periods must be fixed, in advance, and, once established, can only be changed when the change is intended to be permanent or address seasonal fluctuations in workload and timing. Work Periods in excess of seven (7) Days are applicable only to certain Safety Employees as authorized by, and consistent with, FLSA. Work Periods may not be changed to avoid the requirement to pay overtime pursuant to provisions of the FLSA. The provisions of this definition do not guarantee any specific number of hours to be worked in any 24-hour period, or the hours or Days to be worked in any Work Period. Examples of work periods include:
1. **9/80 Schedule.** The Work Period for the 9/80 Schedule is seven (7) consecutive 24-hour periods beginning at noon on Friday if the Employee takes off an alternating Friday, or noon on Monday if an alternating Monday is taken off. This schedule allows for 8 nine hour Workdays, 1 eight hour Workday.
  2. **4/10 Schedule.** The Work Period for the 4/10 Schedule is seven (7) consecutive 24-hour periods beginning midnight on Saturday with four (4) ten (10) hour Workdays during each Work Period.
  3. **3/12 Schedule.** The Work Period for the 3/12 schedule and similar schedules is twenty-eight (28) Days with the Days to be worked typically determined by seniority or other method established by MOU.
- SS. Workday** shall mean the number of hours an Employee is scheduled to work during any 24-hour period.
- TT. Written Reprimand** shall mean a written notice of unsatisfactory performance or misconduct given to an Employee as discipline.
- UU. Y-Rate** shall mean maintaining the Base Rate of Pay of an Employee who was voluntarily or involuntarily Transferred, Demoted or Reclassified to a lower Classification until the Employee would be entitled to the same or greater Base Rate of Pay in the lower Classification.

## 2.1 Construction

For purposes of this Manual the following rules of construction shall apply:

- A. The words “include” or “including” shall be construed to mean “without limitation.”
- B. Unless otherwise indicated by the context or definitions, words, terms and phrases shall have their ordinary and customary meaning.
- C. The Table of Contents, Section, Subsection and Paragraph captions are for the convenience of the reader and shall not be considered in the construction or interpretation of this Manual.
- D. The Table of Contents, Section, Subsection and Paragraph of this Manual do not define, limit, augment, or describe the scope, content, or intent of this Manual.
- E. This timeframes specified in this Manual are generally based on an eight (8) hour Workday. Many Employees are scheduled to work more than eight (8) hour workdays and certain Fire and Marine Department personnel have twenty-four (24) hour Workdays. The timeframes specified in this Manual shall, whenever appropriate in the context, be modified on a pro-rata basis so that any Employee with a Workday of more than eight (8) hours is treated the same as an Employee with an eight (8) hour Workday and vice versa.

## SECTION 3. STANDARDS AND PRACTICES

### 3.0 Basic Principles

- A. **General.** All Employees are expected to fully comply with the rules and standards of conduct established by this Manual. Employees are also expected to advise their Supervisor, or Department Director, or the Human Resources Director if the Supervisor is in any way involved, of any Employee’s violation of the rules and standards of conduct established by this Manual.
- B. **Values and Standards.** The Employees have, through a collaborative process, established the values and behavioral standards that should guide each Employee in the performance of their duties. These “organizational values” and “organizational behaviors” are described in the Appendix and may be revised by the Employees from time to time. In accordance with these values and standards each Employee is expected:



1. To be respectful, patient and fair with other Employees and members of the public.
2. To perform their duties in a competent and efficient manner with a commitment to providing the public and/or other Employees with the best service possible.
3. Not to give special treatment to, or discriminate against, any person in the performance of their duties.

Employees are not required, and are not expected, to deal with any person who physically or verbally threatens, harasses or abuses the Employee or another person in that Employee's presence. In such event, the Employee shall leave the immediate area and promptly report the incident to their Supervisor.

### **3.1 Fair Employment Practices**

The City's policy is to offer equal opportunity in all matters of employment and personnel administration. Employment with the City is based solely upon the qualifications of the individual applicant, regardless of race, religion, creed, ethnicity, gender, age, marital status, sexual orientation, political affiliation, national origin, or physical or mental disability, unless gender or physical ability is a bona-fide occupational qualification.

### **3.2 Discrimination and Harassment**

The City is committed to providing a work environment free of harassment and discrimination on the basis of an Employee's race, religion, creed, ethnicity, gender, age, marital status, sexual orientation, political affiliation, national origin, or physical or mental disability unless such factor is a bona-fide occupational qualification. A comprehensive policy regarding discrimination and harassment is found in Appendix A and is incorporated by reference. All Employees are required to read, acknowledge receipt of, fully comply with and are protected by the provisions of this Manual and the City's discrimination and harassment policy the full text of which is found in the Appendix. This policy defines unlawful harassment and discrimination to include verbal, visual or physical conduct: (a) to which submission could produce a tangible adverse affect on the victim's employment; or (b) that creates a hostile or offensive work environment. The policy expressly prohibits all forms of unlawful harassment and discrimination and requires the victim to promptly report the incident to their Supervisor, the Human Resources Director or the City Manager. The City is obligated to, and will, promptly investigate any claim of a violation of the Policy. Any Employee who is the victim of harassment or discrimination and fails to report some or all of the harassment or discrimination as required by this Section shall not be subject to discipline. However, an Employee's failure to report the harassment or discrimination to which

he/she was subjected may prevent the City from conducting an appropriate investigation or taking corrective action. The failure of an Employee to report harassment or discrimination to which he/she was subjected may affect the Employee's legal rights and/or legal remedies.

### **3.3 Political Activities**

- A.** The City shall not adopt or enforce any policy or take any action that restricts, or tends to control or direct, the political activities of any Employee except as expressly provided in this Section. For purposes of this Section, the term political activities shall include any communication or activity, including the solicitation of contributions in support of or opposition to the qualification, passage or defeat of a ballot measure or the qualification, nomination, election or defeat of any candidate for political office. The term political activities shall also include those activities covered by or described in Sections 1101, Section 1102 and other provisions of the Government Code of the State of California. The term ballot measure shall mean any initiative, charter amendment, referendum or recall petition that has been submitted for, and received, a title and summary required by provisions of the Elections Code of the State of California.
- B.** No Employee shall use, or threaten use of, their actual or perceived authority to the benefit or detriment of any person's existing or contemplated employment or contractual relationship with the City in an effort to influence the vote or political action of that person.
- C.** No Employee shall solicit, directly or indirectly, political contributions from other Employees except:
  - 1.** As a member and on behalf of a Recognized Employee Organization (or its political action committee); or
  - 2.** Through communications sent outside of their Workday and to a significant segment of the public that may incidentally include one or more Employees.
- D.** No Employee shall engage in any political activities while in City uniform or wearing any official indicia of City employment (badges, patches etc.) or a reasonable facsimile of such indicia.
- E.** No Employee shall engage in political activities while on duty during their Workday or while using City equipment.

### **3.4 Conflicts of Interest and Acceptance of Gifts and Other Gratuities**

- A.** City Employees should perform their duties in a fair and impartial manner, free from bias or influence resulting from their own financial interest or the financial interest of others. The Political Reform Act of 1974 prohibits an Employee from making, or participating in, any decision when it is reasonably foreseeable that the decision could have a material financial impact on a source of income to the Employee or the assets of the Employee. State law and the City Charter prohibit an Employee from having a financial interest in any contract to which the City is a party. Each Employee is required to comply with provisions of State law, the City Charter and resolutions or policies adopted the City Council that are related to conflicts of interest, the reporting of income and business interests, and contracts involving the City and the Employee. Specific requirements include the following:
- 1.** An Employee shall not participate in the consideration or processing of any decision, application, proceeding or other matter involving the Employee's financial interests, including real property, personal property or investments, or those of any member of Employee's spouse or dependent children. The Employee shall disclose to their Supervisor any financial interest that may be involved in any such application, discussion, or proceeding.
  - 2.** Each Employee shall comply with all applicable provisions of the Political Reform Act of 1974, Regulations adopted by the Fair Political Practices Commission (FPPC) and the City's Conflict of Interest Code, including the reporting of all gifts and economic interests when required to do so.
- B.** The acceptance of gifts or gratuities, such as meals, tickets, presents, and food, from any person having business with the City may be, or create the appearance of, a conflict of interest. To avoid an actual or apparent conflict of interest, each Employee shall:
- 1.** Share gifts that can be shared, such as boxes of candy or food products, with other Employees.
  - 2.** Not accept any gift or gratuity when it is reasonably apparent that the gift or gratuity is intended to influence the Employee's performance or non-performance of their duties or result in a higher level of service than the donor would otherwise receive. In evaluating whether a gift or gratuity is intended to influence performance or level of service the Employee shall consider the nature, value and timing of the gift or gratuity.

3. An Employee who is unsure if a gift or gratuity with a value in excess of twenty-five dollars (\$25.00) could constitute a conflict of interest should consult their immediate Supervisor prior to acceptance.
  4. Not accept discounts from the posted or regular price of food, beverages, items or services unless the discount is available to members of the general public.
- C. The provisions of Subsection B shall not apply to Employee solicitation of pledges, contributions, or sponsorship for functions or events sponsored, in whole or in part, by the City that are not intended to benefit any individual. Employee solicitations related to events and functions such as races, health fairs, charitable activities, and activities to protect or preserve the environment do not benefit the individual Employee and do not create the appearance of a conflict of interest.

### **3.5 Incompatible Activities**

During an Employee's Workday, the Employee is expected to devote their full time, attention and efforts to the performance of their assigned duties. An Employee shall not engage in any outside employment or business activities during their Workday. An Employee shall not engage in any employment, outside activity, or enterprise that is inconsistent, incompatible or in conflict with, or that interferes with, their ability to perform the duties, functions, or responsibilities of their Position except as provided in Section 3.12. No Employee shall engage in Recognized Employee Association activities during that Employee's Workday except during break time, meal periods or as expressly authorized or permitted by the Department Director, Federal law, State law, or MOU.

### **3.6 Drug and Alcohol Free Workplace**

The City Council has adopted and requires strict compliance with the City of Newport Beach Drug and Alcohol Policy. The complete text of the Drug and Alcohol Policy is in the Appendix. The City was required to adopt this policy pursuant to the Drug-Free Workplace Act of 1988. All Employees are required to read, acknowledge receipt of, and fully comply with this policy. The City will not tolerate the use or possession of drugs or alcohol in violation of the terms and conditions of this policy. The purpose of the policy is to ensure that all Employees are performing their duties unimpaired by drugs or alcohol and to protect Employees and the public from the risk or injury or property damage that could result from illegal or improper use of drugs or alcohol. The Drug and Alcohol Policy does not prevent certain Safety Employees of the Newport Beach Police Department from possessing drugs or using alcohol when necessary or appropriate in the course and scope of employment.

### **3.7 Smoking Prohibited**

Smoking or use of any tobacco product is prohibited in all City facilities, in all City vehicles, equipment and rolling stock. Smoking is permitted during meal periods or breaks so long as the Employee is not in any City facility, City vehicle, City equipment or rolling stock unless prohibited as a condition of employment.

### **3.8 Safety and Health**

Each Employee shall comply with all applicable safety laws, rules, and regulations. Each Employee shall follow safety practices, use personal protective equipment as required, and report all unsafe conditions of City property, equipment or practices to their immediate Supervisor.

### **3.9 Communications Equipment and Systems Policy**

The City has adopted a comprehensive policy relating to the use of all City electronic communications equipment and computer equipment. The full text of this policy is found in the Appendix. Employees are required to acknowledge receipt of the policy, read the policy and fully comply with the Policy when using City electronic communications equipment or computer equipment.

### **3.10 Personal Telephone Calls**

Employees are permitted to make or accept personal calls on a limited basis during their Workday provided the conversations do not prevent the Employee from timely performing their normal duties. Employees shall use their best efforts to keep personal telephone calls to a minimum during the Workday and to make personal calls during their meal period(s) or on break(s). Employees shall reimburse the City for the cost of all long distance personal calls and the cost of personal cellular phone calls.

### **3.11 Search of Lockers, Desks, and Other Containers**

- A.** Lockers, desks and other containers provided to Employees for their convenience are and remain City property. Employees are not guaranteed a right to privacy in any areas or containers provided by the City, including but not limited to lockers, desks, file cabinets or other equipment.
- B.** The City may conduct an investigatory search of a work area, locker, desk, storage area, file or equipment provided or assigned to an Employee when:
  - 1.** The City has obtained a search warrant; or
  - 2.** The Employee has consented to the search; or

3. The City has determined, based on all of the circumstances, that the Employee has no reasonable expectation of privacy in the contents of the work area, desk, locker, storage area, file or equipment to be searched or inspected;
  4. The City has maintained full control, or joint control with the Employee, of the item or area to be searched; or
  5. The City has reasonable cause as required by then current statutory or decisional law to conduct an investigatory search.
- C. The provisions of this Section shall not be construed or applied in a manner that conflicts with any statutory provisions (such as Government Code Section 3300, et. seq.) relating to the search of lockers, files, equipment, containers or areas that have been provided or assigned to an Employee.

### 3.12 Outside Employment

Employees may obtain and/or maintain employment with persons or entities other than the City (outside employment), or self-employment, subject to approval by the Department Director in conformance with the following:

- A. **Notification.** Prior to initiating any self-employment or accepting an offer of outside employment, an Employee shall notify their Department Director of the nature and duties of the position, the name and address of the prospective employer, the proposed work schedule and other information reasonably requested by the Department Director. Any Employee who is contemplating self-employment shall provide the Department Director with information regarding the nature of the work performed and work schedule.
- B. **Approval.** The Department Director shall approve the request for approval of outside employment or the self-employment unless the Department Director can reasonably make one of the following findings:
1. The nature of the outside employment or self-employment, or the proposed schedule, could adversely affect, or interfere with, the Employee's performance of the duties of their Position; or

2. The outside employment or self-employment is with a business or enterprise that performs or provides a service to the City over which the Employee or their Department has regulatory authority or influence; or
  3. The outside employment or self-employment would create the appearance of a conflict of interest or would be incompatible with the duties and responsibilities of the Position occupied by the Employee.
- C. Modification.** The Department Director’s approval of outside employment or self-employment may be revoked in the event of a change in circumstances that would warrant disapproval of the initial request for approval.
- D. Annual Review.** The Department Director may, once every twelve (12) months, require any Employee to provide information regarding the status of their outside employment or self-employment.

### 3.13 Recording of Conversations

Except to the extent permitted by law, the recording of a conversation between Employees or between an Employee and any other person or persons is permitted only with the knowledge and consent of all participants.

### 3.14 Work Place Security and Anti-Violence Policy

This Section describes the City’s policy regarding violence or threats of violence, and is applicable to all Employees.

- A. General.** The City is committed to providing its Employees with a working environment free from violence or the threat of violence. Without exception, threats of violence (including threats allegedly made in jest), acts of violence, possession of weapons, or explosives are a violation of this policy. Accordingly, there is “**Zero Tolerance**” for any threat, actual or perceived, or any form of violence against an Employee, a member of the public or the property of either. All threats and acts of violence will be investigated with the understanding that any such conduct may result in discipline up to and including termination.
- B. Definition of Threats and Violence in the Workplace.**
1. **Act of Violence** means any assault, battery, or stalking, with the intent or implied intent to harm a person or property;

2. **Threat of violence** means a statement or course of conduct that could cause a reasonable person to believe that he or she, is under threat of death or bodily injury or that their property would be damaged;
3. **Course of conduct** means a pattern of conduct composed of a series of acts over a period of time, however short, showing continuity of purpose, including the physical presence of an Employee, physical acts or gestures by an Employee, or an Employee's communication by phone, e-mail, fax, letter or otherwise. A course of conduct by another person shall be attributed to an Employee if that person is acting on behalf of the Employee at their request or insistence.
4. **Weapon** means any non-job related firearm, explosive device, knife (non-folding or locking with blade length equal to or greater than 2 1/2 inches), club, or other object or item that a reasonable person would consider a weapon capable of inflicting bodily injury.

**C. Act or Threat of Violence Prohibited**

1. **Act or Threat of Violence Prohibited.** No Employee shall commit any Act of Violence or a Threat of Violence against any other Employee or any member of the public except in self-defense.
2. **Possession or Display of Weapon.** No Employee shall possess or display any Weapon while on duty or bring a weapon into any City building, facility, rolling stock or property except a Safety Employee authorized to possess a Weapon pursuant to State law.

**D. Responsibilities.** All Employees are responsible for communicating and implementing this policy. Department Directors and/or Supervisors shall regularly advise Employees of the provisions of this Policy.

**E. Complaints.** Any Employee who believes he or she has been a victim of any Act of Violence or Threat of Violence, or has witnessed or been made aware of such behavior or incident in the workplace, shall promptly report the facts of the incident(s) and name(s) of the individual(s) involved to their supervisor, their Department Director and/or to the Human Resources Director. All complaints will be promptly investigated. Any Employee who fails to comply with the reporting requirements of this subsection shall be subject to discipline up to and including termination.



### 3.15 Fitness for Duty

An Employee may be required to undergo a medical and/or psychological assessment or evaluation upon a determination by the Department Director, and with the approval by the Human Resources Director, that there is reasonable cause to believe that the Employee may not be physically and/or mentally capable of performing one or more of their normal duties or may be a threat to their safety or the safety of others. This assessment shall be considered, and limited to, a fitness for duty evaluation. The City shall pay all of the costs of the fitness for duty evaluation. The Employee shall not be subject to any loss of pay or benefits by virtue of the fitness for duty evaluation or the time spent travelling to or from the location of the evaluation. All fitness for duty evaluations shall be conducted by a qualified healthcare professional and the City shall comply with all laws relative to the confidentiality of information resulting from a fitness for duty evaluation.

### 3.16 Qualifications

- A. Maintenance.** Employees shall maintain all licenses, permits, certificates or other job-related criteria required as a minimum qualification for their Position as stated in the Classification Specifications or, if there are no Classification Specifications, the job announcement.
- B. Report Change.** Each Employee is required to report to their Supervisor any material change in the status of any license, permit, certificate or other job-related criteria required as minimum qualification for their Position. The Employee shall report the change in status whenever they have actual notice of the change or becomes aware of facts that would cause a reasonable person to believe that a change in status has occurred (constructive notice). The change in status shall be reported before the end of the first Workday following actual notice or constructive notice of the change.

### 3.17 Disaster Service Workers

All Employees are considered to be "disaster service workers" pursuant to provisions of State law. Each Employee shall fully comply with their duties and responsibilities pursuant to any emergency operations plan approved by the City Council and/or City Manager as well as any directive issued by a supervisor during an emergency.

## **SECTION 4. ADMINISTRATION OF THE PERSONNEL SYSTEM**

### **4.0 City Manager's Duties**

The City Manager is responsible to administer provisions of this Manual and, pursuant to the City Charter, may delegate any of their powers or duties to any other officer or Employee of the City to the extent not inconsistent with the provisions of the City Charter or ordinance. The City Manager shall:

- A.** Act as the Appointing Authority for all Employees except the City Attorney and City Clerk.
- B.** Administer all aspects of this Manual and the personnel system except to the extent the responsibilities are specifically delegated by the City Charter or ordinance to the City Council, or a board or commission.
- C.** Prepare and recommend approval of amendments to this Manual and provide copies to all recognized employee organizations and unrepresented employees.

### **4.1 Supervisor's Duties**

The duties of a Supervisor includes the following:

- A.** To fully inform subordinates of their duties and responsibilities.
- B.** To provide subordinates with adequate direction and guidance in the performance of their duties.
- C.** To monitor and evaluate the performance of subordinates and regularly communicate their observations and opinions about performance to the subordinate in a constructive and respectful manner.
- D.** To make employment-related decisions and recommendations solely on the basis of merit and ability.
- E.** To acknowledge, and reward when appropriate, outstanding or improved performance.
- F.** Make every reasonable effort to improve unsatisfactory performance using the resources within the Department and those available through the Human Resources Director.
- G.** Recommend or impose discipline in a manner consistent with this Manual.
- H.** Maintain a safe, healthy and productive work environment.

- I. Encourage communication between Employees and Supervisors.

## 4.2 Open Door Policy

Supervisors are encouraged to maintain an open line of communication with their subordinates and to discuss issues related to their duties or suggestions for improving City service. The City encourages Employees to discuss with their Supervisor any concern or question they have about their duties as well as any suggestion or idea for improving City service. Management and Supervisory personnel shall use their best efforts to respond to concerns or questions any Employee may have about their performance and shall pursue ideas or suggestions about improving City service. Each Employee is encouraged to work within their Department's "chain of command" to resolve issues and improve service. However, an Employee who has utilized the "chain of command" and remains dissatisfied with the responses of the Supervisor and/or Department Director may consult with the Human Resources Director or City Manager. The provisions of this Section shall not diminish the right of any Employee to submit grievances pursuant to this Manual or any relevant MOU.

## 4.3 Employees Records and Files

- A. **Human Resources Files.** The Human Resources Director shall maintain a personnel file for each City Employee. The file shall contain a copy of all documents pertaining to formal actions taken with respect to the Employee that are relevant to compensation or benefits such as performance evaluations, changes in employment status and any disciplinary action taken by a Supervisor or Department Director. Personnel files shall be kept in a secure manner in the Human Resources Department.
- B. **Payroll Files.** The Administrative Services Department shall maintain a file on each City Employee that contains all information necessary for the preparation of payroll checks and the administration of the salary and benefit provisions of this Manual, any relevant MOU, or other plan or program adopted by the City.
- C. **Department Files.** The Department shall also maintain a file on each Employee within the Department. The Department file shall contain a copy of all documents that reflect any formal action taken with respect to each Employee, such as Appointments, performance evaluations, and discipline. The Department file shall also contain copies of other documents related to the Employee's performance of their duties such as any certificate or license related to their duties and letters of commendation. The Department personnel files shall be kept in a secure manner.
- D. **Access to Personnel Files and Payroll Files.** Access to documents in an

Employee's personnel file is limited to the City Manager and their designees, the Human Resources Director, the Department Director, any Supervisor in the Employee's chain of command and the City Attorney if access is necessary to perform their legal duties. Access to the payroll file is limited to those Employees entitled to access the personnel file and those Employees responsible for administering the payroll system. The Employee, or any person authorized by the Employee may, during normal working hours, inspect the contents of the Employee's personnel files or the payroll file within a reasonable time (generally one business day) after a request to do so is submitted to the custodian of the file. The Department Director is the custodian of the Department file and the Human Resources Director is the custodian of the Human Resources file.

- E. Disclosure of Information.** Except as provided in this Manual or unless required by law or court order, information contained in the Personnel Files or payroll files shall not be disclosed to any person. However, the Employee's job title, dates of employment, current or final salary, work telephone number, Department assignment, and the type of any Separation are subject to disclosure pursuant to State law. The restrictions on disclosure of information shall not apply to the Employee or to any person that the Employee has authorized to receive information pursuant to a written waiver or consent filed with the Department Director or Human Resources Director. Except to the extent that disclosure is required (as opposed to permitted) by Federal, State or local law, the City may refuse to disclose information in an Employee's Department file or payroll file to any third party.

**F. Miscellaneous Provisions**

- 1. Department File.** Documents sent by members of the public commending performance of an Employee and documents that reflect educational achievements of the Employee shall be kept in the Department personnel file for a period of at least one year and longer at the discretion of the Department Director. Any such document shall be given to the Employee upon request or at such time as the document would otherwise be removed from the file.
- 2. Copies.** An Employee shall, within a reasonable time (generally within one business day) after a request submitted to the custodian of the file, be given a copy of any document(s) placed in their personnel files or payroll file. An Employee may obtain an additional copy of any document in their personnel file. The Employee shall pay the actual cost of duplication in the case of requests that require the production of more than five (5) pages.

#### **4.4 Classification Plan**

The City Manager shall prepare a Classification Plan and submit the Classification Plan to the City Council for approval. The Classification Plan shall describe appropriate Classification Series and reflect the number of positions in each Classification. The Classification Plan shall also help ensure that all Positions that are substantially similar with respect to duties, responsibilities, authority and character of work, are included within the same Classification. Classification Specifications are explanatory, but not restrictive. The listing of particular duties and tasks in the Classification Specifications shall not preclude the assignment of related duties or work requiring lesser skills.

#### **4.5 New Positions**

When a new Position is created and authorized in the annual budget, no person shall be appointed or employed to fill the Position before the Position is assigned to a Classification unless otherwise provided by this Manual. In such event, the City Manager shall amend the Classification Plan to assign the Position to an appropriate Classification consistent with the action by the City Council.

#### **4.6 Compensation Plan**

The City Manager shall prepare and maintain a Compensation Plan that establishes the Base Rate of Pay for all Classifications. The City Council shall approve, by resolution or minute order, all modifications to the information in the Compensation Plan. The Compensation Plan shall be automatically adjusted to conform to any action taken by the City Council that affects the Base Rate of Pay or other information in the Compensation Plan such as approval of an MOU.

### **SECTION 5. RECRUITMENT AND SELECTION**

#### **5.0 Goals**

The primary goal of the City's recruitment and selection policies is to ensure that the City attracts and employs the most qualified person for each Position. Another goal is to ensure that each Employee is encouraged, and given the opportunity, to attain the skills, education and experience necessary to meet the minimum qualifications for Promotion to Positions within their Classification Series or related Classifications.

## **5.1 Recruitment**

Recruitment may be open, promotional or continuous. The Civil Service Board shall make the determination of the nature of the Recruitment of Civil Service Employees. With respect to non-Civil Service Employees, recruitment shall be promotional unless the Human Resources Director, after consultation with the relevant Department Director(s), determines that an open Recruitment is necessary to ensure an adequate number of candidates with appropriate skills and ability. A Probationary Employee may participate in a promotional recruitment provided he/she possesses the minimum qualifications for the Position as of the last date on which applications for the Position are accepted.

## **5.2 Job Announcements**

The Human Resources Director shall prepare and distribute job announcements with information about the Position including the Classification and Base Rate of Pay, the primary responsibilities and duties, minimum and other qualifications, where and when to apply, and the last date that applications will be accepted. Notices of Recruitment shall be posted and shall specify a deadline for submitting an application that provides adequate time to attract candidates for the Position.

## **5.3 Personnel Applications**

Applications for employment, transfer, or promotion shall be made on forms provided by the Human Resources Director. All applicants shall provide, and certify the truth of, all information required by the application. Any material false statement or omission on the application shall be cause for disqualification of the applicant and may be cause for termination or other disciplinary action if the applicant is, or subsequently becomes, an Employee regardless of when the error is discovered. Resumes and other supplementary information may be submitted and attached to the application for consideration, but may not be used as a substitute for the application. An application shall not be considered unless it is received on or before 5:00 p.m. on the last Day of the advertised Recruitment period.

## **5.4 Evaluation of Applications**

The Department Director, and the Human Resources Director if he/she desires, shall review each application to determine if the applicant appears to possess the minimum qualifications for the Position. The Department Director may utilize the applications as the first step in the selection process by screening out applicants other than those who appear to be the individuals most highly qualified for the Position. The Department Director may, at any time during the recruitment process, verify references and other information provided by the applicant.

## 5.5 Selection Techniques

Selection techniques may consist of personal interviews, practical tests, performance tests, evaluation of work performed, work samples, assessment center, physical ability tests, other written tests, review and investigation of personal background and references, medical examination(s), polygraph examination(s), and psychiatric or psychological examination(s). The Department Director shall ensure that the selection process is structured to promptly determine whether applicants meet minimum qualifications. Examinations shall be designed so that the results reasonably represent an objective assessment and comparison of the merits, skills and abilities of the applicants in terms of the essential job duties of the Classification or the Position. The Examinations shall be designed such that candidates with substantially similar ability and skill have an equal opportunity for selection. Written examinations, tests of physical ability, performance tests and psychological examinations shall be prepared or validated by a testing service or the Human Resources Director to ensure thoroughness and objectivity. Examinations shall be given the weight indicated in the announcement. The selection process may include tests or examinations administered on a pass/fail basis. To the extent feasible, each candidate shall be given written notice of their test result(s).

## 5.6 Review of Examination

An Applicant shall have the right to review their written test(s), as well as their result or grade on other tests, within five (5) working days after written notice of the results. No Applicant will be allowed to examine the test key. Any arithmetical error in the rating of an Applicant or the grading of an Examination shall be corrected if notice is given to the Department Director or Human Resources Director within seven (7) Days after written notice of the results. Any Applicant will be considered eligible to continue with the selection process if their corrected score meets or exceeds the established passing score. The correction or modification of the score of any Applicant shall not invalidate or nullify the acceptance of an offer of employment by another applicant for the Position. The provisions of this Section shall not apply to selection of Civil Service Employees to the extent this Section is in conflict with the Civil Service Ordinance or Civil Service Rules.

## 5.7 Eligibility List

- A. Preparation and Availability.** As soon as possible after the completion of the examination process, the Human Resources Director shall prepare and make available to the relevant Department Director an Eligibility List consisting of the names of candidates who successfully completed the process, arranged in order of their final rating.
- B. Duration of Eligibility List.** Eligibility Lists, other than those resulting from a Continuous Examination, shall remain in effect for twelve (12) months or

until all eligible candidates have been appointed, whichever occurs first. The term of an Eligibility List may be extended up to an additional twelve (12) months by the Civil Service Commission for Civil Service positions or the Human Resources Director for non-Civil Service positions. The Department Director may, with the concurrence of the Human Resources Director, terminate or discontinue an Eligibility List at any time. At the option of the Department Director, the names of all eligible candidates on the discontinued list may be placed on an Eligibility List of a specified duration with the names ranked by total test scores. Each eligible candidate's name shall remain on the Eligibility List for twelve (12) months from the date their name is added to the Eligibility List unless they receive an Appointment, fail to meet hiring standards or the Eligibility List is discontinued.

- C. Re-Employment List.** The names of Regular Full Time Employees, Regular Part Time Employees and Probationary Employees who have been laid-off, or reduced in Classification in lieu of layoff, shall be placed on an appropriate Re-Employment List. The Re-Employment List shall remain in effect until all persons have been reinstated or for a period of at least two (2) years. Persons who refuse an offer of Re-Employment within the first year will be removed from the Re-Employment List. When a Re-Employment List is used to fill vacancies, the Human Resources Director shall certify all of the names on the Re-Employment List for consideration by the Appointing Authority.
- D. Removal of Names from Eligibility List.** The Human Resources Director may remove the name of any eligible candidate appearing on an Eligibility List if any of the following occurs:
1. The eligible candidate accepts an Appointment to a Regular Full Time Position in the same or higher Classification.
  2. The eligible candidate requests their name be removed.
  3. The eligible candidate fails to provide notification of a change in address.
  4. The eligible candidate fails to respond within ten (10) calendar Days to a notification or letter that has been mailed to the eligible candidate's last known address on file with the City.
  5. The eligible candidate declines (or fails to appear for) an interview, offer of employment or appointment during the term of the Eligibility List.
  6. The eligible candidate was on an Eligibility List as a result of a promotional examination and, after preparation of the Eligibility List, Separated from the City.



7. Subsequent to preparation of the Eligibility List, the eligible candidate fails to meet minimum qualifications for the Position or an event occurs that would make the person ineligible for the Position.
8. Subsequent to preparation of the Eligibility List, the eligible candidate fails to satisfactorily complete any additional aspect of the selection process such as background checks, reference checks, or pre-appointment interviews.

**E. Disqualification.** The Department Director or Human Resources Director, as appropriate, may determine an Applicant is an ineligible candidate, or may withhold placement on the Eligibility List if:

1. The Applicant has failed to provide proof of any of the requirements specified in the announcement of the vacancy for the Classification for which he/she applied;
2. The City Manager has determined that the Applicant has been convicted of a felony, that there is a rational relationship between the conviction and the normal duties of the position and there are no mitigating circumstances that would warrant a waiver of the provisions of Section 6.5.
3. The Applicant has been dismissed for cause from any Position in the public or private sector and the reasons for the dismissal would warrant dismissal by the City;
4. The Applicant has misrepresented any fact material to the selection or testing process, including making false representations on the employment application, submitting false documents, or cheating on any portion of the examination; or
5. The Applicant is not otherwise qualified for Appointment to the Position.

**F. Civil Service Employees.** The provisions of this Section shall not apply to Civil Service Employees to the extent of any conflict with the Civil Service Rules.

## **SECTION 6. APPOINTMENTS**

### **6.0 Appointment Process**

The Appointment process is initiated with a conditional offer of employment sent to the eligible candidate on the Eligibility List who is recommended for Appointment by the Department Director. The conditional offer of employment shall be made pursuant to a letter from the Human Resources Department or the Police Chief in the case of the Police Department. The conditional offer of employment shall specify the medical, background and other examinations that the candidate is required to successfully complete prior to, and as a condition to, Appointment. Appointments shall be considered final when the candidate has satisfied all pre-conditions to employment, the Appointment has been reviewed and approved by the Human Resources Director and/or City Manager and the candidate reports to duty at the time and place designated. The selected candidate shall be deemed to have declined the Appointment if he/she fails to report to duty at the time and place directed.

### **6.1 Salary at Appointment**

- A. Appointment.** Except as otherwise provided in this Section, the initial Appointment of an Employee shall be at the first Step of the Salary Range of their Classification. When the proposed Employee's education, training, and/or experience are deemed superior and justify a salary in excess of Step 1, the Department Director may offer employment and appoint at Steps 2, 3 or 4. The Department Director may, with prior City Manager approval and when a proposed Employee's education, training and/or experience are deemed superior, offer employment and Appoint at Steps 5 through 8. All Appointments are subject to City Manager approval, regardless of the Step at which the Employee is Appointed. Any Appointment of an Employee at other than the first Step, and any Appointment that includes a financial commitment other than normal Base Rate of Pay and benefits shall be approved in writing and the financial commitments made part of the Employee's personnel file.
- B. Incentives.** The City Manager may authorize incentives to aid in Recruitment or Appointment. Additional inducements may include the authorization of a moving allowance, additional paid leave or educational expenses.

## **6.2 Pre-Employment Physical**

Upon receiving an initial conditional offer of employment, an eligible candidate will be required to pass a pre-employment physical at a City designated or City approved medical facility, at City cost, before the Appointment becomes effective. A physical examination may also be required whenever any Employee is promoted to a Position the duties of which require a substantial change or increase in the physical demands on the Employee when compared to their current Position. All pre-employment physicals shall include testing consistent with the provisions of the City's Drug and Alcohol Policy. Violation of the Policy shall result in withdrawal of the conditional offer of employment.

## **6.3 Nepotism Policy**

An Applicant who has a member of their Immediate Family employed by the City shall have the right to file an application for employment and compete in the examination process. An Employee shall not participate directly or indirectly in the Recruitment or selection process for any vacant Position for which a member of the Employee's Immediate Family has filed an employment application. In the event the Applicant is selected for Appointment, he/she may be Appointed to a Department, division, or office in which a member of their Immediate Family is employed unless the Department Director, with the concurrence of the Human Resources Director, determines that:

- A.** Employment of the Applicant would potentially create a conflict of interest or have a potentially adverse impact on supervision, safety, security or morale; or
- B.** The Applicant would, if Appointed, occupy a Position where he/she would directly supervise or be supervised by a member of their Immediate Family.

In the event an eligible candidate is denied Appointment by virtue of this Section, an eligible candidate shall remain on the Eligibility List for a vacancy in the same Classification. Except as to the prohibition against participation in Recruitment, this Section shall not apply to an Employee Appointed to a Position prior to the effective date of this Manual. The Department Director shall take appropriate action to insure the circumstances in subsections A and B do not exist if and when an Employee becomes a member of the Immediate Family of another Employee in the same Department. In the event the Department Director has more than one action available, the Department Director shall take the action that least impacts the Base Rate of Pay or the normal duties of the Employee. In the event that no feasible action is available to the Department Director, the Employee within the Immediate Family with the least seniority shall be terminated in good standing.

#### **6.4 Fingerprinting and Background Checks**

To facilitate the City's ability to perform complete background checks on Employees, eligible candidates will be fingerprinted to enable the City to conduct a background check. The City will conduct background checks to insure the candidate is eligible for Appointment and has the ability to perform the normal duties of the Position in a manner that will neither diminish the quality of City service nor create liability on the part of the City.

#### **6.5 Criminal Conduct**

No person convicted of a felony or a crime involving moral turpitude shall be eligible for employment in the service of the City when there is a rational relationship between the conviction and the normal duties of the Position for which the person is applying. The City Manager may, in their sole discretion, waive the provisions of this Section based on mitigating circumstances. Mitigating circumstances include evidence of rehabilitation, length of time since the conviction, the age of the person at the time of conviction, and/or the limited nature of the relationship between the conviction and the duties of the Position for which the person has applied.

#### **6.6 Appointments from Lists**

Except for an Emergency, Interim or Acting Appointment, or a reassignment, each vacant Position shall be filled by Transfer, Promotion, Demotion, or by Appointment of an eligible candidate from the appropriate Eligibility List.

#### **6.7 Emergency Appointments**

To fulfill the immediate requirements of an emergency situation, the City Manager may employ persons on a temporary basis as needed for the duration of the emergency. The method of hiring for emergency Appointments shall be solely within the discretion of the City Manager unless determined by ordinance or specific provision of the Emergency Operations Plan. Emergency Appointments shall be reported to the City Council at the next regularly scheduled meeting.

#### **6.8 Interim Appointments**

The City Manager may authorize and approve an interim Appointment to fill either a temporary vacancy (such as maternity leave, long-term disability or military leave) or permanent vacancy (separation or retirement). As a general rule, Interim Appointments expire in six (6) months but may be extended an additional six (6) months by the City Manager. All Interim Appointees must satisfy the minimum qualifications for the Position.

## **6.9 Acting Appointments**

The formal and express assignment of an Employee to perform the significant duties and responsibilities of a higher Classification for more than one hundred sixty (160) consecutive working hours shall be deemed an Acting Appointment. The Employee who has received an Acting Appointment shall, from the date of the Acting Appointment, be compensated at the Step in the Salary Range for the Classification of the Acting Appointment that is at least five percent (5%), but not more than fifteen percent (15%), higher than the Employee's current Salary Step. If Acting Appointment is to a Classification without a Salary range, the Employee shall be compensated at a level of five percent (5%) higher than the Employee's current Salary Step. With the exception of Civil Service Employees, in the event the Employee is subsequently Appointed to the higher Classification, the time accumulated while working in that Classification shall be applied towards fulfilling any required Probationary Period. The Department Director shall consider the time spent by an Employee and the performance of that Employee in a Classification pursuant to an Acting Appointment when and if the Employee applies for a Promotion to any Classification in that Classification Series. The Employee shall return to their former Position and Step if the Employee is not Promoted once the Acting Appointment is completed.

## **6.10 Transfer**

A Department Director may, without cause, Transfer an Employee from their then current Position to a vacant Position at the same Salary Step in the same Classification in the same Department. An Employee may also request a Transfer from their current Position to a vacant Position in the same Classification in the same or different Department. An Employee who is Transferred shall retain their Date of Hire. An Employee who Transfers to a Position in a lower Classification, may be Y-Rated at the sole discretion of the Department Director and with the concurrence of the City Manager. Any Employee who requests a Transfer must have completed their Probationary Period before the request is submitted. An Employee shall not be required to complete a new Probationary Period upon Transfer but is required to complete their Probationary Period if Transferred before completion of their Probationary Period. This section does not affect the right of a Safety Employee of the Police Department to an administrative hearing pursuant to the provisions of the Peace Officers Bill of Rights Act.

## **6.11 Promotion**

When an Employee is Promoted, the Employee shall be paid at the step in the Salary Range of their new Classification which is at least five percent (5%) greater than the Step he/she occupied prior to the Promotion. Any Employee who is Promoted shall be required to successfully complete a six (6) month Probationary Period in the new Position. Employees in the Civil Service System shall complete a twelve (12) month Probationary Period. In the event the Employee fails to

satisfactorily complete their Probationary Period after Promotion the Employee shall be reinstated to their former Position at their Salary Step effective as of the date of Promotion provided the Employee meets the minimum qualifications for the Classification.

## **6.12 Demotion**

- A.** An Employee may be demoted because he/she lacks the knowledge or skills to satisfactorily perform the required duties of their Position, for disciplinary purposes, or for any other reason consistent with this Manual. No Employee shall be Demoted to a Position for which he/she does not possess the minimum qualifications. An Employee shall not be required to complete a Probationary Period for the Classification to which he/she is Demoted unless they have not completed a Probationary Period in either Classification. A Demoted Employee shall retain their Date of Hire.
- B.** An Employee may, for any reason, request a voluntary Demotion to a lower Classification with a lower Salary Range in which the employee has previously held Regular status. A voluntary Demotion shall require the approval of the Human Resources Director, and the Director of the Department in which the Employee will work. An Employee who is granted a voluntary Demotion shall be placed in the Step of the lower Salary Range that is equal to, or closest to but lower than, the Employee's Step in their former Position. In lieu of a reduction in salary, the City Manager may Y-Rate a voluntarily Demoted Employee.

## **6.13 Re-Employed and Reclassified Employees**

An Employee Re-employed within one (1) year after Layoff shall not be required to complete a new Probationary Period if he/she successfully completed a Probationary Period prior to Layoff. A Regular Full Time Employee occupying a Position that is Reclassified shall not be required to serve a new Probationary Period in their new Classification.

## **6.14 Re-Employment of Former Employees**

On written recommendation of the Department Director and approval by the City Manager, a former Employee may be Re-employed in the Classification or Position he/she occupied at the time of their Separation and at the same Step subject to the following conditions:

- A.** There must be a vacant Position in the Classification and no Re-Employment Lists for the Classification.

- B. Separation was not based on misconduct or unsatisfactory performance and Separation from City employment was under favorable conditions.
- C. Re-Employment occurs within one (1) year after termination of City employment for Non-Civil Service Employees and two (2) years for Civil Service Employees.
- D. The Employee shall complete the remainder of any Probationary Period.
- E. The Employee shall be required to take a medical examination at their own expense and as prescribed by the City Manager.

## **SECTION 7. PROBATIONARY PERIOD**

### **7.0 Purpose**

The Probationary Period is part of the selection process and affords the Department Director and Supervisors an opportunity to identify and evaluate factors and qualities related to the competence and fitness of an Employee that may not have been revealed during other testing procedures.

### **7.1 Period of Probation**

All original and promotional Appointments to Regular Employee status, except the Appointments of Department Directors, are tentative and subject to the successful completion of a Probationary Period. The Probation Period of any Regular Full Time Employee after their initial Appointment shall be twelve (12) months and, except for Civil Service Employees, the Probation Period after a Promotion shall be six (6) months. The Probationary Period for a Civil Service Employee after a Promotion is twelve (12) months. The Probationary Period for Regular Part Time Employees shall be at least one thousand hours of work and twelve months from the date of Appointment. A probationary employee who has separated from the City and is re-employed as per section 6.14 shall have the probationary period established by the Department Director but shall not be less than a total of twelve months.

### **7.2 Extension of Probation**

An Employee's Probationary Period shall be deemed extended in increments of thirty (30) Days for a period of one hundred and eighty (180) Days after the expiration of the initial Probationary Period unless the Department Director has filed a Personnel Action Form confirming Appointment to Regular Employee status. The Department Director shall give written notice to any Employee whose Probation Period has been extended but failure to give notice shall not constitute an Appointment to Regular status. The Department Director shall have the right

to Appoint an Employee to Regular status at any time during the extended Probationary Period.

### **7.3 Rejection of Probationer**

An Employee serving their first Probation Period with the City may be terminated at any time at the sole and absolute discretion of the Department Director without cause and without any right of appeal. The Department Director may reject an Employee Promoted to a Position in a higher Class by at any time during their Probationary Period without cause and without any right of appeal. In such event, the Employee shall be reinstated to the Position he/she occupied prior to the Promotion, provided he/she had acquired Regular status in the former Position. An Employee discharged for cause while on Probation after a Promotion shall not be reinstated to their former Classification.

### **7.4 Effect of Absence**

The Probationary Period of any Employee who is, for any reason, absent from regular duty or assignment in excess of ten (10) working days during Probation shall be extended for a period equal to the total number of Days the Employee was absent.

## **SECTION 8. TRAINING AND CONTINUING EDUCATION**

### **8.0 Purpose**

The City recognizes the importance of Employee development and training. The City will offer training programs to improve the capabilities and effectiveness of all Employees. This training shall be designed to improve the Employee's skill and ability so that he/she will be able to better perform their duties, effectively compete for Promotion, and enhance the performance of the organization.

### **8.1 In-House Training**

An Employee who has training, knowledge or expertise in a subject area, or who has recently attended a City sponsored seminar or conference in a given subject matter, may be asked to share this information with other Employees. In-house training may be informal or formal depending upon the nature of the subject.



## 8.2 Department Training

Department Directors are encouraged to offer specialized training to their Employees subject to the following:

- A. Budgeted funds must exist for all such training and any related travel. Travel outside of the City that is related to training shall be approved and funded in accordance with the City Council's travel policy.
- B. Employees must comply with the City travel policy and provide documentation of expenses to the extent required by Council Policy.
- C. Employees who receive City-wide or specialized training may be asked to provide on duty "in-house" training to other Employees.

## 8.3 Training and Travel Reimbursement

- A. **Non-exempt Employees.** Non-exempt Employees are entitled to receive compensation for overtime pursuant to FLSA. Time spent in training and travel may be considered as "hours worked" for purposes of calculating FLSA overtime. The provisions of the City Council travel policy do not describe or affect the obligations of the City with respect to the calculation of "hours worked" or paying overtime to Non-exempt Employees. The FLSA shall prevail in the event of any conflict between this Section and the FLSA or binding decisions of a court of competent jurisdiction.
  - 1. Employee attendance at lectures, meetings, training programs, and similar activities outside of the Employee's normal working hours shall not be considered as time worked unless the Employee is directed to attend by a Supervisor. Break time and meal times are considered time worked only to the extent that training or education occurs during the break or meal time.
  - 2. Time spent by an Employee traveling between the Employee's residence and the regular workplace is not work time and shall not be treated as hours worked. When an Employee is assigned by a Supervisor to travel outside of the City, in the same Day, time spent traveling between the Employee's home and assigned destination shall be treated as time worked to the extent that it exceeds the Employee's normal commute. Travel time during an Employee's normal Workday shall be treated as hours worked if it is related to the Employee's normal duties.
  - 3. When an Employee, who is assigned to travel outside the City and return the same day, utilizes public transportation, work time shall be equal to the travel time in excess of the Employee's normal

commute. Assigned travel away from home overnight for the purpose of training is work time when it occurs during the Employee's Workday, however, travel as a passenger in an automobile or on public transportation outside of regular working hours shall not be treated as hours worked.

- B. Travel Reimbursement.** Employees shall receive mileage and travel reimbursement in accordance with the then current City Council travel policy.

#### **8.4 Tuition Reimbursement**

The objective of the Tuition Reimbursement Program is to encourage each Employee to participate in off-duty instruction that will be immediately and mutually beneficial to the Employee and the City.

- A. Eligibility.** All Regular Full-time and Probationary Employees whose performance has been satisfactory based on the most recent performance evaluation are eligible for the Tuition Reimbursement Program.
- B. Application.** Application for tuition reimbursement shall be in the format prescribed by the City Manager. Pre-payment or post-payment of the cost of tuition, parking permit fees, graduation fees and required materials such as workbooks and lab materials may be requested. No payment shall be made for expenses related to travel, meals, normal supplies or other incidentals. Applications must bear the signature of the Employee and must be approved by the Department Director.
- C. Ineligible Courses.** Courses are not eligible for tuition reimbursement if they are taken to acquire certificates, licenses, skills or knowledge that the Employee was required to have when initially hired or Appointed. Courses that involve no classroom participation are not eligible for tuition reimbursement except that any course offered through correspondence or the Internet is eligible if approved by the Department Director.
- D. Reimbursement Limits.** Reimbursement for a Regular Non-safety Employee is limited to a maximum of \$1,000 per fiscal year, or such other amount as may be approved by the City Manager or City Council, and reimbursement for a Regular Safety Employee shall be as specified in the relevant Memoranda of Understanding. Reimbursement is subject to completion of the course within any fiscal year when funds for reimbursement are available in the Human Resources Department budget.

- E. Grade.** Reimbursement will be made only for those courses completed with a final grade of "C" or better (or the equivalent) in an undergraduate course, or "B" or better (or the equivalent) in a graduate level course. No reimbursement shall be made for audited courses or incomplete courses.
- F. Eligible Courses.** The following criteria shall be used to determine the eligibility of courses for Tuition Reimbursement Program:
1. Courses must be in furtherance of a degree or certificate that is related to the duties performed by the Employee or the mission of their Department.
  2. Courses must bear some relationship to one or more of the normal duties performed by the Employee.
  3. Courses must be taken at accredited institutions or at an institution approved by the Department Director.
- G. Pre-payment.** To obtain prepayment of up to fifty percent (50%) of authorized expenses, an application must be made at least two (2) weeks prior to the starting date of the course. An itemized list of all expenses for which payment is requested shall accompany the application. Confirmation of the grade received and receipts for all expenses prepaid must be submitted within ninety (90) Days after completion of the course. The amount prepaid will be deducted from the Employee's next paycheck if the Employee fails to submit the information required or fails to obtain the requisite grade.
- H. Post-payment.** To obtain post-payment of authorized expenses, application must be made within ninety (90) Days of the completion of a course. Confirmation of the grade received and an itemized list with all receipts for all expenses claimed must accompany the application.
- I. Re-payment on Termination.** The reimbursed cost of course(s) shall be deducted from an Employee's final paycheck in the event the Employee Separates from City service within one (1) year after the completion of the course(s) for reasons of other than death or permanent disability.
- J. Approval Authority.** The Department Director shall be the final authority for approving requests for reimbursement. The Department Director may, with the consent of the City Manager, waive any of the requirements of this Section.

## SECTION 9. PERFORMANCE EVALUATIONS AND SALARY ADJUSTMENTS

### 9.0 Employee Performance Evaluation

- A. Purpose and Intent.** The purpose of Performance Evaluations is to enable the Supervisor and/or Department Director to discuss with the Employee being evaluated (i) the positive and negative aspects of the Employee's performance; (ii) the positive aspects of the Employee's performance; (iii) appropriate goals such as development of additional skills; and (iv) aspects of the Employee's performance that should or could be improved. The Performance Evaluation is an opportunity for the Employee to ask their Supervisor for clarification of duties or Department objectives and to suggest changes in the Department or Supervisor actions that could help improve Employee's performance, better serve the public, or better fulfill the mission of the Department.
- B. Timing of Evaluation.** Each Regular Employee shall, at a minimum, have their performance evaluated in writing at the following times:
1. Eligibility for a Step increase or proposed salary adjustment.
  2. Reclassification or Promotion.
  3. Twelve (12) months after the previous evaluation.
  4. At least once during the Probationary Period.
- The evaluation of performance should occur on a daily basis and the written evaluation should reflect the ongoing evaluation that has occurred prior to documentation.
- C. Forms.** The Human Resources Director shall provide each Department with training and forms helpful to assist Supervisors in assessing performance, establishing goals, and recording suggestions from the Employee. The evaluation form is a tool to assist each Supervisor with their evaluation but completion of the form does not, in and of itself, constitute an adequate evaluation. The Evaluation shall be conducted in a manner best calculated to achieve the purposes and objectives of this Manual. Departments may use their own evaluation forms and procedures provided that the Department or Human Resources Director have provided appropriate training for Supervisors and use of the forms has been coordinated with the Human Resources Director.

- D. Employee Response.** The Employee shall have an opportunity to read and review their performance evaluation form and offer comments on the ratings or the overall evaluation prior to Supervisor execution and approval. The Department Director shall give the Employee a copy of the final personnel evaluation no later than five (5) working days after approval by the Supervisor. The Employee shall have the right to prepare a written response to the Performance Evaluation and request that the response be attached to the Performance Evaluation Form for inclusion in the Employee's personnel file. The response and request to attach must be provided to the Department Director no less than thirty (30) Days after receipt of the Performance Evaluation. The failure of an Employee to sign or respond to a Performance Evaluation Form shall not have a bearing on the approval or validity of the form or the performance evaluation.
- E. Procedures.** The Department Director shall establish appropriate procedures to insure that performance evaluations are completed on a timely basis and that evaluations are conducted in a manner consistent with the purpose and intent of this Manual.
- F. Provisional Employees.** A Provisional Employee may receive a performance evaluation upon Separation to determine, among other things, if he/she is eligible for rehire. A Provisional Employee may be evaluated from time to time at the discretion of the Department Director. The performance evaluation shall be a factor in any adjustment in compensation paid to the Provisional Employee. The evaluation of the performance of a Provisional Employee does not change or alter their status or affect or diminish the City's right to terminate him/her without cause or right of appeal.

## 9.1 Merit Steps Progression

- A. Regular Employees.** A Regular Employee shall earn Step increases based upon satisfactory performance of duties (not just longevity) and in accordance with the following:

  - 1. Normal Progression.** Except for Safety Employees, as a general rule no Step increase shall be granted from the Date of Hire until the successful completion of the Regular Employee's Probationary Period. The Department Director may grant one (1) additional Step increase during a Regular Employee's normal progression in a Classification based on documented outstanding performance. A Regular Employee shall become eligible for a Step increase only if the Regular Employee's overall performance is rated at least satisfactory. Thereafter, eligibility for Step increases for Regular Full Time Employees shall occur at twelve (12) month intervals, provided the Regular Full Time Employee's overall performance is at least

satisfactory, until such time as the Regular Employee reaches the last Salary Step available for their Position. Eligibility for Step increases for Regular Part Time Employees shall occur at twelve-month intervals, provided the Employee has worked at least one thousand (1000) hours since the last increase, and the Employee's overall performance is satisfactory. A Regular Employee who receives a less than satisfactory performance evaluation shall not receive any Step increase at that time, but may receive a Step increase at such time as the Regular Employee's performance is rated at least satisfactory.

2. **Promotional Progression.** As a general rule, no Regular Employee shall receive a Step increase from the date of Promotion until they have satisfactorily completed their Probationary Period. A Regular Employee who has been Promoted and has successfully completed their Probationary Period is eligible for a Step increase provided their performance is rated at least satisfactory and a Step increase is available in that Classification. A Promoted Regular Employee is eligible for annual Step increases, provided their performance is at least satisfactory, until he/she reaches the top Step.

**B. Provisional Employees.** Salary increases for Provisional Employees are at the discretion of the Department Director with the approval of the Human Resources Director and may be based on merit and on the need to remain competitive in the marketplace for recruiting purposes. All merit advancements shall be effective on the first day of the first pay period following the eligibility date. Provisional Employees shall not received more than one merit increase per year.

1. **Seasonal Employees.** Step increases may be granted to Provisional Employees that work on a seasonal basis and whose performance the previous season was rated satisfactory or above. The Salary Range for Provisional Employees may be adjusted annually based upon a market survey.
2. **Non-Seasonal Employees.** Provisional Employees who work other than on a seasonal basis shall have a salary schedule that may be adjusted annually based upon a market survey.

## 9.2 Reclassification/New Classifications

- A.** The City Manager shall Reclassify Positions upon a determination that there has been a material change in the normal duties regularly performed by, or expected of, the Employee occupying the Position. The Reclassification process may be initiated only through a request for a job audit submitted to, or initiated by, the Human Resources Director at their sole discretion. A job audit may be requested by an Employee, their Supervisor, or the Department Director. The Human Resources Director may decline to initiate, or may terminate at any time, the job audit upon a determination that there is no substantial evidence of a material change in duties. The job audit should include a detailed analysis of the work performed by, or expected of, the Employee and a comparison of that work with the job specifications for the Classification. The Human Resources Director shall submit the completed job audit, together with recommendations relative to Reclassification to the Department Director, the Employee, and the City Manager.
- B.** In the event a Position is Reclassified and the incumbent meets minimum qualifications, the Employee shall be Appointed, or offered an Appointment to the Reclassified Position with no change in their Date of Hire in accordance with the following.
1. If the Reclassified Position has the same Salary Range, the incumbent shall be Appointed to the Reclassified Position with no change in their Base Rate of Pay.
  2. If the Reclassified Position has a lower Salary Range, the incumbent shall be offered an Appointment to the Reclassified Position at a Base Rate of Pay that is closest to, but not less than, the Employee's current Base Rate of Pay. The City Manager may approve a Y-Rated salary for the Employee if he/she is at the top Step of the Salary Range in the previous Classification.
  3. If the Reclassified Position has a higher Salary Range, the incumbent shall be appointed to the Reclassified Position at the first Step with a Base Rate of Pay higher than their previous Base Rate of Pay.

The effective date of Reclassification shall be the first day of the pay period immediately after the Reclassification is approved by the City Manager. An Employee who does not meet the minimum qualifications for the Reclassified position shall be laid off.

## **SECTION 10. ATTENDANCE AND HOURS OF WORK**

### **10.0 Overtime**

For purposes of applying the overtime requirements of the FLSA, the Work Period (see Subsection 2.0 RR for examples of Work Periods for various schedules) shall be as specified in writing by the City Manager or their designee (such as the Department Director).

- A. FLSA Overtime.** The City shall fully comply with the provisions of FLSA with respect to all Employees who are not considered exempt from FLSA overtime pay requirements. Employees entitled to overtime pursuant to FLSA may be compensated in the form of pay or compensatory time off. Any Regular Employee who believes he or she is entitled to, but has not received, overtime pursuant to FLSA shall immediately notify their Supervisor. The Employee's Supervisor shall have the authority to approve payment of overtime. In the event the Supervisor does not approve the request for overtime, the Supervisor shall promptly communicate the request to the Department Director who shall notify the Human Resources Director and the City Manager. The Department Director shall respond to the Employee, in writing, within ten (10) working days and shall promptly take any action necessary to comply with FLSA.
- B. Non-FLSA Overtime.** Regular Employees may be entitled to overtime without regard to FLSA based upon provisions of the applicable MOU. Any Regular Employee who believes he/she may be entitled to overtime pursuant to the provisions of an MOU shall immediately notify their Supervisor. The Supervisor shall have the authority to authorize payment of the overtime. In the event the Supervisor does not approve the request for overtime, the Supervisor shall promptly notify the Department Director who shall immediately notify the Human Resources Director and City Manager. The Department Director shall respond to the Employee's request within ten (10) working days and promptly take corrective action.

### **10.1 No Guarantee of Hours**

Nothing in this Manual shall be construed to constitute a guarantee of minimum hours of work per Day or within any Work Period.

### **10.2 Time Sheets**

All Employees must complete appropriate payroll records or timesheets showing hours worked and leave taken. In those cases where the Employee signs time sheets, the Supervisor or Department Director shall confirm the time worked. Where required, the Department timesheets will be reviewed and audited by the



Administrative Services Department. Notice of any correction(s) to the timesheet will be sent to the Employee and the Department Director. Corrections shall be deemed final unless the Employee files an objection with the City Manager within thirty (30) Days after notice of the correction has been given to the Employee. The determination of the City Manager shall be final.

### **10.3 Constructive Resignation**

An Employee who is absent, without authorized leave, for three (3) or more consecutive Workdays shall be presumed to have resigned. Written notice of the presumed resignation shall be sent by certified mail, return receipt requested, to the Employee at their last known address. The resignation shall be deemed effective as of the date of the written notice unless the Employee responds in writing, and returns to work, within five (5) Days after the written notice.

### **10.4 Lunch and Break Policy**

- A. Breaks.** Regular Full Time Employees may take one (1) paid break during the first half of the Employee's Workday and one during the second half of the Employee's Workday. Breaks shall not exceed fifteen (15) minutes each. Regular Part-time Employees and Provisional Employees are not entitled to a paid break unless they work at least three and one half (3 1/2) hours during the Workday in which the break is to be taken. Breaks may not be accrued, consolidated or aggregated without the approval of the Employee's Supervisor.
  
- B. Meal Periods.** Meal periods shall be at least thirty (30) minutes, but no more than sixty (60) minutes per Workday, do not constitute hours worked and are unpaid. Employees are expected to adjust their meal periods to conform to Department schedules and operational needs. The Department Director may schedule staggered meal periods throughout the late morning and early afternoon. Regular Part-time Employees and Provisional Employees must work four (4) or more consecutive hours during a Workday to receive an unpaid thirty (30) minute meal period during that Workday. Meal periods may not be consolidated or aggregated.

## SECTION 11. LEAVES

### 11.0 Flex Leave

- A. Introduction.** The City recognizes that the provisions of this Section are subject to and possibly inconsistent with MOU's between the City and Recognized Employee Associations. City acknowledges that, in the event of a conflict, the MOU shall prevail over provisions of this Section. The provisions of this Section are intended to apply to unrepresented Employees and represented Employees to the extent not inconsistent with any relevant MOU.
- B. Accrual.** Regular Full Time Employees (assumes eighty (80) hours worked per pay period) enrolled in the Flex Leave Program prior to July 1, 1996 will earn Flex Leave pursuant to the following schedule:

<u>Years of Continuous Service</u>	<u>Hours of Accrual Per Pay Period</u>	<u>Days Accrued Per Year</u>
0 but less than 5	5.54	18
5 but less than 9	6.15	20
9 but less than 12	6.77	22
12 but less than 16	7.69	25
16 but less than 20	8.31	27
20 but less than 25	8.92	29
25 and over	9.54	31

Employees hired, or rehired, by the City of Newport Beach on or after July 1, 1996, shall accrue Flex Leave at the following rates:

<u>Years of Continuous Service</u>	<u>Hours of Accrual Per Pay Period</u>	<u>Days Accrued Per Year</u>
0 but less than 5	4.92	16
5 but less than 10	5.53	18
10 but less than 15	6.46	21
15 but less than 20	7.08	23
20 and over	8.00	26

Regular Full Time Employees assigned to other than an eighty (80) hour work schedule per pay period will accrue Flex Leave on a pro rata basis. Probationary Employees serving a twelve (12) month Probationary Period shall earn Flex Leave from their Date of Hire but, except as otherwise provided in this Manual, the Employee shall not be credited with Flex Leave for use by the Employee until the Employee has served six (6) months of their Probationary Period. Probationary Employees shall be credited with

Flex Leave in the same manner as Regular Employees after serving six (6) months of their Probationary Period.

The Department Director may authorize an advance of up to sixty (60) hours of Flex Leave for a Probationary Employee to use in the event he/she is required to be absent from work due to illness during the Probationary Period. The Department Director may also authorize an additional advance of up to forty (40) hours of Flex Leave for a Probationary Employee to use for any purpose during their Probationary Period. Any Flex Leave advanced during a Probationary Period shall be deducted from the amount of Flex Leave that would otherwise be accrued by the Employee upon satisfactory completion of their Probation. In the event an Employee fails to satisfactorily complete Probation, the value of the Flex Leave advanced during Probation, calculated on the basis of the Employee's Base Rate of Pay, shall be deducted from the Employee's final check.

**C. Limit on Accumulation.** Regular Full Time Employees may accrue Flex Leave up to an amount equal to seventy-eight (78) times the Employee's bi-weekly accrual rate (accrual cap).

1. For Regular Full Time Employees hired before July 1, 1996, any Flex Leave that would have been earned in excess of the accrual cap will be paid on an hour for hour basis in cash at the Regular Full Time Employee's Base Rate of Pay (spillover pay). Regular Full Time Employees hired before July 1, 1996 and accruing Flex Leave at an accrual rate based on less than sixteen (16) years of continuous service shall not receive spillover pay unless they have utilized at least eighty (80) hours of Flex Leave during the previous calendar year. Regular Full Time Employees hired before July 1, 1996 and accruing Flex Leave at an accrual rate based on at least sixteen (16) years of continuous service shall not receive spillover pay unless they have used 120 hours of Flex leave during the previous calendar year. Regular Full Time Employees hired before July 1, 1996 and who are not eligible for spillover pay shall not be eligible to earn Flex Leave in excess of the accrual cap.
2. Regular Employees first hired, or rehired, by the City on or after July 1, 1996 shall not be eligible for spillover pay and shall not be entitled to accrue Flex Leave in excess of the accrual cap.
3. Flex Leave shall not be accrued while a Regular Full Time Employee is on leave of absence without pay or while serving a Suspension of five (5) Days or more.

**D. Method of Use.** Flex Leave may not be taken in excess of the amount of Flex Leave accrued as of the date of the request to use Flex Leave. The

Department Director shall approve all requests for Flex Leave taking into consideration the needs of the Department, the seniority and wishes of the Employee and the timing of the request in relation to the date(s) on which the Employee wishes to use Flex Leave. Flex Leave may be granted on a quarter hour basis. Any fraction less than one-quarter hour shall be charged as a full one-quarter hour of Flex Leave. An Employee requesting Flex Leave to cover unanticipated absences shall notify their Department by phone as soon as possible after the need for the absence becomes apparent and at least one-half (½) hour prior to the Employee's normal time to report for work.

- E. Terminal Flex Leave Pay.** Upon Separation, a Regular Full Time Employee shall receive a check for the value of their accrued Flex Leave calculated at the Base Rate of Pay at Separation.

**11.1 Vacation Leave**

- A. Eligibility.** Regular Full Time Employees hired on or before January 1, 1990, and who have elected not to enroll in the Flex Leave Program, shall be entitled to earn Vacation Leave. Regular Full Time Employees shall earn Vacation Leave except while the Employee is on leave of absence without pay or serving a Suspension of five (5) Days or more.
- B. Basis for Accrual/Full Time Regular Employees.** Vacation Leave is earned at a rate that is based on continuous years of service and the time an Employee is scheduled to work during a pay period in accordance with the following:

<u>Years of Service</u>	<u>Hours of Accrual Per Pay Period</u>	<u>Days Accrued Per Year</u>
0 but less than 5	3.38	11
5 but less than 9	3.99	13
9 but less than 12	4.61	15
12 but less than 16	5.22	17
16 but less than 20	5.84	19
20 but less than 25	6.46	21
25 and over	7.07	23

For Employees working other than eighty (80) hours per pay period, Vacation Leave shall be earned on a pro-rata basis with forty (40) hours as the denominator and the Employee's normal Work Period as the numerator.

- C. Limit on Accumulation.** Regular Full Time Employees shall not earn Vacation Leave in excess of the maximum possible accrual during a two (2) year period (52 x bi-weekly accrual rate – accrual cap). However, the Department Director may approve accrual in excess of the accrual cap if the Employee agrees to use all Vacation Leave in excess of the accrual cap within ninety (90) Days after the Employee has reached the accrual cap.
- D. Method of Use.** Vacation Leave may be granted only to the extent accrued as of the date of submittal of the request for Vacation Leave. The Department Director shall schedule and respond to requests for Vacation Leave taking into consideration the needs of the Department and, whenever possible, the seniority and wishes of the Employee. Vacation Leave may be requested and granted in increments as small as one quarter (1/4) hour. One quarter (1/4) hour of Vacation Leave shall be charged to any Regular Full Time Employee who requests or takes less than one quarter (1/4) hour.
- E. Terminal Vacation Pay.** Upon Separation, Regular Full Time Employees shall receive a check for the value of accrued Vacation Leave calculated at the Employee's then current Base Rate of Pay.

## 11.2 Sick Leave

- A. Definition.** Sick Leave shall mean the absence from duty of a Regular Full Time Employee because of:

  1. An injury, illness or medical condition that did not arise out of the course and scope of employment.
  2. Medical or dental examination or treatment.
  3. Exposure to a contagious disease when quarantine is imposed by health authorities or when a Physician determines that the presence of the Employee on duty would endanger the health of the Employee or others.
  4. A physical condition that, in the opinion of the Department Director, could result in a substantial risk of injury to the Employee, other Employees, or the public if the Employee was required to perform their normal duties.
  5. The illness of a member of the Employee's Immediate Family.

- B. Eligibility.** Regular Full Time Employees hired on or before January 1, 1990 and who have elected not to enroll in the Flex Leave program shall be entitled to earn Sick Leave. Regular Full Time Employees shall be entitled to earn Sick Leave except during periods when the Employee is on leave of absence without pay or a Suspension of five days or more.
- C. Basis for Accrual.** Regular Full Time Employees shall earn Sick Leave based on the hours the Employee is regularly scheduled to work during a pay period and continuous years of service. Employees scheduled to work eighty (80) hours during a period shall earn Sick Leave in accordance with the following schedule:

Years of Service	Hours of Accrual Per Pay Period	Days Accrued Per year
0 – 1 year	1.85	6
1 – 2 years	2.31	7.5
2 – 3 years	2.77	9
3 – 4 years	3.23	10.5
4 and over	3.69	12

Regular Full Time Employees regularly scheduled to work other than eighty (80) hours during a pay period shall earn Sick Leave on a pro-rata basis with forty (40) hours as the denominator and the normal Work Period as the numerator.

- D. Method of Use.** A Regular Full Time Employee shall not be entitled to take Sick Leave in excess of the amount of Sick Leave accrued as of the date of the request.
- E. Abuse of Sick Leave.** Regular Full Time Employees shall use Sick Leave only for the purposes specified in this Manual and/or to the extent permitted by State or Federal law. The Department Director may require any Regular Full Time Employee using Sick Leave to provide verification of the illness, injury, condition or treatment for which the Sick Leave was requested or granted. Regular Full Time Employees who have been on Sick Leave for three (3) or more consecutive Workdays, shall, upon request, provide their Supervisor or Department Director with written evidence from a medical professional of the reasons for the absence. In the event the Regular Full Time Employee does not provide satisfactory evidence that he/she used Sick Leave in a manner consistent with this Manual, the absence shall be converted to Vacation Leave, other paid leave, or leave without pay at the discretion of the Regular Full Time Employee.

- F. Notification.** A Regular Full Time Employee requesting Sick Leave for unanticipated injury or illness shall notify their Department by phone as soon as possible after the need for Sick Leave becomes apparent but no later than one-half (½) hour before the Employee’s normal time to report for work. Department Directors may establish specific rules and procedures for requesting Sick Leave that are consistent with this Manual. A Regular Full Time Employee requesting Sick Leave for medical treatment or evaluation shall request Sick Leave within twenty-four (24) hours after scheduling the appointment or one business day before their normal reporting time, whichever is earlier.
- G. Dependent Care.** Regular Employees may use up to ½ of the Sick Leave or Flex Leave accrued per year to provide care (including transportation to and from any health care provider) for any member of their Immediate Family in need of care due to illness or injury.
- H. Return to Work.** When a Regular Full Time Employee has been on Sick Leave for five (5) or more consecutive Workdays, the Department Director may require him/her to undergo, at City expense, an examination limited to a determination of their fitness to perform normal duties.
- I. Payment for Sick Leave Upon Termination.** Upon Separation in good standing a Regular Full Time Employee or their estate shall be paid for a percentage of the first 800 hours (1200 hours for Fire Personnel on a 24-hour shift) of accrued Sick Leave as follows:

**PERCENT OF UNUSED SICK LEAVE CONVERTED TO PAY**

<u>Years of Service</u>	<u>Percentage of Accrued Sick Leave Paid</u>
Less than 10	None
10 but less than 15	25.0%
15 but less than 20	37.5%
20 or more	50.0%

The term “years of service” shall mean full-time, continuous service as a Probationary Employee and Regular Full Time Employee. The payment for Sick Leave shall be based on the Base Rate of Pay of the Employee at the time of Separation. Regular Full Time Employees who are Discharged for cause or resign in lieu of discipline shall not be eligible for payment for accrued Sick Leave.

- J. Illness During Vacation Leave.** The Department Director may convert Vacation Leave to Sick Leave upon a written request to do so from the Regular Full Time Employee accompanied by a written statement signed by their attending physician describing the nature and dates of illness.

### 11.3 Bereavement Leave

Regular Full Time Employees shall be entitled to forty (40) hours of paid Bereavement Leave per occurrence. A Regular Full Time Employee is entitled to use their Bereavement Leave whenever a member of their Immediate Family dies or becomes terminally ill. Bereavement Leave may not be accumulated from year to year.

### 11.4 Holiday Leave

The following Days shall be observed as paid holidays for Regular Full Time Employees. In addition, each Regular Full Time Employee shall be entitled to a "floating holiday". Regular Full Time Employees who, by virtue of their Position or assignment, are required to work on holidays shall receive an equal amount of Flex Leave/Vacation Leave or an equivalent amount of pay at the discretion of the Department Director.

Independence Day	July 4
Labor Day	1st Monday in September
Veterans' Day	November 11
Thanksgiving Day	4th Thursday in November
Day After Thanksgiving	Friday following Thanksgiving
Christmas Eve	Last Half of Working Day
Christmas Day	December 25
New Year's Eve	Last Half of Working Day
New Year's Day	January 1
President's Day	3rd Monday in February
Memorial Day	Last Monday in May

When any of the holidays listed above (except the floating holiday) occur on a Saturday, the holiday shall be observed on the preceding Friday. Holidays occurring on a Sunday shall be observed on the following Monday. Half-day holidays shall be observed prior to the observed holiday. The floating holiday will be added to each Regular Full Time Employee's Vacation or Flex Leave account on the first pay period in July. The City Council or City Manager may establish additional holidays for certain Employees if necessary to ensure parity between those Employees and Employees covered by an MOU.



## 11.5 Jury Duty and Witness Leave

- A. Jury Duty.** Regular Full Time, Probationary Employees and Part-Time Employees shall not be disciplined or subject to any discrimination when required by law to attend a legal proceeding as a juror. An Employee called to serve as a juror shall notify their Supervisor on the first Workday following receipt of the summons. Any Employee of the City legally required to serve as a juror shall be entitled to leave with pay and all benefits for a period of up to sixty (60) days so long as their presence is legally required. The Employee shall have the jury calendar or assignment sheet signed by the jury clerk or commissioner and shall deliver this calendar/sheet to their Supervisor at the end of each week to verify jury duty. An Employee shall deposit with the City any fees for service, excluding mileage, received for service as a juror during the time the Employee receives their Base Rate of Pay and benefits pursuant to this Section. An Employee who is released by the court from jury duty on any regularly scheduled Workday shall contact their Supervisor to find out when he/she is required to return to work.
- B. Witness Leave.** Any Employee required to attend a legal or administrative proceeding on behalf of the City, or to testify to any act or omission occurring within the course and scope of their employment, shall be considered on duty while in attendance. The Employee shall deposit all fees, except mileage, with the City. Any Employee required to attend a legal or administrative proceeding on behalf of a party other than the City in a matter unrelated to their employment with the City shall not be entitled to compensation during their absence except to the extent required by State law. However, the Employee may use accrued Flex Leave, Vacation Leave or other paid leave during their absence.

## 11.6 Family and Medical Leave

This Section briefly summarizes the relevant provisions of the City's Family and Medical Leave Policy the full text of which is found in the Appendix. This Policy describes the rights of Employees eligible to take Family and Medical Leave and Pregnancy Disability Leave pursuant to current Federal or State law, the effect of taking Family and Medical Leave, medical certification requirements, and other relevant information. Employees shall be entitled to up to four (4) months of Family and Medical Leave to the extent provided, and consistent with the terms and conditions imposed by, State and Federal law. Family and Medical Leave includes leave related to the birth of a child, the placement of a child in connection with an adoption or foster care, or the serious health condition of the Employee, or the Employee's parent, child, spouse or domestic partner. An Employee may receive up to two (2) additional months leave due to the Employee's own serious health condition if the Employee provides the required medical certification, the Department Director is able reasonably to accommodate the absence and the City Manager approves the request.

### **11.7 Leave of Absence Without Pay**

An Employee may request a Leave of Absence Without Pay. The request shall indicate the length of the leave requested and if the Employee intends to pay premiums for benefit plans. The Department Director may approve or deny the request in their sole discretion. An Employee on leave of absence without pay shall not earn Flex leave, Vacation Leave, Sick Leave, holiday leave or other benefits. An Employee on Probation shall have their Probationary Period extended by the amount of time on leave of absence without pay. An Employee who fails to report to work on the first Workday after the leave of absence expires shall be considered to have resigned and the Department Director shall proceed as provided in Section 10.3 of this Manual.

### **11.8 Special Paid Leave**

The City Manager may, with the concurrence of the Department Director, authorize a Regular Full Time Employee to take a special leave of absence with pay for a period not to exceed 180 Days upon a determination the leave will contribute to the Employee's effectiveness and be beneficial to the City.

### **11.9 Military Leave**

All Employees are entitled to Military Leave to the extent required by, and subject to the terms and conditions imposed by, provisions of State and Federal law. Employees on a Military Leave of absence shall be entitled to the salary and benefits to the extent required by State law. Employees eligible for Military Leave shall, if reasonably possible, submit a copy of their military orders to the Department Director within twenty-four (24) hours after the Employee becomes aware of the orders and the need to request Military Leave.

### **11.10 Administrative Leave**

Department Directors may grant Administrative Leave to Exempt Employees. Administrative Leave shall be granted on a case by case basis, shall not exceed eighty (80) hours per calendar year, and the amount of Administrative Leave granted to any Exempt Employee shall be reevaluated each fiscal year. Administrative Leave shall be utilized during the calendar year it is granted and may not be accumulated beyond the calendar year for which it was granted without the approval of the City Manager.

### **11.11 Voting Leave**

Each Employee is encouraged to vote in all elections. Employees are encouraged to vote outside of their Workday. An Employee is encouraged to obtain and use an absentee ballot if he/she may not have time to vote outside of their Workday due to their schedule. Under special circumstances, a Regular Full Time Employee or Probationary Employee who does not have ample time to vote outside of their Workday may request approval from their Supervisor to take up to two (2) hours of leave with pay to vote.

### **11.12 Workers Compensation Benefits and Industrial Accident Leave**

- A.** The City will provide workers compensation benefits in accordance with the laws of the State of California for any work-related injury or illness. These benefits include medical care, temporary disability, permanent disability, vocational rehabilitation and survivor benefits.
- B.** In the event that any Regular Full Time Employee or Probationary Employee is absent from work as a result of any injury or illness that comes under the State of California Workers Compensation Law, the absence shall be considered to be Industrial Accident Leave (IAL).
- C.** Any Regular Full Time Employee and any Probationary Employee on Industrial Accident Leave shall receive temporary total disability (TTD) compensation mandated by the Workers Compensation Laws of the State of California.
- D.** Any Regular Full Time Safety Employee on Industrial Accident Leave shall receive temporary total disability (TTD) compensation mandated by the Workers Compensation Laws of the State of California in accordance with Section 4850 of the Labor Code. Section 4850 of the Labor Code allows for the payment of one (1) year of salary in lieu of temporary total disability (TTD) compensation for the designated safety classifications listed in Section 4850 of the Labor Code.
- E.** In the event the Regular Full-Time Safety Employee's temporary total disability (TTD) exceeds the one (1) year period for Industrial Accident Leave, the employee will continue to receive TTD compensation in accordance with the Workers Compensation Laws mandated by the State of California.

- F. In the event that any Provisional Employee, Probationary Employee or Regular Part-Time Employee is absent from work as a result of any injury or illness which comes under the State of California Workers Compensation Law, the absence shall be considered as temporary total disability (TTD) and that Employee will receive TTD compensation in accordance with the Workers Compensation Laws mandated by the State of California.
- G. In the event any Employee who has received or is receiving any workers compensation benefits (industrial accident leave, medical care, etc.) files a civil action against a third party for allegedly causing or contributing to the cause of the injury/illness, the Employee is required to notify the Risk Manager of the filing of such legal action.

## **SECTION 12. DISCIPLINARY ACTIONS**

### **12.0 General Principles**

The City's goal is to administer discipline in an equitable way with an emphasis on progressive discipline to prevent misconduct or attain satisfactory job performance. The level of discipline should reflect the objective (punishment and/or ensure satisfactory performance), the nature of the misconduct, the presence or absence of mitigating circumstances and the record of the Employee. Supervisors and Department Directors should enforce rules and regulations in a consistent manner. However, consistency does not mean the same discipline should be imposed in each case, rather, that the Supervisor is able to articulate an objective and reasonable basis for the discipline imposed in each case.

Disciplinary actions are considered confidential. Participation in or knowledge of the matters under consideration in a disciplinary action shall be limited to those Department personnel who have a legitimate business reason for being involved. Information obtained pursuant to any disciplinary investigation, process or hearing will only be disclosed to those City officials and agents who have legitimate business need for the information, or as required by law.

### **12.1 Grounds for Disciplinary Action**

Each of the following may be cause for discipline:

- A. Fraud or misrepresentation in obtaining a conditional offer of employment or an Appointment;
- B. Incompetence or neglect of duties;
- C. Inefficiency;

- D. Dishonesty;
- E. Insubordination – the willful disobedience or disregard of a Supervisor’s lawful directive;
- F. Misconduct committed during an Employee’s Workday or directly related to the Employee’s duties, including violations of the provisions of this Manual and/or the Appendix, violation of Department policies, tardiness or absenteeism;
- G. Misconduct committed when the Employee is off duty, including a violation of a criminal law, provided there is a reasonable relationship between the misconduct and the interests of the City or the Employee’s duties;
- H. Absence without approved leave; or
- I. Misappropriation of, damage to, or waste of public funds or property through negligent or willful misconduct.

## **12.2 Definition of Certain Disciplinary Actions**

Disciplinary actions include: (1) a written reprimand; (2) disciplinary suspension; (3) disciplinary transfer or reassignment; (4) the temporary or permanent reduction in pay, accrued paid leave, or one or more Salary Steps; (5) demotion; (6) discharge; or (7) any other action taken for disciplinary purposes. The Department Director and/or City Manager shall have the authority to develop and/or administer disciplinary measures other than those specified in this Section whenever appropriate. The Department Director or City Manager may impose a temporary reduction or loss of pay, the loss of a grade or step, or the forfeiture of accrued paid leave or compensatory time off as an alternative to suspension, demotion or other discipline.

## **12.3 Counseling**

Counseling or discussions between a Supervisor and an Employee regarding a minor performance problem does not constitute discipline. A Supervisor should have a discussion with an Employee to clarify expectations and resolve problems in performance as soon as possible. The counseling or discussion may be documented in the Supervisor’s log but shall not be included in the Employee’s personnel file unless the Employee is given notice of the inclusion and an opportunity to respond in writing. An Employee is not entitled to representation, during counseling.

## **12.4 Written Reprimand**

A written reprimand may be given by a Supervisor whenever an Employee has failed to correct their behavior or performance in response to counseling or when the misconduct is sufficiently serious to warrant a written reprimand. The written reprimand should be given as part of a discussion between the Supervisor and the Employee. During this discussion the Supervisor should explain the act or omission that prompted the reprimand, the appropriate conduct or performance, and the potential consequences for the failure to correct such performance or behavior. The Supervisor shall give the Employee an opportunity to respond during the discussion. The Employee shall have a right to submit a written response within ten (10) calendar days and the written response will be placed in the Employee's personnel file with the written reprimand.

## **12.5 Performance Improvement Program (PIP)**

A Department Director may, to improve an Employee's performance of their normal duties to a "satisfactory" level, direct an Employee to participate in, and comply with the provisions of, a PIP. The Department Director shall fully explain to the Employee the terms, conditions and provisions of the PIP prior to directing the Employee to participate in the PIP. The PIP shall be designed to provide the Employee with any training or education necessary to improve performance of the Employee's normal duties to a satisfactory level and shall include provisions that give the Employee the opportunity to comment on evaluations of performance during the PIP. The Employee shall not be entitled to any prior written notice of, or a right to respond to or appeal, a decision to implement a PIP.

## **12.6 Disciplinary Suspension**

An Employee may be suspended or suffer a reduction (permanently or temporarily) in pay, accrued paid leave or Salary Step when previous discipline has not been effective or when the misconduct is sufficiently serious to warrant such discipline.

## **12.7 Demotion**

The Department Director may demote an Employee in the event of serious misconduct or in the event the Employee consistently fails to perform at a satisfactory level after receiving the training and counseling necessary to perform at a satisfactory level. Upon request of the Employee, and with the consent of the Department Director, demotion may be made to a vacant Position. No Employee shall be demoted to a Position unless he or she possesses the minimum qualifications for the Position.

## **12.8 Discharge**

Discharge is appropriate when other appropriate progressive disciplinary measures have failed, when misconduct is sufficiently serious, or when the Employee does not possess the minimum qualifications for their Position.

## **12.9 Resignation – An Alternative to Disciplinary Action**

An Employee may resign in lieu of disciplinary action. An Employee who resigns forfeits their right to contest the proposed discipline. (The Department Director is not required to accept a conditional or deferred resignation.)

## **12.10 Documentation of Disciplinary Action**

All disciplinary actions should be documented. If the action taken is a written reprimand, suspension, a reduction in pay, a demotion, or a dismissal, or other change in pay or employment status, documentation shall be prepared in accordance with this Manual and a copy of all the disciplinary documents shall be placed in the Employee's personnel file(s). The Employee shall sign for and receive a copy of the disciplinary documents but the signature is for the purpose of acknowledgement only and does not indicate the Employee's concurrence with the proposed action. An Employee's failure to sign shall be noted in the personnel file.

## **12.11 Employee Representation**

A represented Employee is entitled to the presence of an Association representative during an investigative interview conducted by the Supervisor/Interviewer whenever the Supervisor/Interviewer or Employee reasonably believes that the interview might lead to or result in disciplinary action against the Employee. The Employee must request the representation. The Supervisor/Interviewer is encouraged but not obligated to inform the Employee of the right to representation. The Employee and representative must be allowed a reasonable period of time to confer in advance of the interview.

The Supervisor shall make a reasonable effort to accommodate the desire of the Employee to have a specific representative, but the Supervisor is not required to unreasonably delay the interview to accommodate the schedule of the desired representative. The Supervisor shall make every effort to schedule the interview during normal working hours and consider any requests regarding scheduling. The representative does not have the right to interfere with legitimate inquiries but may object to questions that the representative believes, in good faith, are improper.

## SECTION 13. DISCIPLINARY PROCEDURES

### 13.0 Disciplinary Procedures

- A. Regular Employees.** This section establishes the procedures that must be followed before and/or after the imposing a disciplinary suspension, a reduction in pay, leave or Salary Step, a Demotion, or a Discharge on a Regular Employee.
- B. Other Employees.** Provisional Employees, Probationary Employees and Department Directors may be terminated without cause and without compliance with the procedures outlined in this Section. Department Directors performing duties pursuant to contract shall have only those substantive and procedural rights, if any, specified in the contract. Provisional Employees, Probationary Employees and Department Directors may have the right to an appropriate “name clearing hearing” if terminated for misconduct that adversely impacts their liberty interests as those terms are defined by then current decisional law (for example, a Probationary Safety Employee may be entitled to a “name clearing hearing if he/she is terminated for allegedly stealing property from the evidence locker or falsifying a police report). The “name clearing hearing” shall be limited to the production of information by the Employee that he/she believes is necessary to establish a record of the events related to the termination. In no event shall a Provisional Employee, Probationary Employee or Department Director have the right to appeal a termination.
- C. Exempt Employees.** Employees who have been deemed exempt will be disciplined consistent with the FLSA. Suspensions resulting in salary deductions of less than a week are not permitted unless for safety rules of major significance or as permitted by FLSA or rulings of courts of competent jurisdiction that are binding on the City.
- D. Direct Appointees.** The City Manager, City Attorney and City Clerk are Direct Appointees of the City Council and may be terminated without cause subject only to provisions of the City Charter and any employment contract.

### 13.1 Administrative Suspensions

The Department Director may order the administrative suspension of an Employee pending investigation of possible misconduct. The Department Director shall promptly notice the City Manager and Human Resources Director of any administrative suspension. An administrative suspension shall typically be with pay but may be imposed without pay to the extent permitted by statutory or decisional law. The term of the administrative suspension shall be limited to the time necessary to complete the investigation, to determine whether to impose



discipline, to receive the response of the Employee to any proposed discipline and to make a final decision on discipline.

### **13.2 Skelly Procedure/Due Process**

**A. Written Notice.** The Department Director or designee shall give an Employee at least seven (7) Days prior written notice of intent to impose a demotion or a suspension of more than (3) Workday(s), or an equivalent reduction in pay, leave or Salary Step. The Department Director may, but is not required, to give an Employee prior written notice of intent to impose a suspension of three (3) Days or less or the equivalent reduction in pay, leave or Salary Step. The Department Director is required to give Regular Employees at least seven (7) Days prior written notice of intent to Discharge a Regular Employee. The notice of intent shall be personally delivered to the Employee or sent by certified mail to the Employee's last known address. Any notice of intent required by this Section must, at a minimum, include the following information:

1. A description of the proposed action to be taken and its proposed effective date.
2. The specific grounds and particular facts upon which the action is proposed to be taken.
3. The Employee's right to receive a copy of the written materials alleged to support the proposed action.
4. A statement advising the Employee of the right to respond, orally or in writing, and the time period within which the response must be made.
5. The Employee's status during the response period.

**B. Employee Review and Response.** The Employee shall be given an opportunity to review the documents or materials upon which the Notice of Intent to impose discipline is based. The Employee shall have the right to respond to a Notice of Intent, orally or in writing, within seven (7) Days after the Notice of Intent is personally served or the date on which the Notice of Intent was deposited in the U.S. mail with first class postage prepaid. Failure to respond within the time specified may result in the Employee's waiver of their pre-disciplinary procedural rights. The time for a response may be extended by agreement and a request for up to five (5) additional Days to respond shall be granted if accompanied by a showing of good cause.

**C. Department Director Decision.** The Department Director shall, within ten

(10) Days after an Employee's response, provide the Employee with written notice of their decision. The decision shall be personally delivered to the Employee or sent by certified mail to the Employee's last known address. The decision shall acknowledge the Employee's response, describe the reasons for the decision (may reference the Notice of Intent) and shall be dated and signed by the Department Director. If discipline is imposed, the written response shall include a statement informing the Employee of the right to appeal and the time period within which the appeal must be made. The date for a decision may be postponed to give the Department Director sufficient time to adequately review the Employee's response before making a decision.

### **13.3 Appeal of Department Director's Decision**

- A. Non-Civil Service.** A Non-Civil Service Employee may appeal a decision of the Department Director by filing a written appeal with the Human Resources Director within ten (10) Days after the Employee receives the decision of the Department Director. The Human Resources Director shall review the administrative record and may conduct an additional investigation. The Human Resources Director shall render a written decision on the appeal within ten (10) Days after receipt of the Notice of Appeal. The Human Resources Director shall have the right to modify discipline imposed by the Department Director. The decision of the Human Resources Director shall be personally served on the Employee or mailed to the Employees last known address, regular and certified mail and shall advise the Employee of their right of appeal.
  
- B. Civil Service Employees.** Civil Service Employees shall have the right to appeal the Department Director's decision to the City Manager. The procedures for processing the appeal of a Civil Service Employee shall otherwise be identical to the procedures for processing a Non-Civil Service Employee's appeal.

### **13.4 Appeal to Civil Service Board**

An Employee may appeal the decision of the Human Resources Director or the City Manager, as appropriate, imposing any demotion, suspension or any reduction in pay, Salary Step or accrued paid leave. A Regular Employee may appeal the decision of the Human Resource Director or City Manager discharging that Employee. An appeal shall be filed by serving a Notice of Appeal on the Secretary of the Civil Service Board (Human Resources Director). The Notice of Appeal must be filed within ten (10) Days from receipt of the decision of the Human Resources Director or City Manager. The Civil Service Board shall schedule and conduct a hearing in accordance with procedural rules adopted by the Civil Service Board. In the case of Civil Service Employees, the decision of the Civil Service Board shall be final. In the case of Non-Civil Service Employees, the decision of

the Civil Service Board shall be advisory and the record of the hearing/decision shall be submitted to the City Manager for a final decision.

### **13.5 Final Decision**

The City Manager shall render the final decision on all appeals of discipline submitted to the Civil Service Board by Non-Civil Service Employees. The City Manager shall review the record of the hearing before the Civil Service Board, including the findings and decision, and render a decision within twenty (20) Days after the record is submitted by the Secretary of the Civil Service Board. The City Manager shall give written notice of their decision to the Employee and Department Director. The decision of the City Manager shall be supported by substantial evidence in the record of the hearing.

### **13.6 Preparation and Attendance**

An Employee shall not be considered on duty while researching, writing or preparing an appeal of a disciplinary hearing. An Employee shall not be permitted to research, write or prepare a grievance, disciplinary appeal or related document during their Workday except during meal periods and breaks.

## **SECTION 14. GRIEVANCES**

### **14.0 Matters Subject to Grievance Procedures**

A “grievance” is a job-related complaint by an Employee regarding the terms and conditions of employment arising out of the interpretation or application of existing ordinances, rules, regulations, or policies related to matters within the scope of representation. Grievances are considered confidential. Participation in or knowledge of the matters under consideration in a grievance shall be limited to those Department personnel who have a legitimate business reason for being involved. Information obtained pursuant to this procedure will only be disclosed to those City officials and agents who have legitimate business need for the information, or as required by law.

### **14.1 Matters Not Subject to Grievance Procedures**

Except to the extent otherwise provided by an MOU, the following matters are not subject to the grievance procedures:

- A.** Discipline.
- B.** Written reprimands and counseling.
- C.** Management of the City generally and issues of City or Department policy.

- D.** Necessity and organization of any service or activity conducted by the City including the expansion or reduction of services or workforce.
- E.** Determination of the nature, manner, means, technology, and extent of services to be provided to the public.
- F.** Methods of financing.
- G.** Types of equipment or technology to be used.
- H.** Determination of and/or change in facilities, methods, technology, means and size of the workforce by which City operations are to be conducted.
- I.** Determination of and/or change in the location, number of locations, relocations and types of operations, processes and materials to be used in carrying out City functions.
- J.** Establishment and approved modifications of job Classifications, or Reclassifications.
- K.** Establishment, implementation, and modification of Departmental structure, supervisory assignments, chain of command, and reporting responsibilities.
- L.** Performance Evaluations

The categories of matters that are not subject to the grievance procedure in this Manual are general in nature and the City acknowledges that there may be occasions where the actions described in this Section would be subject to the grievance procedure or the “meet and confer” process. On the other hand, the failure to list a “management right” or other proposed action in this Section does not mean the City has an obligation to meet and confer or consider any grievance related to the proposed action.

## **14.2 Freedom from Reprisal**

No Employee shall be subject to any retaliation, harassment, discipline or other adverse employment action for discussing a request or complaint with their immediate Supervisor, or for filing a grievance petition.

### **14.3 Consolidation**

Grievance petitions involving the same or similar issues, filed by Employees in the same representation unit, may be consolidated for presentation, hearing and/or decision at the discretion of the person or board considering the petitions.

### **14.4 Resolution**

Any grievance petition resolved at any step of the grievance procedure shall be considered final.

### **14.5 Withdrawal**

Any grievance petition may be withdrawn, without prejudice, by the Employee or Employee's Association at any time,.

### **14.6 Resubmission**

Upon consent of the person hearing the grievance petition and the Employee, a petition may be resubmitted to a lower step in the grievance procedure for reconsideration.

### **14.7 Employee Representation**

An Employee may, upon request, be represented in the preparation and presentation of the grievance at any step, provided, however, an Employee may not be represented by their Supervisor and no Supervisor shall be represented by an Employee he/she supervises. An Employee shall not research, write or prepare a grievance or disciplinary appeal during normal working hours except during breaks and meal periods. An Employee and, when applicable, one Employee representative shall be entitled to release time to appear at formal grievance or disciplinary appeals before their immediate supervisor, Department Director, City Manager or the Civil Service Board if the hearing is scheduled during regularly scheduled working hours. For purposes of this Section release time shall be considered "hours worked" if the time fall within the Employee's normal Work Day.

### **14.8 Miscellaneous**

An Employee is required to comply with all lawful direct orders of their Supervisor as a condition to filing a grievance. An Employee may, as part of the grievance or any related disciplinary proceeding, challenge the validity of the order. An order that requires an Employee to perform an act that could subject him/her to an unreasonable risk of injury in light of their normal duties shall not be considered a lawful order.

#### **14.9 Grievance Procedure – Step 1**

Every effort should be made to resolve a grievance through informal discussion between the Employee and the Employee's immediate Supervisor, unless extenuating circumstances exist. A grievance shall be brought to the attention of immediate supervisor for discussion within ten (10) days of when the grievance arose. If the Employee is not satisfied with the decision reached through the informal discussion or if extenuating circumstances exist, the Employee shall have the right to file a formal grievance in accordance with Section 14.10.

#### **14.10 Grievance Procedure – Step 2**

If the Employee is not in agreement with the decision rendered in Step 1, an Employee shall have the right to present a formal grievance to the Department Director within ten (10) Days after the discussion in Step 1. The right to file a grievance petition shall be waived in the event the Employee fails to file a formal grievance within ten (10) Days after the occurrence of the incident that forms the basis of the grievance. All formal grievances shall be submitted on the form prescribed by the Human Resources Director and no formal grievance shall be accepted until the form is complete. The formal grievance shall contain a clear, concise statement of the grievance, the facts upon which the grievance is based, the rule, regulation or policy the interpretation of which is involved in the grievance, and the specific remedy or remedies sought by the grievant. The Department Director should render a written decision within ten (10) Days after receipt of the formal grievance.

#### **14.11 Grievance Procedure – Step 3**

If the formal grievance has not been satisfactorily adjusted in Step 2, it may be appealed to the City Manager within ten (10) Days after the Employee receives the decision. The City Manager may accept or reject the decision of the Department Director and shall render a written decision within ten (10) Days after conducting a grievance hearing. The decision of the City Manager shall be final and conclusive. If mutually agreeable, a meeting may be conducted involving all affected parties at any step in the grievance procedure prior to a decision. The City Manager may delegate uninvolved Department Directors to act on behalf of the City Manager to provide findings and recommendations. The findings and recommendations of the uninvolved Department Directors are advisory only and the City Manager's decision shall be final.

#### **14.12 Time Limits**

Grievances shall be processed from one step to the next within the time limit indicated for each step. Time limits shall be strictly enforced. Any time limits established in this Manual can be waived or extended only by mutual agreement

confirmed in writing. Any grievance not carried to the next step by the Employee within the prescribed time limit shall be deemed resolved upon the basis of the previous decision.

## **SECTION 15. REDUCTIONS IN FORCE**

### **15.0 Reductions in Force/Layoffs**

The provisions of this Section shall apply when the City Manager, in their sole discretion, determines that a reduction in the workforce is warranted because of actual or anticipated reductions in revenue, reorganization of the workforce, a reduction in municipal services, a reduction in the demand for service or other reason unrelated to the performance of duties by any specific Employee. Reductions in force are to be accomplished, to the extent feasible, on the basis of Seniority within a particular Classification or Classification Series and this Section should be interpreted accordingly.

### **15.1 Definitions**

The following definitions shall apply to the interpretation and administration of this Section:

- A. "Layoffs" or "Laid Off"** shall mean the non-disciplinary termination of employment.
- B. "Seniority"** shall mean the time an Employee has worked in a Classification or Series calculated from the date on which the Employee was first granted permanent status in the current Classification or any Classification within the Series, subject to the following:
  - 1.** Credit shall be given only for continuous service subsequent to the most recent Appointment to permanent status in the Classification or Series.
  - 2.** Continuous service shall include time spent on paid leave, industrial leave, military leave but not leave of absence without pay, suspension or unauthorized leave of absence.
- C. "Classification"** shall mean one or more full time Positions identical or similar in duties. Classifications within a Series shall be ranked according to pay (lowest ranking, lowest pay).
- D. "Series"** shall mean two or more Classifications within a Department which require the performance of similar duties with the higher ranking Classification(s) characterized by the need for less supervision, more

difficult assignments and more responsibilities for subordinates. The City Manager shall determine those Classifications that constitute a Series following a meet and consult process with the relevant Recognized Employee Association.

- E. **“Bumping rights, bumping or bump”** shall mean either (1) the right of an Employee, based upon seniority within a Series, to bump into a lower ranking Classification within the same Series; or (2) the right of an Employee to bump into a Classification within a different Series. The right of an Employee to bump into a Classification in a different Series shall be based upon unit wide seniority and shall be limited to a Classification in which the Employee previously held a regular status. No Employee shall have the right to bump into a Classification for which the Employee does not possess the minimum qualifications such as certificates, specialized education, training or experience.

## 15.2 Procedure

In the event the City Manager determines to reduce the number of Employees within a Classification, the following procedures are applicable:

- A. Provisional and Probationary Employees within any Classification shall, in that order, be laid off before Regular Employees.
- B. Employees within a Classification shall be laid off in inverse order of seniority.
- C. An Employee subject to layoff in one Classification shall have the right to bump a less senior Employee in a lower ranking Classification within a Series.
- D. An Employee who has bumping rights shall notify the Department Director within three (3) working Days after notice of layoff of their intention to exercise bumping rights.
- E. In the event two or more Employees in the same Classification are subject to layoff and have the same seniority, the Employees shall be laid off following the Department Director's consideration of established performance evaluations.

## 15.3 Notice

Employees subject to layoff shall be given at least thirty (30) Days advance notice of the layoff or thirty (30) Days pay in lieu of notice. This notice will include any available bumping rights. In addition, Employees laid off will be paid for all accumulated Flex Leave, Vacation Leave, Holiday Pay, Compensatory Time Off,



and Sick Leave to the extent permitted by this Manual.

#### **15.4 Re-Employment**

Regular and Probationary Employees who are laid off, reduced in Classification, demoted, or transferred shall be placed on a Department Re-Employment List in reverse order of layoff. The Re-Employment List shall expire in two (2) years. In the event a vacant Position occurs in the same or lower Classification that the Employee occupied at the time of layoff, reduction in Classification, demotion or transfer, the Employee at the top of the Department Re-Employment List shall have the right to an Appointment within seven (7) Days of written notice of the vacancy. Notice shall be deemed given when personally delivered to the Employee or deposited in the U.S. Mail, first class postage prepaid, and addressed to the Employee at their last known address. Any Employee shall have the right to refuse to be placed on the Re-Employment List or the right to remove their name from the Re-Employment List by sending written confirmation to the Human Resources Director.

#### **15.5 Severance**

If an Employee is laid off from their job with the City for economic reasons, the City will grant severance pay in an amount equal to one week of pay for every full year of continuous employment service to the City up to ten (10) weeks of pay.

### **SECTION 16 ON-CALL TIME AND CALL BACK DUTY**

#### **16.0 On-Call Time**

- A. Definition.** On-call time is time spent by Employees, usually off City property and in their own pursuits, when the Employee is (i) available to be called back to work on short notice if the need arises; (ii) subject to contact by telephone or pager; (ii) the Employee must remain within a specified distance from the Employee's workstation; and (iv) the Employee may not engage in activities that could impair their ability to perform their normal duties.
- B. Compensation.** When an Employee is directed to be on-call during a specified period, the on-call time shall be compensated at the rate of one (1) hour of overtime for each eight (8) hours of on-call time. On-call time on holidays shall be compensated at the rate of two (2) hours of overtime for each (8) hours of on-call time. If an Employee is required to return to work while on on-call status, the provisions pertaining to Call Back Duty/Pay shall apply for the time the Employee is on duty.

## 16.1 Call Back Duty/Pay

- A. **Definition.** Call Back Duty/Pay means a directive to an Employee to return to their workplace after their Workday and the Employee has left their normal workstation. Overtime scheduled or worked during or immediately after the Workday is not considered Call Back Duty/Pay.
  
- B. **Compensation.** An Employee on Call Back Duty/Pay shall be paid for two (2) hours, or one and one-half (1-1/2) times the hours worked, whichever is greater.