

# City of Saratoga Personnel Rules and Policies



## Updated December 2012 Partial Revision November 2014

(i) Article 5, Section 9, (ii) Article 6, Section 3, (iii) Article 22, Section 3, and Subdivision 6)

## **NOTE REGARDING CHANGES TO PAGES**

Occasionally, pages in the City's Personnel Rules and Policies must be replaced when typographical errors are discovered or other grammatical/format changes need to be made. These changes are minor in nature and do not alter any rule that would be subject to bargaining and/or approval by the City Council. To keep track of changes, and to ensure that individuals using the Personnel Rules and Policies are referencing the most current version, a Version Date will be noted at the bottom of any page where the contents have been changed (other than where the sole change is a page number due to reformatting) and the Human Resources Division will keep the most up to date Personnel Rules on the City's website.

**ACKNOWLEDGMENT OF RECEIPT OF THE  
CITY OF SARATOGA  
UPDATED PERSONNEL RULES AND POLICIES**

The undersigned employee of the City of Saratoga acknowledges receipt of the City's Personnel Rules and Policies.

I understand that I am responsible for reading, understanding, and complying with the Personnel Rules and Policies.

I understand if my employment classification is included in a bargaining unit, I should refer to the Memorandum of Understanding (MOU) in addition to the City's Personnel Rules and Policies. I understand if I have any questions about which resource to consult, I may contact the Human Resources Division or union representative.

I acknowledge a signed copy of this Acknowledgement of Receipt shall be submitted to the Human Resources Division and will be placed in my official personnel file.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
PRINT NAME

DATE \_\_\_\_\_

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duplex printing purposes.**

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**ARTICLE 1. AUTHORITY FOR AND COVERAGE OF THE PERSONNEL POLICIES**

**Section 1. Authority** The City of Saratoga City Council authorizes the City Manager to establish and enforce these personnel rules and policies (“Policies”) pursuant to City Code 2-20.050 Powers and Duties of the City Manager.

**Section 2. Coverage** These Policies apply to all City employees, except that nothing in these Policies regarding disciplinary rights and disciplinary processes apply to those who serve in an at-will capacity, or at the pleasure of the City Council, or by contract. Nothing in these Policies gives those who serve at-will, or at the pleasure of the City Council, or by contract the right to continued employment.

**Section 3. No Contract Created** Nothing in these Policies is intended to create or creates any contractual right in City employment.

**Section 4. Conflicts with Other Provisions** This document includes policies and rules which govern the personnel system for the City of Saratoga. They are intended to set forth general provisions which apply to all City of Saratoga employees. However, if a provision of these Policies actually conflicts with any provision of an applicable collective bargaining agreement or Memorandum of Understanding (“MOU”), resolution, law, City ordinance, Employment Agreement or Policy, or state or federal law, the collective bargaining agreement or MOU, resolution, law, City ordinance, Employment Agreement or Policy, or state or federal law shall control. In all other cases, these Policies apply.

**Section 5. Violation of the Personnel Policies** A violation of any Policy contained herein shall be grounds for discipline, up to and including termination from City employment.

**Section 6. Delegation of Authority** Any of the City’s management staff may delegate any of the responsibilities listed in these Policies to any other appropriate management staff member, regardless of whether the Policy at issue specifically authorizes the delegation of the matter.

**Section 7. Severability** If any court finds any section, subsection, sentence, clause or phrase of these Policies to be inconsistent with the law, such finding(s) shall not affect the validity of the remaining portion of these Policies.

**ARTICLE 2. EQUAL EMPLOYMENT OPPORTUNITY, REASONABLE ACCOMMODATION POLICY**

**Section 1. General Policy**

The City prohibits discrimination against applicants or employees on the basis of any of the following protected classifications: race, religion, color, religious creed, gender (gender identity and gender expression), sex (including pregnancy, childbirth, and related conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality, national origin, ancestry, citizenship status, marital status, age (40 years and older), medical condition, physical disability, mental disability, genetic information or characteristics, and status as a veteran or a member of the uniformed services.

The City will afford equal employment opportunity to all qualified applicants and employees with regard to all terms and conditions of employment, including hiring, compensation, training, promotion, transfer, discipline and termination.

**Section 2. Reasonable Accommodation Policy**

The City provides employment-related reasonable accommodations to qualified individuals with disabilities within the meaning of the California Fair Employment and Housing Act and the Americans with Disabilities Act. *“Reasonable Accommodation”* is the adjustment or modification to a job duty, employment practice, or the work environment that makes it possible for a qualified individual with a disability to perform the essential function(s) of the position that they hold or desire. The City will not engage in unlawful retaliation against a disabled individual or individual requesting accommodations (See Article 3.).

**Subdivision 1. Procedure**

**a. Request for Accommodation** An employee who desires a reasonable accommodation in order to perform essential job functions should make such a request in writing to the Human Resources Division. The request must identify: a) the job-related functions at issue; and b) the desired accommodation(s).

**b. Reasonable Documentation of Disability** Following receipt of the request for accommodation, the Human Resources Division will request additional information, such as reasonable documentation of the existence of a disability.

**c. Fitness for Duty Examination** The City may require an employee

to undergo a fitness for duty medical examination (and/or inquiry) if it is job related and consistent with business necessity to determine whether the Article 2. Equal Employment Opportunity, Reasonable Accommodation Policy

employee can perform the essential functions of the job with or without accommodation (See Article 15. Fitness for Duty Medical Examinations).

### **Subdivision 2. Interactive Process Discussion**

The City will consider all applicant or employee accommodation requests and carefully assess all appropriate options before making any decision to grant or deny an accommodation. Furthermore, the City will continue its obligation to consider alternative accommodations if presently implemented accommodations are ineffective.

After receipt of reasonable documentation of disability, the City will arrange for an interactive process meeting, in person or via telephone conference call, with the employee, and his or her representatives, if any. The purpose of the discussion is to work in good faith to fully disclose all feasible potential reasonable accommodations.

During the meeting, the Human Resources Manager will also disclose, if relevant, alternate available jobs for which the employee is qualified or whether the employee may qualify for a CalPERS disability retirement under the Public Employees' Retirement Law (Government Code § 20000, et seq., the "PERL") or a family and medical care leave (FMLA) of absence.

### **Subdivision 3. Case-by-Case Determination**

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

**ARTICLE 3. POLICY AGAINST HARASSMENT, DISCRIMINATION AND RETALIATION**

**Section 1. Purpose** It is the City's intent and the purpose of this Policy to promote a workplace that is free of unlawful harassment, discrimination and retaliation. This Policy prohibits unlawful harassment, discrimination and retaliation as defined by federal and state laws based on an individual's protected characteristics, including but not limited to the following protected classifications as defined by applicable law: race, religion, color, religious creed, gender /sex (including pregnancy, childbirth, and related conditions), transgender, sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, citizen status, marital status, age (40 years and older), medical condition, physical disability, mental disability, (whether perceived or actual), genetic information, and status as a veteran or a member of the uniformed services.

This Policy sets forth a procedure for filing a complaint in violation of this Policy and sets forth a procedure for investigating alleged harassment, discrimination and retaliation complaints in violation of this Policy.

Retaliation against an individual(s) who has complained, retaliation against anyone associated with the complaining individual because of the complaint, retaliation against an individual(s) for participating in any manner in an investigation into an alleged complaint, and retaliation for opposing practices prohibited by this Policy, or for filing a complaint with, or otherwise participating in an investigation, proceeding, or hearing conducted by, the DFEH or the EEOC is unlawful as provided by applicable law, in violation of this Policy and provides grounds for disciplinary action, up to and including termination.

**Section 2. Policy** The City will not tolerate any conduct that violates this Policy and will take appropriate corrective action to stop inappropriate behavior. Conduct need not rise to the level of a violation of law in order to provide grounds for disciplinary action, up to and including termination. Instead, a single act can violate this Policy and provide grounds for discipline.

If an employee is in doubt as to whether or not any particular conduct may violate this Policy, the employee should not engage in the conduct, and seek guidance from management or the Human Resources Manager.

**Section 3. Policy Coverage** As set forth in both State and Federal law, this Policy prohibits applicants, employees, volunteers, officers, officials, and contractors (whom provide services to the City of Saratoga) from harassing or discriminating against others on the basis: (1) of an individual's protected classification under applicable law (see Article 3, Section 1); (2) of the perception

that an individual has a protected classification; or (3) the individual associates with a person who is in or is perceived to be in a protected classification.

**Section 4. Responsibilities of Employees, Management and Supervisory Employees**

**Subdivision 1. Employees** In order to establish and maintain a professional working environment, while at the same time preventing unlawful harassment, discrimination, and retaliation, employees are expected to:

- a. Set an example of acceptable conduct by not participating in or provoking behavior that violates this Policy. People have different ethical values and standards and may be offended by behavior someone else thinks is proper.
- b. When comfortable doing so, employees should let fellow employees know when their behavior is considered offensive. The City hires people from a wide variety of cultural and ethnic backgrounds, and an individual may not realize behavior he or she thinks is proper could be seen by others as offensive.
- c. Report harassment, discrimination or retaliation as quickly as possible, whether the employee is the target of the conduct or a witness.
- d. If an employee observes harassment, he/she should tell the individual being harassed that the City has a policy prohibiting such behavior, and that the individual can demand that the harasser stop the behavior. If the employee is not comfortable doing this, the employee should notify any management employee or the Human Resources Manager or designee.
- e. Protect confidentiality to the extent possible as required by this Policy.
- f. Fully cooperate with the City's investigation of complaints made under this Policy and tell the truth to the City's investigator.

**Subdivision 2. Managers and Supervisors** In addition to the responsibilities listed above, managers and supervisors are responsible for the following:

- a. Implement this Policy by taking all complaints seriously and model behavior that is consistent with this Policy. Direct all complaints to the Human Resources Manager or designee.
- b. Take positive steps to eliminate and remedy any form of harassment, discrimination or retaliation observed or brought to his/her attention.
- c. Refrain from retaliating through any action of intimidation, restraint, coercion or discrimination.
- d. Monitor the work environment and take appropriate action to stop

potential Policy violations.

e. Follow up with those who have complained to ensure the behavior complained of has stopped.

f. Inform complainants of their option to contact the EEOC or DFEH regarding unlawful discrimination, harassment, and retaliation (see Section 6, Subdivision 4 of this Policy).

### **Section 5. Definitions**

**The definitions described in this section define terms used in this policy and establish standards for workplace conduct and are designed to be consistent with the City's goal of creating a non-harassing and professional work environment in compliance with applicable law.**

**Subdivision 1. Protected Classifications** See Article 3, Section 1.

**Subdivision 2. Harassment** Harassment includes verbal, physical or visual conduct that creates an intimidating, offensive or hostile working environment or that unreasonably interferes with job performance. Harassment may also include unwelcome, offensive racial or ethnic slurs, jokes, or other similar conduct.

**Subdivision 3. Sexual Harassment Defined** Federal law defines sexual harassment as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made a term or condition of employment; or (2) submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment.

California law defines sexual harassment as unwanted sexual advances or visual, verbal or physical conduct of a sexual nature. This definition includes many forms of offensive behavior. The following is a partial list:

- (1) Unwanted sexual advances.
- (2) Offering employment benefits in exchange for sexual favors.
- (3) Making or threatening reprisals after a negative response to sexual advances.
- (4) Visual conduct: leering, making sexual gestures, or displaying of sexually suggestive objects or pictures, cartoons or posters.
- (5) Verbal misconduct: making or using derogatory comments, epithets, slurs, sexually explicit jokes, or comments about an employee's body or dress.

- (6) Verbal sexual advances or propositions.
- (7) Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, or suggestive or obscene letters, notes or invitations.
- (8) Physical conduct: touching, massaging, assaulting, impeding or blocking movements.

All conduct described in this section is prohibited.

It is unlawful for males to sexually harass females or other males, and for females to sexually harass males or other females. Sexual harassment on the job is unlawful whether it involves co-worker harassment, harassment by a supervisor or manager, or by persons doing business with or for the City.

**Subdivision 4. Discrimination** This Policy prohibits treating individuals differently because of the individual's protected classification as defined by this Policy. There is "disparate treatment" and "disparate impact" discrimination, meaning an employee is treated differently because they are a member of a protected class.

Disparate treatment involves employer actions, e.g., promotion or termination that single out an employee because of a protected characteristic. For example, only older workers are laid off or only males are promoted. This type of discrimination often happens because of personal prejudice or dislike.

Disparate impact occurs when an employer's rules or practices affect employees differently based on their protected characteristics. This type of discrimination is often proven by statistics. For example, an employer policy of counting all absences and leaves against seniority that has a disproportionate adverse impact on women who have to take time off for pregnancy disabilities.

**Subdivision 5. Retaliation** Retaliation against a person (and his or her associates) because the person has reported or provided information about harassment or discrimination is strictly prohibited. Any act of unlawful retaliation violates this Policy and will result in appropriate disciplinary action, up to and including termination.

Examples of actions that might be retaliation against a complainant, witness or other participant in the complaint process include: (1) singling a person out for harsher treatment, (2) lowering a performance evaluation, (3) failing to hire, failing to promote, withholding pay increases, assigning more onerous work, abolishing a position, demotion or discharge, (4) spreading rumors about a complainant, (5) treating negatively, refusing or failing to interact or communicate about work-related issues, or refusing or failing to include an individual in work-related

meetings and functions because the individual has reported harassment or discrimination or participated in the complaint process, and/or (6) real or implied threats of intimidation to prevent or discourage an individual from reporting harassment or discrimination or to punish an individual because of a previous report of such concern.

Even well-intentioned attempts to insulate or protect a complainant by changing his or her work environment, schedule, or duties may be retaliatory. Before a supervisor takes such action, the supervisor should seek guidance from any management employee, the Human Resources Manager, or designee.

Any act of retaliation will be treated as a separate and distinct incident, regardless of the outcome of the harassment or discrimination complaint.

**Section 6. Reporting of Harassment, Discrimination, or Retaliation** An applicant, employee, volunteer, officer, or official who feels he or she has been harassed, discriminated against or retaliated against in violation of this Policy should report the conduct immediately as outlined below so that the complaint can be investigated and resolved quickly and fairly. Contractors are to report harassment to the Human Resources Manager or the City Manager.

Complainants involved in the complaint process may be represented by a person of their choosing, union representative, or attorney, at the complainant's expense.

**Subdivision 1. Objection to the Conduct** If comfortable doing so, a person who believes he/she is being harassed is encouraged to first use the informal and direct approach by informing the offending person that his/her conduct or language is offensive and unwelcome and request the offending person to discontinue his/her offensive conduct or language immediately. Sometimes an offending person is unaware that his/her conduct is offensive and using the informal and direct approach is the solution. However, if this approach is utilized and unsuccessful and the conduct in question continues or if the person who believes he/she is being harassed is not comfortable using the informal and direct approach with the offending person, the person should make a report in accordance with Subdivision 2 and/or 3 below, or go directly to the formal reporting process.

**Subdivision 2. Oral Report** If a person believes that this Policy has been violated and does not want to confront the offending person, he/she should report the conduct to any management employee. Any management employee who receives such a report must in turn direct it to the Human Resources Manager or designee.

**Subdivision 3. Written Complaint** An individual who believes this Policy has been violated and does not feel comfortable using the process outlined above is

to provide a written confidential complaint in the form of a memo or email to any management employee, who in turn must direct the complaint to the Human Resources Manager or designee.

**Subdivision 4. Option to Report to Outside Administrative Agencies** While the City encourages individuals to report all concerns to the City to allow the City to take prompt and appropriate corrective action, applicants, employees, volunteers, officers, and officials have the option to report harassment, discrimination, or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These governmental agencies offer legal remedies and a complaint process. The nearest offices are listed in the government section of the phone book as well as on the posters located on City bulletin boards.

**Section 7. City's Response to Complaint of Harassment, Discrimination, or Retaliation**

**Subdivision 1. Investigation** Upon receipt of a complaint of alleged harassment, discrimination or retaliation, the Human Resources Manager or designee will be responsible for determining the type of investigation and coordinating the investigation (unless the Human Resources Manager or designee is named in the complaint, in which case City Manager or designee will coordinate the investigation, unless the City Manager or designee is named in the complaint, in which case the City Attorney or designee will coordinate the investigation, in which case the Human Resources Manager references below will mean the investigation coordinator).

The Human Resources Manager or designee may coordinate the investigation with the complainant's department director(s) and may hire an outside investigator if the City deems appropriate. The type of investigation undertaken and the party chosen to conduct the investigation will depend on the nature of the complaint made and shall be determined by the Human Resources Manager or designee.

The Human Resources Manager or designee or the City Manager or designee, or the City Attorney or designee if the City Manager is named in the complaint, may take interim action to address the allegations and special circumstances, such as placing the alleged accused on paid administrative leave. No interim action should be taken to change the complainant's working conditions unless the complainant voluntarily requests and/or consents to the temporary change.

Internal investigations typically fit into two categories, informal investigations and formal investigations, which are dictated by circumstances and at the discretion of the investigator. The investigator will review the complaint allegations in an objective manner and to the extent that the City deems necessary. The

investigation will normally include interviews with the reporting individual (complainant), the accused, and any other person who is believed to have relevant knowledge concerning the allegations. The investigator will remind all witnesses to maintain the confidentiality of the content of the interview and not to retaliate against those who report alleged harassment or who participate in the investigation.

The City takes a proactive approach to potential Policy violations and will conduct an investigation if any management becomes aware that harassment, discrimination or retaliation may be occurring, regardless of whether or not the recipient of the alleged conduct or a third party reports a potential violation of this Policy.

**Subdivision 2. Remedial and Disciplinary Action** If the investigation determines that the alleged conduct occurred and that the conduct violated this Policy, the City will notify the complainant and accused of the general conclusion(s) of the investigation and take effective remedial action that is designed to remedy the impact on the complainant and end the violation(s). Any employee or officer determined to have violated this Policy will be subject to disciplinary action, up to and including termination.

Disciplinary action may also be taken against any official, supervisor or manager who condones or ignores potential violations of this Policy, or who otherwise fails to take appropriate action to enforce this Policy. Any official or contractor found to have violated this Policy will be subject to appropriate sanctions.

**Subdivision 3. Confidentiality** Every possible effort will be made to protect the confidentiality of complaints made under this Policy. Complete confidentiality cannot occur, however, due to the need to fully investigate potential Policy violations and take effective remedial action.

An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except with a representative for the employee such as an exclusive representative or as otherwise directed by a supervisor or the Human Resources Manager or designee.

Any individual who discusses the content of an investigatory interview will be subject to discipline, up to and including termination.

**Subdivision 4. Investigation Report** The City will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the laws or other legal requirements.

**ARTICLE 4. EMPLOYEE RECRUITMENT, SELECTION AND APPOINTMENT**

**Section 1. Policy** It is the policy of the City of Saratoga to recruit and select the most qualified persons for positions in the City's service. Recruitment and selection shall be conducted in a manner in accordance with the City's hiring process that will ensure open competition, provide equal employment opportunity, and prohibit discrimination or favoritism on the basis of any of the protected classifications under applicable law. (See Article 3, Section 1.)

**Section 2. Department Hiring Procedures**

**Subdivision 1. Department** When a department has a staffing requirement, a memorandum ("justification memo") is prepared by the department director for City Manager approval and sent to the Human Resources Division. The memo should include the following essential information:

1. Preferred date the position is filled.
2. Job title and type of position – regular or temporary and full-time or part-time. If the position is temporary, include the start and end date of the temporary assignment.
3. Confirmation that the position is within the currently adopted budget. No positions will be approved for recruitment that is not included in the currently adopted budget. Any modifications in positions (e.g. reclassifications due to reorganization (excluding alternately staffed positions)) require City Council authorization through a mid-year budget adjustment.
4. Job description changes/updates, if applicable. If a job description needs to be updated, the Human Resources Division will coordinate with the hiring department and update it prior to job posting.
5. Suggestions/recommendations for ad placement based on the position's area of the job market (e.g. City Manager, Western Cities monthly magazine or website; Human Resources Manager, NORCAL Municipal Human Resources Managers Group website).
6. Recommendation of potential subject matter experts and/or co-workers to serve as interview panel participants.

**Section 3. Job Posting** When a request to fill a vacancy has been approved by the City Manager, the following procedure shall be followed:

Job announcements will be posted in places available to the general public and all City employees. Postings will include pertinent job information, including minimum qualifications and salary range. Any tests and/or skill assessments will be communicated to the applicants as part of the recruitment process. All City job

descriptions are posted on the City's public website and available to applicants for review.

Job announcements shall be posted for not less than five (5) business days for internal and/or external recruitments. This period of time may be waived by the City Manager for emergency placements.

**Section 4. Application Form** All applications for employment shall be made on forms prescribed by the Human Resources Division.

**Section 5. Application Submittal** All applications and supplemental material such as cover letter, resume, etc. shall be submitted to the Human Resources Division.

**Section 6. Rejection of Applicants** All applications and supplemental material such as cover letter, resume, etc. are carefully reviewed by the Human Resources Division. An applicant may be rejected if he/she:

1. Does not meet the minimum qualifications for the position.
2. Has falsified an application or resume. (Employees who violate or have violated this section shall be subject to disciplinary action, up to and including dismissal.)
3. Is unable to perform the essential functions of the position, with or without reasonable accommodations.
4. Has been convicted of a crime that renders him/her unqualified for the position to which he/she has applied.
5. Is less than 18 years of age if being considered for Regular Full-time or Part-time employment.
6. Has established an unsatisfactory employment record.
7. Advocates the overthrow of the government of the United States by force or violence.
8. Submitted an application after an announcement closed or submitted an application for an unannounced position.
9. Submitted an incomplete application and/or failed to provide copies of documents cited in the job announcement prior to a final decision on hiring.
10. Could not submit written documentation in accordance with federal legislation, verifying identity and right to work in the United States of America.

**Section 7. Selection**

**Subdivision 1. Application Review Process** The intent of the application review process is to maximize reliability, objectivity, and validity through a practical and job-related assessment of whether the applicant meets the minimum qualifications required for the position.

**Subdivision 2. Selection Method** The Human Resources Division, in consultation with the hiring department, shall be responsible for determining valid selection methods to obtain the most qualified candidate for each vacancy. Applicants invited for interview or employment testing can request reasonable accommodations for a disability for the employment testing processes by contacting a representative within the Human Resources Division. The Human Resources Division shall make a decision regarding the reasonableness of the accommodation request, and if approved, take the necessary steps to insure the accommodation is provided. If the request is not approved, the Human Resources Division shall inform the applicant of the reason for denial of the requested accommodation, in writing, within three (3) working days of the decision.

**Subdivision 3. Security** Selection material shall be confidential. Every precaution shall be taken by all persons participating in the development and maintenance of selection materials to maintain the highest level of integrity and security.

**Subdivision 4. Nepotism Prohibited** Any supervisor or manager who is in a position to recommend employment or promotion of a relative (as defined by the City's Employment of Relatives policy, Article 17 of these rules) shall advise his/her immediate supervisor, and withdraw from the selection process. Any employee asked to participate in a selection process where a relative (as defined by the City's Employment of Relatives policy, Article 17 of these rules) is an applicant, shall immediately inform the hiring supervisor of their conflict of interest and withdraw from the selection process.

**Subdivision 5. Pre-selection Prohibited** No City employee will promise job appointments to any person. All inquiries regarding vacancies should be referred to the Human Resources Division.

**Subdivision 6. Education and Experience Substitutions** All internal and external candidates seeking employment must meet the minimum qualifications outlined in the relevant job announcement. Should a job posting yield an insufficient pool of qualified candidates, the Human Resources Division in collaboration with the hiring department/section will determine whether to re-post the position or review applicant substitutions for education and/or experience.

- a. Substitution of Experience for Education: Unless otherwise specified, One (1) year of relevant experience may be substituted for each year of required education. Relevant experience equips the applicant with the particular knowledge, skills, and abilities to perform successfully the duties of the position and is typically in or related to the work of the position to be filled.

(1) For example, if a position requires a Bachelor's degree in Public Administration and an applicant has no college credits, four years of professional-level relevant experience may substitute

for a Bachelor's degree. If a position requires a Master's degree and an applicant has neither a Bachelor's degree nor Master's degree, six (6) years of relevant experience may be substituted for the required education.

- b. Substitution of Education for Experience: Unless otherwise specified, one (1) year of relevant education at the undergraduate level may be substituted for one year of required experience. Relevant education equips the applicant with the particular knowledge, skills, and abilities to perform successfully the duties of the position and is typically in or related to the work of the position to be filled.

(1) For example, if a position requires two years of experience as an Accounting Technician, 60 credit hours of relevant study toward a Bachelor's degree in Accounting may be substituted for the two year experience requirement. Credit for one year of experience will be given for each year of (18 credit hours) relevant education above the Bachelor degree level. For example, if a position requires six (6) years of experience, a Master's degree may be substituted for the required experience. Relevant courses may be substituted for experience, provided an applicant submits a statement identifying the course for which they wish to be credited.

- c. Level of Experience: Only related and relevant professional level experience will be credited for professional positions. Professional level experience involves work that is intellectual and varied in nature, requires advanced knowledge and education, and the exercise of discretion and judgment.

Non-professional level experience may not be substituted for the required professional level experience. In certain instances, non-professional experience may be substituted for educational requirements when the applicant pool does not contain applicants who meet the minimum requirements of the position.

Supervisory level experience will be credited if the experience involves supervision of one or more full-time positions. Supervisory experience involves work in which one has the authority to conduct performance evaluations, approve requests for leave, and make recommendations regarding hiring, termination or other decisions affecting the employment status of others.

- d. Non-Allowable Substitutions

For professions that require a college degree in order to obtain a license or certification to practice within the discipline, experience cannot serve as a substitute for education.

**Subdivision 7. Final Candidate Selection**

1. The Human Resources Division conducts professional employment reference checks, coordinates criminal background check, and if applicable, DMV report, and credit report.
2. The Human Resources Division sends out official letter of employment offer authorized by the City Manager.
3. The Human Resources Division notifies the candidates interviewed but not selected following notification that the recommended hire has been approved and has accepted the position.

**Section 8. New Hire Probation**

Prior to the completion of the new hire probation period (12 months), management shall decide whether or not to recommend continued employment. If the decision is to discontinue employment, the incumbent shall be separated. If a decision is made to continue employment, a Personnel Action Form shall be prepared by the Human Resources Division for the hiring section's authorization changing the incumbent from probationary status to regular status.

**Section 9. Immigration Law Compliance** In compliance with the Immigration Reform and Control Act of 1986, each new or rehired employee, as a condition of employment, must complete the Employment Eligibility Verification Form I-9 and present documentation establishing identity and employment eligibility. An employee whose work authorization documents may expire is responsible for keeping current such documents.

**Section 10. Employee Orientation**

New Employee. New employees shall receive a new employee orientation from the Human Resources Division upon beginning City service.

1. Supervisor. Each Department Director will ensure that the department to which the new employee is to be assigned makes provisions for the director or a supervisor to be available for specific orientation of the new employee regarding department functions, responsibilities, and unique requirements of the department in addition to providing the new employee a walking tour of City facilities including introductions of the new employee to staff throughout the organization.

**ARTICLE 5. EMPLOYEE STATUS**

**Section 1. FLSA - Exempt Employee** An employee who meets one or more of the duties test exemptions from overtime under the FLSA (e.g. executive, administrative, professional, and specified computer employees) and who is paid on a salary basis, meaning that he or she is compensated in a predetermined amount that is not reduced, regardless of the quality or quantity of work actually performed, except as required by the City's principles of public accountability for partial-day absences.

**Section 2. FLSA Overtime-Eligible Employee** An employee who is entitled to FLSA overtime, regardless of whether paid on a salary or hourly basis will be paid overtime in compliance with law. A non-exempt employee assigned to an FLSA-exempt position on an acting or temporary basis remains overtime-eligible.

**Section 3. At-Will Employee** "At-will" refers to any City employee who: (1) does not hold regular status, (2) serves at the pleasure of the City Council or City Manager, and (3) can be terminated at any time with or without cause and with or without notice and without the right of procedural due process, appeal, grievance, or hearing. Employees who move from a "regular" employment status to an at-will position will be required to sign a notification and acknowledgment of at-will employment as a condition of employment.

**Section 4. Probationary Employee** An employee who is serving a probationary period. The probationary period is part of the selection process. Unless otherwise authorized by the City Manager, probation is a twelve (12) month trial period during which a determination is made as to whether or not an employee is suitable for their position. A new employee serves "at will" and can be dismissed with or without cause by the City for any reason that is not unlawful during the probationary period. This section does not apply to at-will employee status described in Article 5. Employee Status, Section 3. At-Will Employee.

**Section 5. Length of Probation** Unless otherwise specified by an applicable memorandum of understanding with an exclusive representative or these Policies, the probationary period is twelve (12) months of actual and continuous City service.

**Subdivision 2. Separation Without Cause** At any time during the probationary period, the employment relationship may be terminated without cause and without right of appeal, grievance or hearing. The City Manager or designee must approve the termination. The probationary employee shall be notified prior to the expiration of the probationary period that he or she has been rejected for regular appointment.

**Subdivision 3. Regular Appointment Requires Passing Probationary Performance Review** An employee will receive a regular appointment only Article 5. Employee Status when he/she receives a “meets expectations” or above rating on his/her written probationary performance review, resulting in the passing of the probationary period. If the employee does not meet the expectations for the probationary period, he/she will be rejected for regular appointment.

**Section 6. Regular Employee** An employee who: (1) is regularly scheduled to work on a continuing basis; and (2) has completed the probationary period for the position he or she holds, and (3) holds a budgeted position which the City Council has authorized the providing of health and welfare benefits. Health and welfare benefit contributions paid by the City are based on the City Council authorized full-time equivalent (1.0 FTE) position (work week of forty (40) hours). Health and welfare benefit contributions by the City are prorated for City Council authorized positions less than 1.0 FTE.

**Section 7. Full-Time Employee** An employee who is regularly scheduled to work forty (40) hours per work week.

**Section 8. Part-Time Employee** An employee who is regularly scheduled to work less than full-time.

**Section 9. Temporary, Provisional or Seasonal Employee** An employee who is assigned to work on a particular project or for a job of limited or indefinite duration is a temporary employee. A temporary employee: (1) does not hold regular status, (2) does not serve a probationary period, (3) can be dismissed at will from City employment at any time without right of procedural due process, appeal, grievance or hearing, and (4) is not entitled to earn, accrue, or participate in any City health and welfare benefits, accrue Paid Time Off (PTO) or other paid leaves, or receive any other benefits afforded to regular position appointments with the exception of Subdivision 1, Healthy Workplaces, Healthy Families Act 2014.

**Subdivision 1. Healthy Workplaces, Health Families Act of 2014** Effective July 1, 2015, temporary, provisional, or seasonal employees will accrue paid sick days in accordance with the requirements of applicable state law.

**Accrual requirements:** Paid sick days will be accrued at a rate of one hour per every 30 hours worked up to a permissible accrual cap of 48 hours, or 6 eight-hour days, unless the law is interpreted to allow a lower accrual cap, in which case that lower cap will apply. Accrual of paid sick leave requires the employee to have worked for the City for 30 days. After 30 days of work, paid sick leave accrues beginning at the commencement of employment or July 1, 2015, whichever is later.

**Carry-over and cap on accruals:** Unused, accrued sick days carry over from the first year of employment to the next year, up to a permissible cap of 48 hours, or 6 eight-hour days. An employee is not allowed to accrue more than 48 hours of paid sick leave. Once an employee has accrued a total of 48 hours paid sick leave, no additional paid sick leave will accrue until the employee uses accrued paid sick leave and reduces the balance to less than 48 hours. Thereafter, paid sick leave benefits will continue to accrue on a prospective basis only until the employee reaches the 48-hour maximum. No retroactive credit will be given for the time when accrued paid sick leave was at the accrual cap (unless the law is interpreted to require this).

**Use of sick leave:** Employees are entitled to use accrued paid sick days beginning on the 90<sup>th</sup> day of employment. The City will not advance paid sick leave. An employee may only use the paid sick leave that is accrued. An employee may not use more than 24 hours of paid sick leave each year, even if the employee has accrued more than this.

Sick leave must be taken by exempt employees only in increments of one (1) hour or more in a workday. For example, when the employee leaves work for 1 or more hours early due to illness.

Sick leave must be taken by non-exempt employees only in increments of 15 minutes (.25 hour) or more in a workday. For example, when the employee leaves work for 15 minutes or more minutes early due to illness.

**No pay-out of accrued sick leave upon termination:** The City is not required to and will not provide compensation to an employee for accrued, unused paid sick days upon separation of employment. However, if an employee separates from the City and is rehired within one year, previously unused paid sick days will be reinstated.

**Reasons for which sick leave can be used:** Sick leave may be used for the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or an employee's family member. The definition of "family member" is broad and includes, for instance, children, parents, parents-in-law, spouses, registered domestic partners, grandparents, grandchildren, and siblings, among other persons. Sick leave may also be used for victims of domestic violence, sexual assault, or stalking.

**No discrimination or retaliation:** The City will not deny an employee the right to use accrued sick days, discharge, and threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using or attempting to use accrued sick days or other protected activity under Labor Code 246.5(c).

The City will comply fully with the California Healthy Workplaces, Healthy Families Act of 2014 by allowing an employee with accrued paid sick leave the right to use

the accrued paid sick leave for the purposes for which leave is allowed to be used under this law. Please contact the Human Resources Division if you have any questions or concerns.

**ARTICLE 6. EMPLOYEE BENEFITS**

The City of Saratoga currently offers the benefits listed below. For a detailed description of these benefits, employees should refer to the summary plan documents distributed by the individual plan providers. In the event of a conflict between the terms contained in the summary plan documents and the information provided in this Policy, the summary plan documents will govern.

**Section 1. Discretionary Benefits** All regular City employees, who are scheduled to work at least 40 hours per work week are eligible for the following benefits. The City's contribution of benefits for regular part-time employees and full-time employees working less than 40 hours per work week will be prorated in proportion to the number of hours worked or accrued leave hours paid as compared to 40 hours per work week. The employee must pay the amount above the City contribution.

**Subdivision 1. Health Insurance** The City contracts with the California Public Employees Retirement System for the PERS health benefits program which includes Kaiser Permanente and Blue Shield Health Maintenance Organization (HMO) plan options and Preferred Provider Organization (PPO) plan options, PERS Choice, PERS Select, or PERS Care through Anthem Blue Cross. Employees may enroll in the plan of their choice; however, some plans require that an employee live within a specific geographic area.

The effective date of health coverage is the first day of the month following the employee's date of hire.

The currently contracted health plans, premium amounts and City contribution, and cash in-lieu payment information is available from the Human Resources Division. City contribution amounts and cash in-lieu payments are prorated based on Full Time Equivalent (FTE) (40 hours per work week).

If an employee and spouse are both City employees, only one employee is allowed to be the employee enrollee for health coverage. One employee may choose to enroll in the applicable coverage (employee +1 dependent or family coverage) and the other employee must waive their health plan coverage and be enrolled as a dependent. The enrolled dependent is not eligible for the cash in lieu payments.

The cash in-lieu payment is not an option for married couples or domestic partners (pursuant to Family Code sections 297, et seq.) employed with the City.

**Subdivision 2. Dental Insurance** The currently contracted dental plan, premium amounts and City contribution information is available from the Human Resources Division. Cash in-lieu payments are made to employees who do not elect dental insurance coverage, and are prorated base on Full Time Equivalent (FTE) (40 hours per work week).

The effective date of dental coverage is the first day of the month following the employee date of hire. The cash in-lieu payment is not an option for married couples or domestic partners employed with the City.

**Subdivision 3. Deferred Compensation (457 Plan) and Roth IRA (Individual Retirement Arrangement)** The City provides employees the opportunity to contribute toward an IRS Section 457 deferred compensation plan and/or Roth IRA managed by a third party plan administrator. Employees may contribute an amount up to a federally mandated maximum per calendar year on a pre-tax basis for the 457 deferred compensation plan and on a post-tax basis for the Roth IRA.

**Subdivision 4. Retirement Plan** The City is a contracting agency of the California Public Employees Retirement System (PERS). Regular employees become members immediately upon employment and become vested after five (5) years of service. The City pays the City's contribution as a contracting employer. For employees hired before May 12, 2012, the City through its contract with PERS provides for retirement benefits of 2% at 55 (effective September 1, 1999), one year final compensation (average full-time monthly pay rate for the highest 12 consecutive months), optional purchase of service credit at retirement using unused Paid Time Off, 1959 survivor benefits (Level 3) if death occurs prior to retirement and after retirement, and continuance of benefits to employee's survivor. The descriptions of benefits can be found in the "PERS Benefits for Local Miscellaneous Members". For employees hired on or after May 12, 2012, the City provides a 2% at 60, 3-year average compensation (highest average annual compensation earnable by a member during the three consecutive years of employment immediately preceding the effective date of his or her retirement).

**Subdivision 5. Short Term Disability Insurance** The City will pay 75% of an employee's salary based on the employee's full-time equivalent position (e.g. 1.0, .75, .60), including 75% prorated holiday pay, and maintain the City's contribution for existing insurance benefits coverage, subject to family and medical leave laws employee eligibility requirements (See Article 13, Section 3, Subdivision 11), for an employee on a disability leave, for six months from the date of the employee's qualifying injury or illness, unless provided otherwise by an applicable MOU. Employee's on disability who have exhausted their family and

medical leave law eligibility are 100% responsible for the continuation costs of insurance benefits coverage through COBRA (See Article 6. Section 2. Subdivision 3.).

Short term disability payments will commence only after 12 continuous working days based on the employee's assigned work schedule (including Off Fridays of an authorized 9/80 work schedule, holidays and furlough days), during which the employee is totally disabled, or only after all of the employee's accrued paid time off is exhausted, whichever is later. Short term disability payments are reported to PERS as salary earned.

An employee on short term disability leave is entitled to accrue Paid Time Off (PTO) within the six (6) month period after the date of injury or illness while on paid status as a result of using accrued (PTO). The accrual of PTO shall be prorated based on the number of hours of PTO that is being utilized by the employee.

Upon exhaustion of all accrued PTO, an employee on short term disability leave shall no longer accrue paid time off. In other words, while an employee is receiving the short-term disability payment of 75% of his/her full salary; the employee will not accrue paid time off. (See Article 6, Section 3, Subdivision 2).

In the event the employee remains on short term disability for six (6) months, the City provides a long term disability plan benefit through a third party administrator as described below.

**Subdivision 6. Long Term Disability Insurance** The City provides a long term disability plan benefit through a third party administrator to provide an employee with income protection of short term disability described above. The group insurance policy will cover 66 2/3% of the employee's monthly base salary up to a maximum of \$2,000 per month. Long-term disability benefits will be reduced for income received through social security, workers' compensation and/or California State Disability Insurance (SDI).

Employee's whose salaries exceed \$3,000 monthly are eligible to purchase additional long term disability insurance for 66 2/3% of monthly base salary up to a salary maximum of \$8,200 per month; however, availability of the plan is subject to the carrier's minimum requirement of ten (10) enrollees.

Employees on long term disability are 100% responsible for the continuation of insurance benefits coverage through COBRA (See Article 6. Section 2. Subdivision 3.).

**Subdivision 7. Life Insurance and Accidental Death Insurance** The City offers basic life and accidental death insurance benefits through a third party

administrator. Each is covered at \$50,000 for non-management employees, \$100,000 for mid-management and \$150,000 for management employees. If an employee dies with a qualifying accidental death, the beneficiary would receive both the life coverage and the accidental death coverage.

**Subdivision 8. Employee Assistance Program** Counseling services are available to employees and their immediate family through a third party administrator. Programs include personal financial management, stress management, marital and related domestic issues, drug or alcohol dependency, and other personal and work-related issues.

**Subdivision 9. Flexible Medical Spending Plan** Under Section 125 of the Internal Revenue Code, the employee may divert, on a pre-tax basis, up to a federally prescribed maximum of wages per year into a Medical Flexible Spending Account for eligible out-of-pocket medical and dental expenses. The City offers this program through a third party administrator.

**Subdivision 10. Dependent Care Spending Plan** Under Section 125 of the Internal Revenue Code, the employee may divert, on a pre-tax basis, up to a federally prescribed maximum of wages per year into a Dependent Care Flexible Spending Account for eligible out-of-pocket dependent care expenses. The City offers this program through a third party administrator.

**Subdivision 11. Tuition Reimbursement** Regular employees of the City who have been employed continually for at least 12 months prior to commencement of an approved or required course are eligible for the City's tuition reimbursement program.

- a. Coursework for Degree or Certificate** - If the course(s) taken is/are job related or in fulfillment of the requirements for a degree or certificate, one hundred percent (100%) reimbursement will be afforded for tuition, fees and books by the CITY up to a maximum of one thousand dollars (\$1,000) per employee per fiscal year. The Department Head and City Manager will determine job-relatedness.
- b. Coursework for Professional Development** - If the course(s) is/are not specifically related to the employee's current position, and does not fulfill the requirements for a degree or certificate, but does provide for professional development related to the worker's position of employment or a higher position in the CITY, reimbursement will be afforded for tuition, fees and books by the CITY at one-hundred percent (100%), up to a maximum five hundred dollars (\$500) per employee per fiscal year.

Reimbursement will be afforded after successful completion of the course(s) requirements. Successful completion is defined as a “C” grade or a “Pass” on a pass-fail system.

**Section 2. Legislated Benefits** The following benefits are mandated by law and apply to all City employees:

**Subdivision 1. Workers’ Compensation** Workers’ Compensation is a no-fault, benefit delivery system which compensates employees who are injured at work. The City participates in a self-funded Workers’ Compensation Shared Risk Pool (SHARP).

An employee who is injured or becomes ill as a result of work performed for the City is entitled to leave without pay for all or part of the period during which the employee receives temporary disability payments under the California Workers’ Compensation Act. When appropriate, the City will designate absences due to occupational injury or illness as Family and Medical Leave. Leave for a work-related injury or illness may run concurrently with other types of leaves, such as Family and Medical Leave.

An employee receiving workers’ compensation may use accrued Paid Time Off (PTO) or earned Administrative Leave to supplement income received under the California Workers’ Compensation Act to reach the equivalent of his/her full salary.

An employee on leave without pay who is receiving temporary disability payments under the California Workers’ Compensation Act does not accrue paid time off as if on pay status.

Workers' compensation insurance provides five basic benefits:

- Medical care: Paid for by the City through its third party claims administrator to help the employee recover from an injury or illness caused by work
- Temporary disability benefits: Payments if the employee loses wages because the injury prevents them from doing their usual job while recovering. As a general rule, an employee is paid two-thirds of their gross (pre-tax) wages at the time of injury, with minimum and maximum rates set by CA State Law. Temporary disability payments begin when the doctor says the employee can't do his or her usual work for more than three days or he or she gets hospitalized overnight.
- Permanent disability benefits: Payments if the employee doesn't recover completely
- Supplemental job displacement benefits (if the employee date of injury is in 2004 or later): Vouchers to help pay for retraining or skill enhancement if the employee doesn't recover completely and doesn't return to work for the City

- Death benefits: Payments to the employee's spouse, children or other dependents if employee dies from a job injury or illness.

**Subdivision 2. Unemployment Insurance Compensation** The State Unemployment Insurance program, paid by the City, provides partial income replacement to employees who become unemployed if determined eligible by the Employment Development Department (EDD) to receive benefits.

**Subdivision 3. Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA)** A federal health Insurance law that requires employers to offer employees and their covered family members continued participation in employer's group health insurance program, at special rates, following a "qualifying event."

**Subdivision 4. Health Insurance Portability and Accountability Act (HIPAA)** A federal law that limits the circumstances under which medical coverage may exclude pre-existing medical conditions and protects the privacy of certain health-related information.

**Subdivision 5. Break Time For Nursing Mothers**  
Section 7 of the Fair Labor Standards Act ("FLSA") requires employers to provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express the milk. The City is committed to providing a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

**Section 3. Paid Time Off (PTO)** The City provides Paid Time Off (PTO), also referred to as annual leave, benefits to regular full-time employees for the purpose of rest, relaxation, and interruptions from the workplace including vacation, illness, caring for children, school activities, medical/dental appointments, personal business, or emergencies. PTO for the purpose of illness may be used for the same purposes as described in the California Healthy Workplaces, Healthy Families Act of 2014 including but not limited to the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or an employee's family member. The definition of "family member" is broad and includes, for instance, children, parents, parents-in-law, spouses, registered domestic partners, grandparents, grandchildren, and siblings, among other persons. PTO may also be used for victims of domestic violence, sexual assault, or stalking.

The City will comply fully with the California Healthy Workplaces, Healthy Families Act of 2014 by allowing regular full-time employees with PTO the right to use PTO for the purposes for which leave is allowed to be used under this law. Please contact the Human Resources Division if you have any questions or concerns.

The City encourages employees to take time off in order to receive the personal replenishment value intended. All use of PTO is to be scheduled in advance and approved by a supervisor except in the case of illness or an emergency.

PTO must be taken by exempt employees only in increments of one (1) hour or more in a workday. For example, when the employee leaves work for 1 or more hours early to take care of personal business.

PTO must be taken by non-exempt employees only in increments of 15 minutes (.25) or more in a workday. For example, when the employee leaves work for 15 minutes or more minutes early to take care of personal business.

**Subdivision 1. Eligibility** All regular full-time employees are eligible to take and/or accrue paid time off based on their continuous length of service, measured from the date of hire. Continuous length of service is defined as service that is uninterrupted by termination of employment and subsequent rehire by the City. A leave of absence for legally protected reasons may not constitute a break in service when the law specifies that result.

**Subdivision 2. Paid Time Off (PTO) Accrual** The amount of PTO earned each calendar year is based on the employee's continuous length of service. PTO hours are calculated as earned on a bi-weekly accrual schedule. All PTO hours are based on compensated work hours. Therefore, PTO accruals for regular part-time employees scheduled to work less than 40 hours per week, as well as employees on a voluntary reduced work schedule shall be prorated accordingly. Employees will not accrue PTO hours while on unpaid status, (e.g., Short Term Disability (STD), Long Term Disability (LTD)), unless otherwise required by applicable law.

**Subdivision 3. Paid Time Off (PTO) Accrual Schedule for Full-Time Employees**

The accrual rates and maximum accrual of hours is the amount stated in the employee groups MOU or the below amount for employees whose amount is not specified in an MOU or for employees who are not governed by an MOU (unrepresented employees).

<b>Years of Service</b>	<b>Days Accrued</b>	<b>Hours Accrued</b>	<b>Maximum Accrual Hours</b>
<b>Years 0 thru 5</b>	<b>22</b>	<b>176</b>	<b>600</b>
<b>After 5 years</b>	<b>27</b>	<b>216</b>	<b>600</b>
<b>After 10 years</b>	<b>32</b>	<b>256</b>	<b>600</b>

**Subdivision 4. PTO Upon Termination** Upon separation from City service, the City will pay 100% of the employee's accrued paid time off (up to the 600 hours accrual maximum or the applicable MOU's specified maximum for accrual of PTO hours) at the employee's regular rate of pay. When an employee voluntarily resigns from employment, no paid time off may be used between the time the notice of resignation is given and the employee's last day of work, unless authorized in a written document signed by the City Manager.

**Subdivision 5. Payout at Retirement** Upon retirement from City service, an employee may choose to use their accrued paid time off for the purpose of obtaining additional service credit under PERS. An employee may choose to use all of his/her accrued paid time off as sick leave for service credit. If an employee chooses to apply less than 100% of his/her accrued paid time off toward PERS service credit, the City will pay 100% of the employee's remaining accrued paid time off at the employee's regular rate of pay.

**Section 4. Administrative Leave** Administrative Leave is compensated time off given to regular, full-time exempt employees of the City. This leave shall be taken in a manner consistent with PTO. Use of administrative leave is a privilege and is provided in recognition that City projects often require employees to devote whatever hours are necessary, irrespective of a regular scheduled workweek, to fulfill the obligations of the job. Employees are granted a specific number of hours per fiscal year, specified in each MOU. Administrative Leave must be taken by exempt employees in increments of one hour or more in a workday. For example, where the employee leaves work for an hour early to take care of personal business. Administrative Leave must be exhausted prior to using PTO.

**ARTICLE 7. PERFORMANCE EVALUATIONS**

**Section 1. Frequency** Supervisors are authorized to evaluate a subordinate's performance as often as the supervisor deems appropriate, however, employee performance will be evaluated at least one time each year.

**Section 2. Process** The evaluation of an employee's performance is an ongoing process. Evaluations must be documented in writing. The supervisor(s) will review the evaluation in a private meeting with the employee. The employee shall sign the performance evaluation to acknowledge that the employee is aware of its contents and has discussed the evaluation with his or her supervisor. The employee's signature on the evaluation does not necessarily indicate agreement with its contents. The employee will receive a copy of the evaluation after the meeting with the supervisor(s) and a copy of the evaluation will be placed in the employee's personnel file.

**Section 3. No Appeal** An employee does not have the right to appeal any matter relating to a performance evaluation. Instead, the employee may comment on the evaluation in a written statement which will then be placed with the evaluation in the employee's personnel file. The written statement must be signed by the employee and provided to the Human Resources Division within 30 days of the evaluation meeting.

## Article 8. Personnel Files and Reference Requests

### **ARTICLE 8. PERSONNEL FILES AND REFERENCE REQUESTS**

**Section 1. File Maintenance** The Human Resources Division maintains a personnel file for each City employee. Personnel files are the property of the City, and access to files is restricted as stated in this section.

**Section 2. File Content** The personnel file contains information including an individual's: 1) employment application, personal emergency contact information, promotions, demotions, transfers, salary, performance evaluations, disciplinary actions, work history, status and tenure, etc. The personnel file also provides a basis for the decision-making in personnel actions and operations and assists the City in personnel administration.

**Section 3. Employee's Responsibility to Notify City of Changes** Each employee is responsible for promptly notifying in writing the department director and the Human Resources Division of any changes in relevant personal information, including change of name, mailing address, telephone number, emergency contacts, and number and names of dependents (including changes in dependents based on marriage, birth, separation and divorce.)

**Section 4. Medical Information** "Medical information" means any information that identifies the employee and pertains to his or her medical history, mental or physical condition, or medical treatment. All employees' medical information shall be kept in separate, secure (locked) confidential files.

#### **Section 5. Access to Personnel Files**

**Subdivision 1. City Employees** A City employee may review his or her personnel file at reasonable times and intervals. An employee who wishes to review his or her file must contact the Human Resources Manager to arrange for an appointment with the Human Resources Division. The review will be conducted in the presence of a Human Resources Division designee. An employee, upon request, is entitled to receive a copy of any employment-related document he or she has signed.

**Subdivision 2. Employee Representatives** An exclusive bargaining representative (meaning a representative of the employee's bargaining organization) may inspect an employee's personnel file without the employee only if the employee has provided written consent.

**Subdivision 3. City Management or Confidential Personnel** The City Manager, City Attorney and legal representatives, Human Resources Manager and department head are authorized to access personnel files as part of their job as needed for legitimate

personnel administration purposes. Confidential personnel assistants may access personnel files as required by their Article 8. Personnel Files and Reference Requests

job duties. Those who are authorized to access personnel files are required to maintain the confidentiality of personnel file information.

**Subdivision 4. Confidential Material** Notwithstanding any of the above, neither an employee nor an exclusive bargaining representative may have access to: (1) documents that pertain to pending investigations regarding the employee's conduct; or (2) references and related information given in confidence as part of the City employment application or promotion process. The City will not disclose employee medical information without prior written authorization from the employee, except to City management personnel and City legal representatives with a legitimate personnel need for access and except as required by law, subpoena, or Court order.

**Section 6. Destruction of Personnel Records** Personnel records, including employment applications, shall be destroyed only in accordance with the City's retention schedule and applicable state and federal law.

**Section 7. Employment Reference Requests** All requests for employee references shall be referred to the Human Resources Division. Information will be released as authorized in writing signed by the employee or former employee if the authorization is legally sufficient. If there is no legally sufficient written authorization, the City will release only the following information: the employee's beginning and end dates of employment, title, and salary upon departure from City employment.

**ARTICLE 9. TRANSFER, REINSTATEMENT, RESIGNATION AND JOB ABANDONMENT**

**Section 1. Transfer** A transfer is the reassignment of an employee from one position to another, to the same or a different classification that has the same or similar maximum salary range, involves similar duties, and requires substantially similar minimum qualifications. A transfer may be involuntary or voluntary.

**Subdivision 1. Voluntary Transfer** A regular employee with an overall “meets expectations” or better rating on their evaluations and no disciplinary actions in the past year may submit a written request to the Human Resources Division to transfer to another position in the same or lower classification for which the employee is qualified. The request will be retained for one year after its receipt. With the approvals of the department director over the current and prospective positions, the employee may be transferred to the new position when the first vacancy becomes available.

**Subdivision 2. Involuntary Transfer** A department director(s) may involuntarily transfer an employee at any time and for any non-disciplinary reason. An employee so transferred has no right of appeal. As an example, an involuntary transfer may occur when the operational needs and demands of one division increase or change, thereby necessitating the transfer in of personnel from another division.

**Section 2. Reinstatement** A regular employee who has resigned, or has otherwise been separated while in good standing, may be considered for reinstatement, upon recommendation of the department director and approval of the City Manager, to a position in the former employee’s classification. Reinstatement is at the City’s sole discretion. An individual requesting reinstatement will be required to apply, pass a medical and/or psychological examination and any other qualifying tests or procedures as in the case of a new employee. Reinstated employees are paid at the salary range and step held at the time of resignation or separation. A reinstated employee shall serve a probationary period as defined in these Policies. Credit will be granted for prior service for purposes of PTO accrual rates.

**Section 3. Resignation** Resignation is an employee’s voluntary separation from City employment. The City Manager, Department director(s), and the HR Manager have authority to accept resignations. To resign from City employment in good standing, an employee must inform his or her department director and the Human Resources Manager in writing at least two weeks prior to the effective date of resignation. A resignation becomes final and irrevocable at the time the City Manager, Department Director, or the Human Resources Manager accepts the resignation. The Department Director and the Human Resources Manager, at the authority of the City Manager, have the discretion to

accept a resignation, Article 9. Transfer, Reinstatement, Resignation and Job Abandonment

in writing, which will be effective immediately and allow the employee to resign in good standing.

**Section 4. Job Abandonment** An employee is deemed to have resigned if the employee is absent for 3 consecutive work days without prior authorization and without notification on each day of the period of the absence. Only regular employees will receive notice of intent to terminate, an opportunity to respond, and final notice of termination for job abandonment.

An employee separated for job abandonment will be reinstated upon proof of justification acceptable to the City for such absence, such as severe accident, severe illness, false arrest, or mental or physical impairment which prevented notification.

No employee has any right to procedural due process, appeal, grievance or hearing for separation due to job abandonment.

**ARTICLE 10. LAYOFF**

**Section 1. Policy** It is the City's intent to avoid employee layoffs whenever possible. When, however, in the City's judgment it is necessary to abolish a position of employment, the employee holding the position may be laid off or demoted without disciplinary action and without the right of appeal. When feasible and practicable, the City will meet with employees of the affected classification in order to determine whether or not a voluntary reduction in hours or other solution may be presented in order to avoid the pending layoff.

**Section 2. Notice** Whenever possible, an employee subject to layoff will be given at least 14 calendar days' notice prior to the effective date of the layoff. Layoff notification will be provided in the form of a "Notice of Layoff." At the time of notice, the employee will also be notified of any displacement rights or rights to reemployment, as described below.

**Section 3. Order of Layoff**

**Subdivision 1.** Employees shall be laid off within a classification in the following order: (1) temporary employees, (2) probationary employees, (3) regular employees. All employees shall be laid off in the inverse order of their seniority within their classification. Seniority is determined by length of service. "Length of service" means employment without interruption, including all days of attendance at work and authorized leaves of absence. Length of service does not include unauthorized absences or periods of suspension or layoff.

**Subdivision 2.** In cases where two or more employees in the classification have the same seniority determination, the following procedure will be used: Employees shall be laid off on the basis of the last evaluation rating in the classification, provided that such information has been on file at least 30 days and no more than 12 months prior to layoff. In such a case, employees shall be laid off in the following order: (1) employees with an "unsatisfactory" or "below expectation" or similar performance numerical rating, (2) employees having a "meets expectations" or similar performance numerical rating, (3) employees with an "exceed expectations or outstanding" or similar performance numerical rating.

**Section 4. Demotion** Upon request of the employee and with approval of the appointing authority, an employee subject to layoff who has not held status in a lower classification may be allowed to demote to a vacant, authorized position in the same department if he/she meets all the requirements of the lower position as determined by the appointing authority. All employees who are demoted under this paragraph will be paid at the rate of pay for the lower position.

**Section 5. Transfer** The appointing authority may transfer an employee subject to layoff to a vacant, authorized position if the employee is qualified and capable of performing the essential functions of the position as determined by the Article 10. Layoff

appointing authority. An employee who is transferred will be paid at the rate of the position to which he or she is transferred. Any employee who does not accept a transfer within 5 working days after a Notice of Transfer is given will have automatically forfeited the ability to transfer. If the transfer involves a change from one department to another, both department directors must consent unless the City Manager orders the transfer for purposes of economy or efficiency.

**Section 6. Re-employment** Regular employees who have received a satisfactory or better evaluation for the 12 months prior to layoff and have completed their probationary period at the time of the layoff, shall be automatically placed on a re-employment list for one year for the classification from which they were laid off. This list will be used when a vacancy arises in the same or a lower class of position with similar duties and skills required. Reemployment shall be based on seniority should more than one person in the same classification be laid off from the same department. Employees who are offered and refuse re-employment will be removed from the re-employment list. Employees re-employed in a lower class, or on a temporary basis, will continue to remain on the list for the higher position for one year from the date of layoff.

**Section 7. Insurance Benefits Upon Layoff** The City will extend medical insurance benefits for two months to an employee who has been laid off. During this two-month period, the City will continue to pay the previously established contribution for the employee's medical insurance premium if the employee continues to pay the employee's portion and if the employee completes and submits required COBRA documents.

**Section 8. Paid Time Off (PTO)** Upon separation from the City service, the City agrees to pay 100% of the employee's accrued PTO at the employee's regular rate of pay at the time of separation in accordance with Article 6, Section 3.

**Article 11. WORK WEEK, HOURS OF WORK, AND ABSENCE CONTROL**

**Section 1. Work Week Defined** Unless otherwise specified in a memorandum of understanding, or as designated in a flexible work schedule, or as designated in a FLSA 29 USC § 207(k) schedule for safety employees, the work week begins at 12:00 a.m. Sunday and ends at 11:59 p.m. Saturday.

**Subdivision 1. Alternative Work Week** The City utilizes alternative work schedules for a variety of classifications and positions within the City service. A department director has discretion to approve an alternative work week, provided that the alternative work week: 1) totals no more than 40 hours; 2) has a specific starting day and time that is noted in the employee's payroll record; and 3) meets the needs of the public and the department.

**Section 2. Hours of Work** All employees are expected to be at their workstations and ready to work at the start of their scheduled work day or shift. Work hours shall be assigned to meet operational needs. The Department Director may change an employee's work period, week, or hours at any time, unless otherwise specified in an applicable MOU.

**Section 3. Absence Control** Arriving late to work or leaving early or late in connection with scheduled work times, breaks, or meal periods is prohibited. An employee is required to obtain advance permission from his or her supervisor for any foreseeable absence or deviation from regular working hours.

All absences or deviations from regular working hours must be accurately reported on the employee's timecard.

Exempt (salary) employees must report on timecard all absences or deviations from regular working hours in increments of one (1) hour or more in a workday.

Non-Exempt (hourly) employees must report on timecard all absences or deviations from regular working hours in increments of 15 minutes (.25) or more in a workday.

**Subdivision 1. Employee's Duty to Notify of Late Arrival or Absence** An employee who is unexpectedly unable to report for work as scheduled must notify his or her immediate supervisor no later than the scheduled work time (preferably an hour in advance of the scheduled start time) and report the expected time or duration of any late arrival or absence. If the employee's immediate supervisor is not available, the employee must notify another supervisor or employee within same division/department.

An employee who fails to timely notify the City of late arrivals or absences, or who is not present and ready to work during all scheduled work times will be deemed to have an unauthorized tardiness or absence.

**Subdivision 2. Excessive Tardiness/Absenteeism**

Excessive tardiness or absenteeism significantly disrupts the work production of the City.

Excessive tardiness or absenteeism exists when an employee's absence from work has an adverse effect on a department's ability to complete normal work requirements or provide normal services. The employee's frequent tardiness or absences render the employee unavailable to work, thus creating a hardship on the department and the City.

Excessive tardiness or absenteeism may be grounds for discipline, up to and including termination.

Excessive tardiness or absenteeism excludes the use of leave protected by law or pre-approved absences from work.

**Section 4. Meal and Rest Periods** Rest and meal periods are intended to allow employees to rest and relax. Rest and meal periods must be taken by the non-exempt (overtime-eligible) employee. Non-exempt employees receive:

- Two ten-minute rest periods, one during each four-hour shift, for each eight-hour to ten-hour working day. These breaks may not be combined or added to a meal period. If an employee works between three and one-half hours and six hours in a day, the employee receives one ten-minute break. If the employee works over six hours, the employee receives two ten-minute breaks. If an employee works over ten hours, the employee receives three ten-minute breaks. Rest periods include restroom breaks, personal calls or activities, smoking breaks, and similar non-working time. The employee is relieved of all duties for the entire rest period.
- One unpaid meal period of 30-60 minutes, depending on the department schedule, is provided for each employee who works more than 5 hours. An employee is free to leave the worksite during meal periods. The employee is relieved of all duties for the entire meal period.

Please observe the following rules governing breaks and meal periods:

- An employee must return to his/her work area promptly after a break or meal period.
- Tardy returns may result in discipline, up to and including termination of employment.
- Hourly employees must comply with timecard reporting requirements.

If an employee believes that a supervisor is discouraging or impeding the taking of rest periods and meal periods, the employee is to express their concern to the Human Resources Manager, either by phone, email, or in person on the same day on which the concern occurred or as soon as practical. The Human Resources Manager will discuss with the involved staff and facilitate a resolution.

**Section 5. Timekeeping Requirements** Each overtime-eligible employee is expected to complete your timecard on a daily basis to note your starting time, lunchtime (beginning and ending times) and ending time. Each entry must include actual start and stop times, which mean the exact time you were ready to begin work and when your work period/day ended. You are expected to be at your work area and be ready to begin work at your scheduled start time and continue to work productively until the end of your work time.

- All hourly employees must submit a signed timecard to their supervisor two days prior to the last day of the pay period. Your signature verifies the hours you worked as being accurate.
- Lunches must be recorded (beginning and ending times) on the timecard if the City's timecard requires lunches to be recorded.
- Each employee must ensure your timecard accurately notes your time worked. Falsifying a timecard will not be tolerated and will result in discipline, up to and including termination of employment. Falsifying includes over-reporting your time worked (claiming time was worked when you did not in fact work that time) and underreporting your time worked (claiming that you stopped work or were not working when you in fact are working or continued to work off the clock).
- PTO and Administrative Leave must be recorded on the timecard by exempt (salary) employees in increments of one (1) hour or more in a workday.
- PTO must be reported on the timecard by non-exempt (hourly) employees in increments of 15 minutes (.25) or more in a workday.

- All types of leave, (e.g. PTO, Holiday, Administrative Leave, and other leave) must be logged on the timecard.
- Supervisors are required to review all timecards for accuracy and to sign all timecards before submitting to payroll by the due date.

**Section 6. Compliance with Legal Requirements and Overtime** The City will pay its employees in compliance with applicable federal wage laws.

Some employees will be overtime-exempt and not eligible for overtime pay. Other employees will be non-exempt or overtime-eligible as determined by position. The City may require an employee to work overtime or hours in excess of the employee's regularly scheduled workweek. Overtime will be paid in compliance with applicable law.

Overtime must be approved, in advance, by the City Manager, your supervisor, or the Department Director.

An employee who works overtime without prior approval may be subject to discipline, up to and including termination of employment.

**Section 7. Paycheck Review and Accuracy** The City strives to ensure that paychecks are accurate. Each employee is required to review their paycheck and pay stub documents to verify the accuracy of each employee's paycheck. If the employee notices an inaccuracy (either overpayment or underpayment), the employee must report (preferably in writing) the inaccuracy to Payroll staff within three business days. Payroll staff will investigate and correct any inaccuracies.

## **ARTICLE 12. COMPENSATION AND PAYROLL PRACTICES**

**Section 1. Salary Upon Appointment** Initial appointments are normally paid at the beginning of the salary range for the classification. When, in the discretion of the City Manager, the education, training, or experience of a prospective employee is such that a salary in excess of the beginning of the salary range is justified, the City Manager may authorize a higher salary for the classification.

**Section 2. Salary Upon Acting Assignment (Work out of Class)** An employee is entitled to begin receiving acting pay at the salary in the acting classification that is at least 5% higher than the employee's regular classification only after 15 continuous work days (not including Off Fridays of an authorized 9/80 work schedule, holidays, or unpaid furlough days) in the classification and only if all of the following criteria are met: 1) the Department Director assigns in writing the employee to work in a permanent position that is vacant or whose incumbent is absent; 2) the salary range of the assigned classification is at least 5% higher than the employee's regular classification; and 3) the employee performs all of the duties of the higher-paid classification for more than 15 continuous days. In the event, while on acting assignment, the employee begins a qualified family and medical care leave and is eligible for Short-Term Disability (see Article 6., Section 1., Subdivision 5. Short Term Disability Insurance) or Military Leave (see Article 13. Section 6. Military Leave), the employee will be paid at the salary of the employee's regular classification.

**Section 3. Salary Upon Transfer** An employee who is transferred from one position to another in the same classification is paid at the same wage rate. An employee who is transferred to a position in a different classification is paid at the wage rate of the new classification.

### **Section 4. Salary Upon Reclassification**

**Subdivision 1. Reclassification to a Higher Salary Range** When an employee is reclassified to a position within a classification that has a higher salary range than the prior classification, the employee receives pay at the beginning of the new classification's salary range.

**Subdivision 2. Reclassification to a Lower Salary Range** When an employee is reclassified to a position within a classification that has a lower salary range than the prior classification, the employee receives a Y-rated salary. Y-rating is defined as retaining an employee at his/her current salary, freezing his/her salary at the Y-rated salary, until the salary of the lower classification catches up through range adjustments, if that should occur. The purpose of this procedure is

to prevent an employee from taking a loss in salary when an involuntary or voluntary reclassification occurs.

**Section 5. Salary Upon Promotion** An employee who is promoted receives the beginning salary in the promotional classification which is at least 5% higher than the employee's prior salary.

**Section 6. Salary Upon Demotion for Cause** An employee who is demoted for cause receives the lower salary assigned to the demoted classification that is closest to his or her salary prior to demotion.

**Section 7. Salary Upon Demotion Due to Layoff** An employee demoted pursuant to a layoff receives the lower salary assigned to the demoted classification that is closest to his or her salary prior to layoff.

**Section 8. Eligibility for Salary Progression within Range** All regular employees will be evaluated on an annual basis and will be eligible to advance in their salary range based on annual performance evaluation results. No increase in salary shall be automatic solely upon completion of a specified period of service. All increases shall be contingent upon a satisfactory annual evaluation of the employee's performance, and shall require recommendation of the Department Head. In the case that an employee receives a cumulative rating of less than three (3) points on the annual performance evaluation, indicating a cumulative rating less than "meets expectations", the employee will not receive a salary increase. Employees are encouraged to refer to the applicable employee group memorandum of understanding for more information.

**Section 9. Pay Range Establishment** The City of Saratoga classifies all positions according to duties and responsibilities, and a salary range is established for each job classification. Salary ranges are established by the collection of data from the following comparable cities: Los Altos, San Carlos, Los Gatos, Campbell, Menlo Park, Cupertino, and Morgan Hill. The Human Resources Manager analyzes salary survey data in order to establish salary ranges for new job classifications.

The City utilizes two forms of salary structures:

Step-Based – A salary structure with standard progression rates established within a pay range for a job. Employees progress on a pre-defined step-to-step on the basis of performance.

Flat Rate - a single rate for incumbents in specific jobs.

**Section 10. Pay Range Adjustments** The City conducts salary surveys with its comparable cities listed in the above Section 9 every two years (Except for employees in bargaining units that gave up the right to these pay range adjustments in its memorandum of understanding. Employees are encouraged to refer to the applicable employee group memorandum of understanding for more information). Pay range adjustments are implemented automatically and administratively based on the salary survey results.

In the event step-based or flat rate salary structures are adjusted in order to maintain Saratoga's comparative position, incumbents will be moved to the newly established equivalent step or flat rate.

**Section 11. Overtime Compensation**

**Subdivision 1. Prior Approval Required** Overtime-eligible employees are not permitted to work overtime except as the department director or City Manager authorizes or directs. No employee may work overtime without receiving the approval of the appropriate supervisor prior to performing the work. Working overtime without advance approval is grounds for discipline, unless the overtime is specifically related to the City-wide emergency preparedness plan.

**Subdivision 2. "Overtime" Defined** Unless otherwise stated in a Memorandum of Understanding, "overtime" is all hours an overtime-eligible employee actually works over 40 hours in his or her work week. Overtime is compensated at 1.5 times the employee's regular rate of pay. Only actual hours worked shall be counted toward the 40-hour threshold for purposes of calculating FLSA overtime pay. No overtime shall be paid for less than 8 minutes of work.

**Subdivision 3. Compensatory Time In Lieu Of "Overtime"**

By mutual agreement of the employee and the City, an employee may receive, in lieu of overtime compensation, compensating time off at a rate of one and onehalf hours for each hour of employment for which overtime compensation is required by law.

The City requires an employee to exhaust any earned compensatory time prior to utilizing PTO in order to manage the accumulation of compensatory time.

The City reserves the right to cash out accumulated compensatory time at any time.

**Section 12. Prohibited Salary Deductions**

**Subdivision 1. Prohibited Deductions** Notwithstanding any other provision in these Policies, the City will not reduce the salary of any overtime exempt employee except for deductions that are authorized by applicable law.

**Subdivision 2. Complaint Procedure** An FLSA-exempt employee who believes his or her salary has been subject to a prohibited deduction should notify in writing the Human Resources Division, which will investigate the matter as necessary.

## **ARTICLE 13. LEAVES OF ABSENCE**

### **Section 1. Holiday Leave**

**Subdivision 1. Holidays** Unless otherwise specified in a memorandum of understanding, the following are designated as City holidays:

- January 1st, New Year's Day
- The third Monday in January, Martin Luther King, Jr. Day
- The third Monday in February, President's Day
- The last Monday in May, Memorial Day
- July 4th, Independence Day
- The first Monday in September, Labor Day
- The second Monday in October, Columbus Day
- November 11th, Veteran's Day
- The fourth Thursday in November, Thanksgiving Day
- The Friday after Thanksgiving Day
- December 24, Christmas Eve
- December 25th, Christmas Day
- December 31, New Year's Eve

**Subdivision 2. Observation of Holiday and Holiday Pay Eligibility** If a designated holiday falls on a Sunday, the following Monday will constitute the holiday rather than the day observed. If a designated holiday falls on a Saturday, the preceding Friday will constitute the holiday rather than the day observed. If a holiday falls on an off-Friday of an authorized 9/80 work schedule, the holiday will be observed on the preceding Thursday.

If a designated holiday falls on an employee's regular work day, the employee may utilize this designated holiday on another day as long as it is scheduled within the same workweek of the designated holiday, not to exceed 40 hours in the workweek.

When there are two sequential holidays (Christmas Eve and Christmas Day, New Year's Eve and New Year's Day) falling on weekends, the nearest additional weekdays will be observed as these holidays. If a holiday occurs during a period when an employee is taking paid leave, the holiday will not be charged against the employee's accrued leave.

To be eligible for holiday pay, an employee must be on paid status the week of the holiday with the City.

All regular and probationary full-time employees shall receive a full day's pay for each holiday. All regular part-time employees and employees on short-term disability shall receive holiday pay on a pro-rata basis. Notwithstanding any of the

above, temporary or seasonal employees are not entitled to any holiday time or pay.

**Subdivision 3. Holiday Furlough**

A holiday furlough will exist whereby the City operations are closed from December 24 through January 1 of every year. Employees shall utilize their available leave balances (paid time off and/or compensatory time off), if applicable. Employees that utilize unpaid leave due to insufficient available leave balances shall maintain regular benefit status.

**Section 2. Employee Voluntary Donation of Accrued Paid Time Off (PTO) Program**

Upon approval of the City Manager or a designated representative, employees may donate accrued (earned) paid time off on a voluntary basis to another employee on a leave of absence due to an injury or illness subject to the conditions listed below:

1. The employee on a leave of absence must provide the City permission to promote the program to City employees.
2. The employee receiving PTO contributions must have exhausted all accrued PTO or any other leave balances available to him/her (e.g. administrative leave, accrued compensatory time in lieu of overtime per employee group memorandum of understanding).
3. State and Federal income tax on the value of PTO donated shall be paid in accordance with pertinent regulations of the Internal Revenue Service and Franchise Tax Board then in effect.
4. Donation of PTO time shall be changed to its cash value and then credited to the recipient in equivalent hours at the recipient's straight time hourly rate of pay.
5. Donating employees may not reduce their balance of accrued PTO below eighty (80) hours by reason of such donations without the written approval of the City Manager or a designated representative.

**Section 3. California Family Rights Act (CFRA) and Family and Medical Care Leave Act (FMLA) Leaves**

The City will grant family and medical care leave in accordance with the requirements of applicable state (California Family Rights Act) and federal law (Family and Medical Care Leave Act) in effect at the time the leave is granted. No greater or lesser leave benefits will be granted than those set forth in the relevant state or federal law. Leaves may also be taken for qualified exigencies and to care for a covered service member who has provided military service. Please contact

Human Resources Division with questions if the leave is needed for reasons related to a covered service member.

**Subdivision 1. Definitions**

- a. “**12-Month Period**” means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
- b. A term used in this Policy that is defined under applicable law will have the same definition when used in this Policy.

**Subdivision 2. Employee Eligibility** To be eligible for family and medical leave benefits, an employee must:

- a. Have been employed by the City for a total of at least 12 months;
- b. Have actually been employed at least 1,250 hours over the previous 12 months; and
- c. Be employed at a worksite where 50 or more employees are employed by the City within 75 miles of that worksite.

**Subdivision 3. Amount of Leave Available** Eligible employees may receive up to a total of 12 work weeks of unpaid leave during any 12-month period. The 12-month period begins on the date of the first absence qualifying for leave, and rolls backward from that date. As a result, the amount of this leave an employee is entitled to take depends on how much of this leave the employee has already taken during the 12 months prior to the request. The City will calculate leave eligibility by looking back 12 months from the date of the leave request, adding together any FMLA leave taken, and then subtracting that number from the employee’s 12-week allotment. For example, an employee requests three weeks of FMLA leave beginning July 30. His attendance record is pulled, and it shows that he has taken five weeks of leave during the past 12 months. This leaves seven weeks of FMLA leave available. The employee’s qualifying period resets on the anniversary of the date FMLA leave was first taken.

**Subdivision 4. Reasons for Leave** Leave may only be used for one or more of the following reasons:

- a. For the birth or placement of a child with the employee for adoption or foster care;

- b. To care for a spouse or domestic partner (pursuant to Family Code sections 297, et seq.), child, or parent with a serious health condition;
- c. To care for a newborn child (birth - 12 months of age); or
- d. When the employee is unable to perform the functions of his or her position because of a "serious health condition" as defined by applicable law.

**Subdivision 5. Intermittent Leave and Minimum Duration of Leave** a. If required by a health care provider, employees may take family and medical leave intermittently (in blocks of time interspersed during work time), or by reducing their normal weekly or daily work schedule.

b. Intermittent leave can be taken in no less than one-hour increments and will be counted toward the annual 12 week allotment. If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement. In addition, the basic minimum duration of such leave is two weeks, except that on no more than two occasions, an employee may use this leave for a period of less than two weeks' duration.

**Subdivision 6. Spouses Both Employed by the City** The aggregate number of work weeks of leave to which City employees who are spouses may be entitled for reasons of birth or placement for adoption or foster care is limited to 12 work weeks during the 12-month period defined herein.

**Subdivision 7. Notice of Need for Leave** An employee needing family and medical leave is required to provide:

a. 30-day advance notice when the need for the leave is foreseeable (e.g., for childbirth or elective surgery). If an employee fails to give 30 days' notice for a foreseeable leave with no reasonable excuse for the delay, the leave may be denied until 30 days after the employee provides notice.

b. When the need for leave is unforeseen, an employee must give notice as soon as possible. If the City determines that the employee's notice is inadequate or the employee knew about the need for leave for a non-emergency condition in advance of the time requested, the City may delay the start of the leave until the City can cover the position with a replacement.

**Subdivision 8. Medical Certification**

a. **Content and Due Date of Certification** An employee who requests leave for his or her own serious health condition, or to care for a child, parent or spouse or domestic partner (pursuant to Family Code sections 297, et seq.) who has a serious health condition, must provide the City written certification from the health care provider of the individual requiring care within 15 days after the City's request unless it is not practicable for the employee to do so despite the employee's diligent and good faith efforts.

(1) If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position.

(2) If the employee requests intermittent leave, or a reduced schedule to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is "medically necessary." "Medically necessary" means that there is a medical need for the leave and that the medical need can best be accommodated through an intermittent or reduced leave schedule.

b. **Second and Third Opinions** If the City has reason to doubt the validity of a certification (for example, if the employee is seen engaging in activity contrary to the certification), the City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee, and paid for by the City. The opinion of the third provider will be binding.

c. **Consequences of Failure to Provide Adequate or Timely Certification** If the employee provides an incomplete or insufficient certification, the employer will notify the employee in writing what additional information is needed and the employee will be given a reasonable time (seven days unless a longer time is needed despite the employee's good faith and diligent efforts) to provide a complete certification. If the employee fails to provide a medical certification within 15 days of the City's request for certification, the City may delay the start time for taking the leave until the required certification is provided.

d. **Periodic Re-Certification** The City may require the employee to periodically obtain recertification of a medical condition and report on his or her status and intent to return to work. An employee who requests an extension of approved leave will be required to provide a new certification.

- e. **Reinstatement: Fitness for Duty Certification** As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, the employee must obtain and present a fitness-for-duty certification from the health care provider that the employee is able to return to work. Failure to provide such certification will result in denial of reinstatement.

**Subdivision 9. Use of Accrued Paid Leaves** Family and medical leave is unpaid, except that an employee is required to first use any accumulated Paid Time Off (PTO), if the leave is for the employee's own serious health condition. The employee may also use PTO to care for a parent, spouse, domestic partner (pursuant to Family Code sections 297, et seq.), or child with a serious health condition or for any other type of family and medical leave. The paid leave runs concurrently with the family and medical leave.

**Subdivision 10. Concurrent Use of Family and Medical Leave with Other Types of Leave**

- a. The City may designate any non-family and medical leave, such as workers' compensation, or disability leave, to run concurrently with family and medical leave. This is applicable when the non-family and medical leave is also for a family and medical leave purpose.
- b. The City integrates family and medical leave with workers' compensation leave whenever an employee is absent from the work place for 30 days or more due to an industrial injury or illness.

**Subdivision 11. Benefits During Leave**

- a. An employee may receive any group health insurance coverage that was provided before the leave on the same terms as if the employee had continued to work during the leave, up to a maximum of 12 work weeks.
- b. Employee contributions for group health insurance coverage, if any, will be required either through prepayment of the employee's portion of the premium, payroll deduction, or by the employee's direct payment to the insurance provider. The method of payment will be established in conjunction with the employee in writing at the beginning of the leave. The amount of an employee's contribution is subject to any changes in rates that occur while the employee is on leave.
- c. If the City pays the employee's contribution in order to avoid cancellation of coverage, the employee will be required to reimburse the City on a payroll deduction schedule upon return from leave. The employee

will be required to sign a written statement at the beginning of the leave period to authorize the payroll deduction for delinquent payments.

d. If the employee fails to return from unpaid family and medical leave for reasons other than: 1) the continuation of a serious health condition of the employee or his or her covered family member; or 2) circumstances beyond the employee's control, the City may seek reimbursement from the employee for the portion of the premiums the City paid on behalf of the employee during the leave period.

**Subdivision 12. Eligibility of Step Increase** A step increase for which an employee would have been eligible during their leave of absence will be adjusted forward by the period of time in calendar days the employee was on leave, regardless of whether the leave of absence was unpaid or paid by using accrued PTO except when applicable law provides otherwise. For example, the employee went on leave on 5/17/2010 and returned from leave on 9/28/2010. The employee was gone for 134 calendar days (15 days May + 30 days June + 31 days July + 31 days August + 27 days September). Take 134 days divided by 14 = 9.57; round up to 10 pay periods. Previous step increase eligibility date: 10/15/2010. New step increase eligibility date after adjusting forward 10 pay periods: 3/4/2011.

**Subdivision 13. Paid Time Off (PTO) Accrual** PTO does not accrue while an employee is on unpaid leave.

**Subdivision 14. Job Reinstatement** An employee will be reinstated to his or her previous position, or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions if all of the following conditions are met: 1) the employee has been on leave for no more than the maximum family and medical leave period; and 2) the employee provides the Human Resources Division a written certification from a health care provider that the employee is fit for duty if the leave was taken for the employee's own serious health condition.

If an employee is returning from family and medical leave taken for his or her own serious health condition, but is unable to perform the essential functions of his or her job because of a physical or mental disability, the City will begin an interactive process to determine whether the City can reasonably accommodate the employee without undue hardship. (*See Reasonable Accommodation Policy – Article 2, Section 2*).

However, an employee returning from family and medical leave has no greater right to reinstatement, benefits, and other conditions of employment than if he/she had been continuously employed rather than on leave.

**Subdivision 15. Required Forms**

Employees must complete required forms provided by the City, in order to receive leave under this policy, including:

- a. “Request for Family or Medical Leave Form” to be eligible for leave.
- b. Medical certification—either for the employee’s own serious health condition or for the serious health condition of a child, parent, spouse or domestic partner (pursuant to Family Code sections 297, et seq.);
- c. Authorization for payroll deductions for benefit plan coverage continuation; and
- d. Fitness-for-duty to return from leave form.

**Section 4. Bereavement Leave**

**Subdivision 1. Amount of Leave** Pursuant to this policy, an employee is entitled to a paid leave of absence not to exceed five (5) days per calendar year per occurrence.

**Subdivision 2. Eligibility for Leave** An employee is eligible to take bereavement leave in the event of the death of a member of his or her immediate family. “Immediate family” consists of the following: Employee’s spouse or domestic partner (pursuant to Family Code sections 297, et seq.), child, stepchild, mother/father, mother/father-in-law, grandparent, grandchild, brother/sister, brother/sister-in-law, son or daughter-in-law, legal guardian, or custodial child. If an employee has another person pass away who is not listed, the employee can request paid bereavement leave from the City Manager by presenting written documentation supporting the closeness of the relationship with the deceased person.

**Section 5. Pregnancy Disability Leave (PDL)**

An employee who is disabled because of pregnancy, childbirth, or a related medical condition is entitled to an unpaid pregnancy disability leave for the period of disability up to four months. Time off needed for prenatal care, severe morning sickness, doctor-ordered bed rest, childbirth, and recovery from childbirth are covered by your PDL. PDL runs concurrently with family and medical leave under federal law, but not family and medical care leaves under California law.

**Subdivision 1. Notice & Certification Requirements**

- a. An employee must obtain approval from her immediate supervisor regarding the scheduling of planned medical treatment, such as prenatal care, so as to minimize disruptions to the City.
- b. Requests for pregnancy disability leave must be submitted in writing and must be approved by the employee's supervisor or department director before the leave begins, except for emergency situations. The request must be supported by a written certification from the attending physician. (See subdivision 6 of this Policy.)
- c. Pregnancy disability leaves must be confirmed in writing, have an agreed-upon specific date of return, and be submitted to the department director prior to being taken, except for emergency situations. Requests for an extension of leave must be submitted in writing to the department director at least 1-2 weeks prior to the agreed date of return and must be supported by a written certification of the attending physician that the employee continues to be disabled by pregnancy, childbirth, or a related medical condition. The maximum pregnancy disability leave is four months under the pregnancy disability law.

**Subdivision 2. Compensation During Leave** Pregnancy disability leaves are without pay. However, the employee may first use accrued paid time off and compensatory time off during the leave.

**Subdivision 3. Benefits During Leave**

- a. For an employee on pregnancy disability leave, the City will maintain group health insurance coverage that was provided before the leave for up to a maximum of four months on the same terms as if you had continued to work. The City may recover premiums it paid to maintain health coverage, as provided by the law, if an employee does not return to work following pregnancy disability leave.
- b. If you are on pregnancy disability leave and if paid coverage ends after the maximum time period provided by applicable law, you may continue your group health insurance coverage through the City in conjunction with applicable COBRA law by making monthly payments to the City for the amount of the relevant premium. Contact your Human Resources Manager for further information.

**Subdivision 4. PTO Accrual** Paid Time Off (PTO) does not accrue while an employee is on unpaid pregnancy disability leave.

**Subdivision 5. Transfer Requests or Intermittent Leave**

- a. Requests for transfers will be reasonably accommodated if the transfer does not cause undue hardship and does not violate other employees' rights. The transferring employee will receive the rate of pay for the job to which the employee transfers.
- b. Intermittent Leave: The PDL does not need to be taken in one continuous period of time but can be taken on an as-needed basis.

**Subdivision 6. Medical Certification** You may be required to obtain a certification from your health care provider of your pregnancy disability or the medical advisability for a transfer or reasonable accommodation. The certification should include:

- the date on which you become disabled due to pregnancy or the date of the medical advisability for the reasonable accommodation and/or transfer;
- the probable duration of the period(s) of disability or the period(s) for the advisability of the transfer or reasonable accommodation; and
- a statement that, due to the disability, you are unable to work at all or to perform any one or more of the essential functions of your position without undue risk to yourself, the successful completion of your pregnancy or to other persons, or a statement that, due to your pregnancy, the transfer or reasonable accommodation is medically advisable.

**Subdivision 7. Non-Interference** The City will not interfere with, restrain, or deny an employee's exercise or attempted exercise of rights under pregnancy disability laws.

**Subdivision 8. Relationship with Pregnancy Leave** Leave time because of the employee's disability due to pregnancy, childbirth or related medical condition is not counted as time used for state CFRA leave, but is counted as time used for federal FMLA leave. Pregnant employees may have the right to take a pregnancy disability leave in addition to family or medical leave. Generally, an employee on pregnancy disability leave is also on FMLA leave, but the employee may be able to take a state CFRA leave for up to twelve (12) work weeks when the pregnancy disability has ended. Employees should contact the Human Resources Division regarding their individual situation.

**Subdivision 9. Reinstatement**

- a. Upon the expiration of pregnancy disability leave and the City's receipt of a written statement from the health care provider that the

employee is fit to return to duty, the employee will be reinstated to her original or an equivalent position, so long as it was not eliminated for a legitimate business reason during the leave.

b. If the employee's original position is no longer available, the employee will be assigned to an open position that is substantially similar in job content, status, pay, promotional opportunities, and geographic location as the employee's original position.

c. If upon return from leave an employee is unable to perform the essential functions of her job because of a physical or mental disability, the City will initiate an interactive process with the employee in order to identify potential reasonable accommodations.

d. An employee who fails to return to work after the termination of her leave loses her reinstatement rights.

## **Section 6. Military Leave**

a. **Military Service Leaves** The City provides military leaves of absence to employees who serve in the uniformed services as required by the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §4301 *et. seq.* ("USERRA") and applicable state laws. To obtain a leave for military service, notify the Department Director and Human Resources Division (preferably in writing) immediately upon learning when you will leave on an active duty assignment. The City requests that you provide a copy of your orders or other documents from the military service pertaining to the leave, including the length of and your release from active duty and the reason for the leave.

An employee who has been a City employee for at least one year and who is on a military leave of absence that meets the requirements of applicable State law may be eligible to be paid his or her regular City salary or compensation for the first 30 calendar days of any such absence. (Mil. & Vet. Code § 395.01, 395.02, 395.05.) Please notify the Human Resources Division of your circumstances who will determine your rights specific to your situation.

Employees will be reinstated in accordance with applicable law. Please notify the Human Resources Division upon your release from active duty.

An employee may also be able to take time off for qualified exigencies. Please contact the Human Resources Division for more information.

b. **Military Spouse** An employee who works an average of 20 or more hours per week may request an unpaid leave of absence of up ten days to spend time

with a spouse serving in the military who has been granted leave from deployment during a period of military conflict. The employee must provide the Department Director and the Human Resources Division with notice, within two business days of receiving official notice that the military spouse will be on leave from deployment, of his or her intention to take the leave. The employee must provide the Human Resources Division with written documentation certifying that the spouse will be on leave from deployment during the time the leave is requested. The spouse must be one of the following: (A) A member of the Armed Forces of the United States who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President of the United States. (B) A member of the National Guard who has been deployed during a period of military conflict. (C) A member of the Reserves who has been deployed during a period of military conflict. "Period of military conflict" means either (A) A period of war declared by the United States Congress; or (B) A period of deployment for which a member of a reserve component is ordered to active duty pursuant to specific legal provisions. The City will not retaliate against an employee for requesting or taking the leave. Mil. & Vet. Code § 395.10.

There are other military-related leaves available as defined under applicable law. Please contact the Human Resources Division who will review your situation and review other leave options.

#### **Section 7. Time Off for Victims of Violent Crimes or Domestic Abuse**

Labor Code 230.1 and 230.2 allow a private sector employee to take time off if a victim of specified crimes. Although these laws do not apply to the City, the City also will allow unpaid time off for such urgent issues as follows.

**a.** An employee who has been a victim of a serious or violent felony, sexual assault, or domestic violence may take time off to: 1) appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding; 2) seek medical or psychological assistance; or 3) participate in safety planning to protect against further assaults.

**b.** An affected employee must give the City reasonable notice that he or she is required to be absent for a purpose stated above. In cases of unscheduled or emergency court appearances or other emergency circumstances, the affected employee must, within a reasonable time after the appearance (within three business days), provide the City with written proof that the absence was required for any of the above reasons. Leave under this section is unpaid, unless the employee uses accrued PTO.

## **Section 8. Jury Duty and Court Appearances**

**Subdivision 1. Jury Duty** An employee who is summoned to serve on a jury must notify his or her supervisor or the Human Resources Division as soon as possible after receiving notice of both possible and actual jury service in order to provide the City with adequate notice. The employee is expected to notify his immediate Supervisor or the Human Resources Division in a timely manner each day he or she serves on jury duty (preferably at least 1 hour before the employee's scheduled workday begins). If work time remains after any day of jury selection or jury duty, you will be expected to return to work for the remainder of your work schedule. The time spent on jury duty is not work time for purposes of calculating overtime compensation.

**Subdivision 2. Witness Subpoena** An employee who is subpoenaed to appear in court in a matter regarding an event or transaction which he or she perceived or investigated in the course of his or her City job duties will do so without loss of compensation. The time spent will be considered work time.

The employee must immediately notify the Human Resources Division and the Department Director of the subpoena because the subpoenaing party may be required to pay a deposit for the cost of the employee's time.

The employee is expected to notify his immediate Supervisor or Human Resources in a timely manner each day he or she serves on witness duty (preferably at least 1 hour before the employee's scheduled workday begins). If work time remains after any day of witness duty, you will be expected to return to work for the remainder of your work schedule.

**Subdivision 3. Exception for Employee-Initiated or Non-City Related Lawsuits** An employee subpoenaed to appear in court in a matter unrelated to his or her City job duties or because he or she is a party to a civil or administrative proceedings does not receive compensation for time spent related to those proceedings. An employee may request to receive time off without pay, or may use accrued PTO for time spent related to those proceedings. The time spent in these proceedings is not considered work time.

## **Section 9. Time Off to Vote**

If an employee does not have sufficient time outside of working hours to vote at a statewide election, the employee may take off enough working time to enable the employee to vote, up to a maximum of two hours, without a loss of pay. The time off must be taken at either the beginning or end of the employee's regular working shift. The time taken off shall be combined with the voting time available outside of working hours. If two working days before the election the employee has reason

to believe that time off will be necessary to vote, the employee must give his Supervisor at least two (2) days' notice that time off to vote is needed and must obtain his Supervisor's approval.

## **Section 10. Work Related Illness or Injury Leave**

The City will grant leave to employees with occupational illnesses or injuries in accordance with state law and/or reasonably accommodates such employees with modified work when appropriate (See Article 2. Equal Opportunity, Reasonable Accommodation, and Interactive Process). The employee's treating doctor is responsible for explaining in a medical report the kind of work the employee can and cannot do while recovering and the changes needed in work schedule or assignments.

### **Subdivision 1. Temporary Disability Benefit Payments**

Temporary disability (TD) benefits (temporary partial disability benefits or temporary total disability benefits) are payments employees receive if they lose wages because their injury prevents them from performing their job while recovering.

Prior to the start of TD, an employee must serve a "waiting period" of three days. The City will pay, on behalf of the employee, the first three days the employee is unable to work. The waiting period of three days is waived if the employee is:

1. hospitalized as a result of the injury or illness,
2. unable to work for more than 14 calendar days
3. or the injury is the result of a criminal act of violence.

As a general rule, temporary disability pays two-thirds of the gross (pre-tax) wages an employee loses while he/she is recovering from a job injury. However, an employee cannot receive more than the maximum weekly amount set by law. Visit the State of California Division of Workers' Compensation website at [www.dwc.ca.gov](http://www.dwc.ca.gov) for the current maximum weekly amount set by law.

The City's third party claims administrator will consider all forms of income when calculating an employee's temporary disability benefits. These payments will be processed by the City's third party administrator and paid to the employee every two weeks until the doctor releases the employee to return to work. An employee may use their accrued paid time off to supplement their temporary disability payments in an amount not to exceed their regular weekly wage.

## **Section 11. School-Related Leaves**

Labor Code 230.8 allows a private sector employee to take time off to attend school or childcare center activities. Although this law does not apply to the City, the City also will allow unpaid time off for such activities as follows.

**Subdivision 1. Permitted Leave and Approval Requirement** An employee who is a parent, guardian or grandparent with custody of a child in a licensed day care facility, kindergarten or grades 1-12, inclusive, shall be allowed up to forty hours each school year, not to exceed eight hours in any calendar month of the school year, without pay, to participate in activities involving the child at the school or day care facility. An employee utilizing this leave must first provide reasonable notice to and obtain approval of his or her supervisor or department director about the planned absence.

**Subdivision 2. Documentation of Visit** The City may require the employee to provide documentation from the school or childcare facility as verification that the employee participated in the school activities in question.

**Subdivision 3. Both Parents Employed by the City** If both parents, guardians or grandparents having custody work for the City, only the first person requesting leave under this policy will be permitted the leave.

## **Section 12. Unauthorized Leave**

When prior authorization is required, an employee who takes leave without prior authorization is subject to discipline, up to and including termination. When prior authorization is not possible due to circumstances beyond the employee's control, the employee is required to contact his or her supervisor as soon as possible after the unauthorized leave has begun and must then follow the procedures applicable to gaining authorization for the particular leave.

Reference Article 9. Transfer, Reinstatement, Resignation and Job Abandonment, Section 4. Job Abandonment.

## **Section 13. Unpaid Leave**

Unpaid leave not otherwise authorized pursuant to any City leave policy may, in certain circumstances, be granted by the City Manager. If granted, the unpaid leave will be only for the period specified by the City Manager. The health and dental benefit premiums may not be paid by the City during the unpaid leave, and an employee on unpaid leave will not accrue annual leave (PTO) during this time.

## **Section 14. General Provisions Applicable to all Leaves**

**Subdivision 1. Benefits during Leave of Absence**

During all unpaid leaves of absence, the City will continue to pay the City portion for an employee's health insurance benefits through the remaining portion of the pay period in which the leave begins unless the City is legally required to continue health benefits for a longer time. For example, if an employee is approved for and takes a three (3) month unpaid personal leave beginning June 15, and the pay period ends on June 25, benefits will continue through June 25, unless the City is legally required to continue health benefits for a longer time. Thereafter, the employee can continue benefits in accordance with applicable law with the employee paying for coverage. If the employee remains in paid status for the length of the leave (by using PTO or CTO), the City will continue the employee's benefits until no longer in paid status.

If the employee is required to pay a part of the premium for health benefits, the employee must ensure that the City promptly receives the employee's required payment to continue health benefits in effect. The deadline for employee paying his part of the monthly health insurance premium is on or before the first day of the month of the coverage. Employee can discuss with the Human Resources Division pre-paying the employee's portion of the premium before the leave of absence begins to ensure that health benefits coverage continues in effect.

An employee may use accrued PTO or other accrued paid time off as part of any leave granted unless the law allows the employee to choose whether to use PTO (such as a pregnancy disability leave).

PTO does not continue to accrue while an employee is on an unpaid leave.

**Subdivision 2. Employees are Prohibited from Working for Another Entity During a Leave**

A leave is time for an employee to deal with a particular issue or situation that requires the employee to be absent from his/her employment with the City. If an employee works a job or performs services for a second employer or works as a contractor or consultant for another entity during a leave from the City, without express written consent provided in advance by the City Manager, the City will terminate employee's employment with the City.

**Subdivision 3. Return to Work**

Each employee is expected to promptly notify the Human Resources Division in writing if the need for the leave has ended so that the employee can return to work earlier than scheduled. The Human Resources Division and the employee's

supervisor will then determine the employee's return to work date and work schedule.

Each employee who is granted a specific length of leave is expected to return to work on the specified return to work date determined by the Human Resources Division. An employee who fails to return to work at the scheduled return date or who fails to notify the Human Resources Division that the need for the leave has ended will be terminated from employment.

If the employee cannot return to work by the expected return to work date, the employee must request in writing an extension of the leave before the return to work date. The employee's request of an extension of leave must be provided to the Human Resources Division at least 1-2 weeks before the return to work date if the need for the extension of the leave is foreseeable.

Each employee on leave must keep the Human Resources Division updated on his/her status and expected return to work date. At least one week before the scheduled return to work date, the employee is required to call or email the Human Resources Division and confirm the employee will return on the scheduled date or, if needed, request a further leave of absence.

Each employee on leave must cooperate in supplying the Human Resources Division with requested information, including doctor notes related to the leave, to a requested extension of a leave, and to the return to work.

Any employee on a medical-related leave must have a doctor's note releasing the employee to return to work.

## **ARTICLE 14. ALCOHOL AND DRUG ABUSE POLICY**

**Section 1. Purpose** - It is the intention of this policy to eliminate substance abuse and its effects in the workplace. While the City of Saratoga has no intention of intruding into the private lives of its employees, involvement with drugs and alcohol can take its toll on job performance and employee safety. Employees must be in a condition to perform their duties safely and efficiently, in the interest of their fellow workers and the public, as well as themselves. The presence of drugs and alcohol on the job, and the influence of these substances on employees during working hours, are inconsistent with this objective.

Employees who think they may have an alcohol or drug usage problem are urged to voluntarily seek confidential assistance from the Employee Assistance Program Counselor. While the CITY will be supportive of those who seek help voluntarily, the CITY will be equally firm in identifying and disciplining those whose continued substance abuse, even if enrolled in counseling or rehabilitation programs, results in performance problems, danger to the health and safety of others and themselves and/or violations of federal, state or CITY laws/policy.

Supervisors will be trained to recognize abusers and become involved in this control process. Alcohol or drug abuse that negatively impacts work performance or safety will not be tolerated and disciplinary action, up to and including termination, will be used as necessary to achieve this goal.

This policy provides guidelines for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of City managers and employees. To that end, the CITY will act to eliminate any substance abuse (alcohol, illegal drugs, prescription drugs or any other substance which could impair an employee's ability to safely and effectively perform the functions of the particular job) which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or damage to the Agency's reputation. All persons covered by this policy should be aware that violations of the policy may result in discipline, up to and including termination, or in not being hired to the extent allowed by law.

In recognition of the public service responsibilities entrusted to the employees of the CITY and that drug and alcohol usage can hinder a person's ability to perform duties safely and effectively, the following policy against drug and alcohol abuse is hereby adopted by the CITY.

**Section 2. Policy** - It is CITY policy that employees shall not be impaired by alcohol or illegal drugs, have illegal drugs in their biological system, or be in possession, of alcohol or drugs while on CITY property, at work locations, or while on duty or subject to being called to duty, and that employees shall not sell or

provide drugs or alcohol to any other employee or person while on duty or subject to being called to duty.

While use of validly prescribed medications and drugs (other than medicinal marijuana) does not violate this policy per se, failure by an employee to notify his/her supervisor, before beginning work, when taking medications or drugs which could foreseeably interfere with the safe and effective performance of duties, or the operation of CITY equipment, can result in discipline, up to and including termination. The employee is required to report to the supervisor the possible negative side effects, but the employee is not to share the drug name or the medical diagnosis. Use, possession, or being under the influence of marijuana, even under a prescription, is not allowed, unless such a provision is determined to be unlawful. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such prescription medications or drugs, written clearance from a qualified physician may be required.

The CITY reserves the right to search, without employee consent, all areas and property in which the CITY maintains control or joint control with the employee. Otherwise, the CITY may notify appropriate law enforcement agencies that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the CITY. The City reserves the right to contact law enforcement for any concerns of possible illegal behavior

Refusal to immediately submit to an alcohol and/or drug analysis when requested by CITY management or law enforcement personnel, or refusal to submit to a search of personal properties if requested by law enforcement personnel, may constitute insubordination and be grounds for discipline, up to and including termination.

An employee reasonably believed to be under the influence of alcohol or drugs shall be prevented from engaging in further work and shall be detained for a reasonable time until he or she can be safely transported from the work site.

The CITY is committed to providing reasonable accommodation to those employees whose drug or alcohol problem classifies them as disabled under federal and/or state law. The disability laws do not protect current users of unlawful drugs.

The CITY has established an Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for alcohol or drug problems. The CITY will provide separate written notice of the availability of this program to all employees. Employees should contact the Human Resources Division or the EAP Counselor

for additional information. EAP posters with contact information are posted in the Human Resources Division and employee break/lunch rooms.

**Section 3. Application** - This policy applies to all employees of and to all applicants for positions with the CITY. This policy applies to alcohol and drugs, including all substances, drugs or medications, whether legal or illegal, which could impair an employee's ability to effectively and safely perform the functions of the job.

**Section 4. Employee Responsibilities** - An employee must:

Not report to work or be subject to duty while his or her ability to perform job duties is impaired due to on or off duty alcohol or drug use;

Not possess or use alcohol or impairing drugs, including illegal drugs and prescription drugs without a prescription, during working hours or while subject to duty, on breaks, during workday meal periods or at any time while on CITY property;

Not directly or through a third party sell or provide drugs or alcohol to any person, including any employee, while either or both employees are on duty or subject to being called to duty;

Submit immediately to an alcohol or drug test when requested by a CITY representative;

Notify his or her supervisor, before beginning work, when taking any medications or drugs, prescription or nonprescription, which may interfere with the safe and effective performance of duties or operation of CITY equipment; and

Provide within one business day of request, bona fide verification of a current valid prescription for any potentially impairing drug or medication identified when a drug screen/test is positive. The prescription must be in the employee's name.

**Section 5. Management Responsibilities** -

a. Managers and supervisors are responsible for reasonable enforcement of this policy.

b. Managers and supervisors may request that an employee submit to a drug and/or alcohol test when a manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol while on the job or subject to being called. A manager may request a second manager or the Human Resources Manager to observe the behavior at issue also before making a decision.

c. "Reasonable suspicion" is a belief based on objective facts sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so the employee's ability to perform his or her job safely is reduced.

d. For example, any of the following, alone or in combination, may constitute reasonable suspicion depending upon the circumstances in which the behavior is observed and/or reported:

1. Alcohol odor on breath;
2. Slurred speech;
3. Unsteady walking and movement;
4. An accident involving CITY property, where it appears the employee's conduct is at fault;
5. Physical altercation;
6. Verbal altercation;
7. Unusual behavior;
8. Possession of alcohol or drugs;
9. Information obtained from a reliable person with personal knowledge.

e. Any manager or supervisor requesting an employee to submit to a drug and/or alcohol test should request a second manager or the Human Resources Manager to join the meeting with the employee and should document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence.

f. Any manager or supervisor encountering an employee who refuses an order to submit to a drug and/or alcohol analysis upon request shall remind the employee of the requirements and disciplinary consequences of this Policy. Where there is reasonable suspicion that the employee is then under the influence of alcohol or drugs, the manager or supervisor should consider contacting law enforcement or arrange for the employee to be safely transported home.

Managers and supervisors shall not physically search the person of employees, nor shall they search the personal possessions of employees without the freely given written consent of, and in the presence of, the employee.

Managers and supervisors shall notify their Department head or designee when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the CITY. If the Department head or designee concurs that there is a reasonable suspicion of

illegal drug possession, the Department head shall notify the appropriate law enforcement agency.

**Section 6. Physical Examination and Procedure** - The drug and/or alcohol test may test for any substance which could impair an employee's ability to perform effectively and safely the functions of his or her job, including, but not limited to, prescription medication, alcohol, heroin, cocaine, morphine and its derivatives, P.C.P., methadone, barbiturates, amphetamines, marijuana and other cannabinoids.

Testing shall be performed at a local medical facility selected by the CITY. The procedure used shall require an unbroken chain of custody from sample collection to return of the written report. A split sample (a test sample which is divided into portions for use in an independent testing of positive samples) shall be preserved to provide an opportunity for a second independent test. If the initial test has positive results, the CITY shall conduct a confirmation test using a court admissible testing technique. If the confirmation test has positive results, the employee may re-test the second part of the split sample at a laboratory of the employee's choice and at the employee's own expense.

A positive result from a drug and/or alcohol analysis showing the employee is under the influence while at work may result in disciplinary action, up to and including, termination.

If the drug screen is positive, the employee must provide, within 24 hours of the request, bona fide verification of a valid current prescription for the drug identified in the drug screen. The prescription must be in the employee's name. If the employee does not provide acceptable verification of a valid prescription, or if the prescription is not in the employee's name, or if the employee has not previously notified his or her supervisor of the same, the employee will be subject to disciplinary action, up to and including termination.

If an alcohol or drug test is positive for alcohol or drugs, the CITY shall conduct an investigation to gather all facts. The decision to discipline, up to and including termination, will be carried out in conformance with the CITY's discipline procedures, modified as follows:

- (1) In the event a regular, for-cause employee requests an evidentiary appeal to the City Manager from a final notice of discipline (Section 6 of the Discipline Policy) for violating the City's Drug and Alcohol Abuse Policy, the evidentiary appeal will be conducted by a neutral, third party arbitrator who, after conducting the evidentiary hearing and hearing all of the evidence (pursuant to the provisions of Section 6

of the Discipline Policy), will make a nonbinding recommendation to the City Manager with respect to discipline. The nonbinding recommendation will include: (a) the arbitrator's nonbinding recommendation regarding discipline; and (b) the arbitrator's nonbinding recommended-written findings of fact in support of his or her recommendation for discipline. The nonbinding recommended-written findings of fact will include the factual basis for the recommendation for discipline, including the testimony of the witnesses relied upon, the basis of any credibility determinations of these and other witnesses, the documents and other evidence relied upon, and nonbinding assessments on how the testimony, documents, and other evidence support the nonbinding recommendation of the arbitrator.

- (2) The City and the Bargaining Unit or unrepresented employee will agree on the neutral, third party arbitrator who will conduct the evidentiary hearing and make the above nonbinding recommendations, prior to the onset of the evidentiary hearing. In the event an agreement on a third party arbitrator cannot be reached, then either party shall promptly obtain from the California State Conciliation Services a list of seven impartial arbitrators from which the City and the Bargaining Unit shall select the neutral, third party arbitrator by alternatively striking names from the list. The first party to strike from the list shall be determined by coin toss.
- (3) The neutral, third party arbitrator will submit his or her nonbinding recommendation for discipline and nonbinding recommended-written findings of fact to the City Manager with a copy to the employee and the Bargaining Unit within 30 days after the evidentiary hearing has been completed and written briefs, if any, have been submitted. The City Manager will have 30 days thereafter in which to review the nonbinding recommendations and findings, to request clarification or additional testimony or evidence (at the City Manager's discretion) on any issue, and to render a final statement of written findings and decision. The City Manager's decision is final.
- (4) Proof of service of the City Manager's final statement of written findings and decision and the statute of limitations on

that final decision is in accordance with Subdivisions 6 and 7 of Section 6 of the Discipline Policy.

**Section 7. Confidentiality** - Laboratory reports and test results shall not appear in an employee's general personnel file. Information of this nature will be contained in a separate confidential medical folder that will be securely kept under the control of the Human Resources Manager. The reports or test results may be disclosed to CITY management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur to the extent allowed by law when: (1) the information is compelled by law or by judicial or administrative process; (2) the information has been placed at issue in a formal dispute between the employer and employee; (3) the information is to be used in administering an employee benefit plan; or (4) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

Article 15. Fitness for Duty Examinations

**ARTICLE 15. FITNESS FOR DUTY EXAMINATIONS**

**Section 1. Pre-Employment Drug Testing, Conditional Offer of Employment**

**Pre-Employment Drug Testing:**

Pre-employment testing of applicants for drugs may be required for safety sensitive jobs in which individuals perform work that involves danger to the public or jobs in which individuals can directly influence children. A positive result of any illegal drugs may result in the applicant being withdrawn for consideration of the position.

If a drug screen is positive, the applicant must provide, within 24 hours of the request, bona fide verification of a valid current prescription for the drug identified in the drug screen. If the prescription is not in the applicant's name or the applicant does not provide acceptable verification, or if the drug is one that is likely to impair the applicant's ability to perform the essential job duties, the applicant's job offer may be withdrawn.

**Conditional Offer of Employment:**

After a conditional offer of employment has been extended to an applicant, prior to conferring appointment, the City may, in compliance with all applicable laws, require the applicant to submit to a fitness for duty medical examination or submit acceptable medical information that is directly related to job performance and business necessity to determine whether or not the individual can perform the essential functions of the position, with or without reasonable accommodation.

If a drug screen is positive, the applicant must provide, within 24 hours of the request, bona fide verification of a valid current prescription for the drug identified in the drug screen. If the prescription is not in the applicant's name or the applicant does not provide acceptable verification, or if the drug is one that is likely to impair the applicant's ability to perform the essential job duties, the applicant's conditional offer of employment may be withdrawn.

**Section 2. Probationary and Regular Status Employee Examinations**

The Human Resources Manager or a designee may require an employee to submit to a fitness for duty examination that is job-related and consistent with business necessity to determine if the employee is able to perform the essential functions

of his or her job when: 1) the employee appears to be unable to perform or has difficulty performing one or more essential functions of his or her job; and 2) there is reason to question the employee's ability to safely or efficiently complete work duties.

## Article 15. Fitness for Duty Examinations

### **Section 3. Role of Health Care Provider**

A City-selected health care provider will examine the employee at City expense. The City will provide the health care provider with a letter requesting a fitness for duty examination and a written description of the essential functions of the employee's job. The health care provider will examine the employee and provide the City with non-confidential information regarding whether: 1) the employee is fit to perform essential job functions; 2) there are any reasonable accommodations that would enable the employee to perform essential job functions; and 3) the employee's continued employment poses a threat to the health and safety of him or herself or others. Should the health care provider exceed the scope of the City's request and provide confidential health information, the City will return the report to the health care provider and request another report that includes only the non-confidential fitness for duty information that the City has requested.

### **Section 4. Medical Information**

During the course of a fitness for duty examination, the City will not seek or use information regarding an employee's medical history, diagnoses, or course of treatment without an employee's written authorization.

### **Section 5. Medical Information from the Employee's Health Care Provider**

An employee may consent to his or her personal healthcare provider submitting confidential medical information to the City or the City-selected health care provider. If the employee provides written authorization, the Human Resources Manager will submit the information that the employee provides to the City-paid health care provider who conducted the examination. The Human Resources Manager will request the City-paid health care provider to determine whether the information alters the original fitness for duty assessment.

## **ARTICLE 16. WORKPLACE SECURITY**

### **Section 1. Policy**

The City is committed to providing a safe and secure workplace for employees and the public. The City will not tolerate acts, jokes about, or threats of violence in the workplace. The workplace includes any location where City business is conducted, including vehicles and parking lots. Any violation of this policy will be referred to law enforcement (which may lead to criminal prosecution), and/or disciplinary action, up to and including termination.

### **Section 2. Requirements for Employees**

- a.** Employees are prohibited from engaging in, joking about, or promoting acts of intimidation, violence, threats, coercion, assault and/or abusive behavior toward any person while in the course of City employment. The City will not tolerate any conduct that references workplace violence, even if it was intended to be harmless, humorous, a prank, blowing off steam, or venting.
- b.** Employees engaged in City business are prohibited from carrying self-defense weapons in violation of any law or this policy. Employees who have legal authority to carry a self-defense weapon shall notify the department director in writing of what type of weapon is being carried. Employees who have legal authority to carry self-defense weapons violate this policy if they: 1) accidentally discharge or lose their weapon; 2) use, threaten to use, or display the weapon while engaging in City business or while on City property; or 3) violate any law related to carrying a legal self-defense weapon while engaged in City business.
- c.** The security of facilities and the welfare of our employees require that every individual be aware of potential security risks. An employee must immediately notify their supervisor or other manager when a person is acting in a suspicious manner in or around the facilities, when keys or other access devices are lost or misplaced, or when the employee believes the City office or facility is otherwise not secure. An employee must also immediately notify their

supervisor or other manager if they are aware of any violent or potentially violent incidents, threats, or concerns of a risk for violence or other disturbance. The employee's supervisor or other manager must promptly notify the Department Director, City Manager or the Human Resources Division of the employee's report.

- d. No profile allows an employer to determine definitely whether an individual will be more prone to workplace violence than another. An employee must immediately report any potential early warning signs or any other unusual behavior to his/her supervisor or department director, per Section 4. Incident Reporting Procedures.

Potential early warning signals may include, but are not limited to, the following:

- Direct or veiled verbal or physical threats of harm.
- Intimidation of others.
- Carrying a concealed weapon.
- Paranoid behavior.
- Moral righteousness and indignation.
- Inability to take criticism of job performance and/or holding a grudge.
- Extreme interest in semiautomatic or automatic weapons.
- Fascination with incidents of workplace violence.
- Obsessive involvement with the job.
- Being a loner.
- Violence toward inanimate objects.
- Theft or sabotage of projects or equipment.
- Behavior or communication presented as some sort of dark humor.

- e. If an employee is faced with aggression from another person, the employee should try to de-escalate the situation whenever the employee can safely do so. Whenever an employee can safely do so, the employee should retreat from the situation and seek assistance from a supervisor, Department Director, or law enforcement rather than responding in a physically confrontational manner. An employee should avoid or minimize conflict, confrontation, and a physical response whenever the employee can safely do so.

### **Section 3. Definitions**

- a. **"Weapons"** are defined as firearms, chemical sprays, clubs or batons, and knives, and any other device, tool, chemical agent or implement that can cause bodily harm if used as a weapon or displayed in such a manner to cause harm or threaten a person with harm.

- b. **"Workplace Violence"** is any conduct that causes an individual to

reasonably fear for his or her personal safety or the safety of his or her family, co-workers, associates, friends, and/or property. Specific examples of workplace violence include, but are not limited to, the following:

- (1) Threats or acts of physical harm directed toward an individual or his/her family, friends, co-workers, associates, or property.
- (2) The destruction of, or threat of destruction to City property or another employee's property.
- (3) Harassing or threatening phone calls.
- (4) Surveillance that is threatening or intimidating.
- (5) Stalking.
- (6) Possession of offensive or defensive weapons (firearms, illegal knives, clubs, mace, pepper spray, tear gas, etc.).
- (7) Any conduct relating to violence, aggression, intimidation, or threats of violence that adversely affects the City's legitimate business interests.

#### **Section 4. Incident Reporting Procedures**

**Subdivision 1.** An employee must immediately report any potential warning signs of workplace violence or any other unusual behavior and workplace violence incidents to his/her supervisor or department director. The supervisor or department director will report the matter to the Human Resources Manager.

An employee is authorized and encouraged to call 911 if the employee feels law enforcement response is needed.

**Subdivision 2.** The Human Resources Manager, at the authority of the City Manager, will document all reports including reports of any potential warning signs of work place violence and workplace violence incidents, including the employee names(s), date/time, location, incident description, witness names and statements, description of unidentified parties, description of the act(s) and/or behavior arising from the incident and action(s) taken, and will provide any other relevant information regarding the incident.

**Subdivision 3.** The Human Resources Manager will take appropriate steps to provide security, such as:

1. Placing the employee alleged to have engaged in workplace violence on administrative leave, pending investigation;
2. Asking any threatening or potentially violent person to leave the site;
3. Immediately contacting an appropriate law enforcement agency; and/or
4. Securing the City offices by methods including a temporary lockdown while other precautions are taken.

**Section 5. Investigation**

The Human Resources Manager will see that reported violations of this policy are investigated as necessary.

**Section 6. Management Responsibilities**

Each department director has authority to enforce this policy by:

- a. Training supervisors and subordinates about their responsibilities under this policy;
- b. Assuring that reports of workplace violence are documented accurately and timely;
- c. Notifying the Human Resources Manager and/or law enforcement authorities of any incidents (including calling 911 if needed);
- d. Making suggestions of methods to improve safety and security;
- e. Making reasonable efforts to maintain a safe and secure workplace; and
- f. Maintaining records and follow up actions related to workplace violence reports.

**Section 7. Follow up and Disciplinary Procedures**

An employee found in violation of this policy will be subject to disciplinary action, up to and including termination of employment. The City may also direct that an employee submit to a fitness for duty examination. In addition, employees found in violation of this policy may be investigated by law enforcement which may result in criminal prosecution.

The Human Resources Division will review security precautions and policies after an incident or concern to determine whether any changes in security, processes, or policy should be made.

## Article 17. Employment of Relatives

### **ARTICLE 17. EMPLOYMENT OF RELATIVES**

#### **Section 1. Definitions**

The following definitions apply to this Article:

**a. “Relative”** means spouse, domestic partner (pursuant to Family Code sections 297, et seq.), child, step-child or a step-relative similar to any of the category of relatives noted in this paragraph, parent, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, nephew, parent-in-law, brother-in-law or sister-in-law.

**b. “Spouse”** means two persons who have a valid marriage and who are wife and husband, or two people who are domestic partners, as that term is defined by California law (pursuant to Family Code sections 297, et seq.).

**c. “Supervisory relationship”** means one in which one employee has the authority to control, direct, reward, or punish another by virtue of the duties and responsibilities assigned to his or her City appointment.

**d. “Employee”** for purposes of this Article only, is one who receives a City payroll check for services rendered or who is serving the City in a limited, volunteer or intern capacity.

#### **Section 2. Policy Relating to Relatives**

A department director has discretion not to appoint, promote or transfer a person to a position within the same department in which the person's relative already holds a position, when such employment would result in any of the following:

- a.** A direct or indirect supervisory relationship;
- b.** The two employees having job duties which require performance of shared duties on the same or related work assignment;
- c.** Both employees having the same immediate supervisor; or
- d.** A potential for creating an adverse impact on supervision, safety, security, morale or efficiency that is greater for relatives than for unrelated persons.

### **Section 3. Policy Concerning Employees Who Become Spouses or Domestic Partners**

**Subdivision 1.** If two City employees who work in the same department become spouses or domestic partners (pursuant to Family Code sections 297, et seq.) or step-relatives, the department director has discretion to transfer one of the employees to a similar position in another department. Although the wishes Article 17. Employment of Relatives

of the employees in question will be given consideration, the department director retains sole discretion to determine which employee is to be transferred based upon City needs, operations, or efficiency. Notwithstanding any provision in these Policies, any such transfer that results in a salary reduction is not disciplinary and is not subject to any grievance or appeal.

**Subdivision 2.** If continuing employment of both employees cannot be accommodated in a manner the department director finds to be consistent with the City's interest in the promotion of safety, security, morale, and efficiency, then the department director, with the authorization of the City Manager, retains discretion to separate one employee from City employment. Absent the resignation of one employee, the less senior employee will be separated. Notwithstanding any provision in these Policies, any such separation is not considered to be disciplinary and is not subject to any grievance or appeal.

Article 18. Use of City Property and Equipment

**ARTICLE 18. USE OF CITY PROPERTY AND EQUIPMENT**

**Section 1. Policy**

**Subdivision 1.** City property is to be used only for conducting City business unless otherwise authorized. City property includes, but is not limited to: telephones, faxes, copiers, desks, computers (including hardware and software), file cabinets, lockers, communications stored or transmitted on City property (such as e-mails and voice-mails), vehicles, maintenance equipment, tools, supplies, and any other City property used by City employees in their work. Employees do not have a reasonable expectation of privacy when using City property or equipment.

**Subdivision 2.** City property may be monitored and searched at any time and for any reason. Messages sent or received on City equipment may be saved and reviewed by others and may be subject to public disclosure under the Public Records Act. As a result, City employees have no expectation of privacy in the messages sent or received on City property or equipment.

**Subdivision 3.** Every City employee is required to adhere to all City rules and policies while on City property or using City property or equipment.

**Section 2. Use of Communications Equipment**

**Subdivision 1. Minimal Personal Use of Communications Equipment Permitted** City employees may use City telephones and e-mail for personal use provided that the use:

- a. Is kept to a minimum and limited to break times or non-working hours;
- b. Does not have any impact upon other City employees or operations;
- c. Allows the employee to more efficiently perform City work;
- d. Is not abusive, illegal, or inappropriate; and
- e. Does not have any cost impact to the City.

**Subdivision 2. Inappropriate Use of Communications Equipment Prohibited**

The following are examples of inappropriate and prohibited uses of the City's communications systems:

- a. Exposing others, either intentionally or unintentionally, to material which is unlawful, harassing, obscene or pornographic;

#### Article 18. Use of City Property and Equipment

- b. Any use that would be offensive to a reasonable person because it involves an individual's race, religion, color, religious creed, sex, gender, gender expression, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality, pursuant to Government Code section 12926 (r)), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, medical condition, genetic information or characteristics, physical or mental disability (whether perceived or actual), or any other characteristic protected by applicable law;
- c. Communication of confidential City information to unauthorized individuals within or outside the City;
- d. Sending messages with content that conflicts with any City policies, rules or other applicable laws;
- e. Unauthorized attempts to access City data or systems;
- f. Theft, removal, unauthorized using or copying of, unauthorized deleting, or unauthorized modifying electronic files or data;
- g. Initiating or sustaining chain letters, and
- h. Intentionally misrepresenting one's identity, position or authority for improper or illegal acts.

#### **Section 3. Vehicle Safety**

**Subdivision 1.** The purpose of this section is to ensure the safe operation of City owned vehicles, as well as the operation of personal vehicles while on City business, to ensure the safety of drivers, passengers, and the public, and to minimize losses, damages, and claims against the City.

**Subdivision 2.** Employees shall refrain from operating telephones (unless using a hand-free headset or a vehicle system that allows hands-free operation), laptop computers, navigational devices and any other device that may cause driver distraction while operating a City vehicle or while operating a privately owned vehicle in the course of conducting City business.

No City Employee shall operate a cellular telephone without a hands-free device, unless the use is required due to an emergency as set forth in California Vehicle Code Section 23123. In the event of an emergency that qualified under California Vehicle Code Section 23123, drivers shall make every attempt to properly park their vehicle prior to using such devices.

## Article 19. Outside Employment

### **ARTICLE 19. OUTSIDE EMPLOYMENT**

#### **Section 1. Policy**

An employee shall not engage in any employment which is inconsistent, incompatible, or in conflict with his or her duties as a City officer or employee, or with the duties, functions, or responsibilities of the City. Employment may include activities which violate the terms of the policy even if no compensation is received.

#### **Section 2. Definition of Outside Employment or Activity**

“Outside employment” is any work performed by a City employee outside of his or her City employment.

#### **Section 3. Prohibited Types of Outside Employment or Activities**

The City prohibits any outside employment or activity that involves:

- a. The use of City time, facilities, equipment and supplies, or the badge, uniform, prestige, authority, or influence of his or her City office or employment;
- b. Receipt or acceptance by the officer or employee of any bribe, payment, money, item of value, or other consideration, from any person or entity other than the City, for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his or her City employment or as a part of his or her duties as an officer or employee;
- c. The performance of an act, not in his or her capacity as a City officer or employee, which may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement by the officer or employee or any other officer or employee of the City;
- d. Such time demands as would render performance of his or her duties as a City officer or employee less efficient;
- e. Any act, whether or not for monetary compensation or other value or consideration, which is inconsistent, incompatible, in conflict with his or her duties for the City.

## Article 19. Outside Employment

### **Section 4. Request to Pursue Outside Employment or Activity**

**Subdivision 1.** Any employee interested in outside employment or activity shall submit a written application to the City Manager, on a form provided by the City, stating the following:

- a. Type or nature of employment or activity;
- b. Name of prospective employer or organization;
- c. Location of employment or activity, including physical and mailing address, email, and telephone number; and
- d. Time period of engaging in the outside employment or activity, including average number of hours per week that will be spent in the outside employment or activity.

**Subdivision 2.** The City Manager's decision will be based on the factors contained in this policy. A notation regarding the City Manager's decision will be placed in the employee's personnel file. The employee's request must be re-submitted when any of the required information changes or when the time period on the application expires. Authorization granted pursuant to this policy is revocable at any time.

## **ARTICLE 20. EMPLOYEE POLITICAL ACTIVITIES**

### **Section 1. Policy**

The City prohibits:

- a. Employees and officers from engaging in political activities during working hours.
- b. Political campaigning in City buildings or on premises adjacent to City buildings; and
- c. An employee or officer from using his or her office to coerce or intimidate public employees to promote, propose, oppose, or contribute to any political cause or candidate.

## **Section 2. Examples of Prohibited Conduct**

- a. Participation in political activities of any kind while in City uniform;
- b. Participation in political activities during working hours;
- c. Participation in political activities on City worksites;  
Article 20. Employee Political Activities
- d. Placing or distributing political communications on City property;
- e. Using city equipment to make political communications;
- f. Soliciting a political contribution from an officer or employee of the City, or from a person on a City employment list, with knowledge that the person from whom the contribution is solicited is a City officer or employee;
- g. Favoring or discriminating against any employee because of political opinions or affiliations;
- h. Interfering with any election; or
- i. Attempting to trade job benefits for votes.

## **Section 3. Examples of Permitted Conduct**

- a. Expressing opinions on all political subjects or candidates;
- b. Becoming a candidate for any local, state, or national election;
- c. Contributing to political campaigns;
- d. Joining and participating in the activities of political organizations;
- e. Requesting, during off-duty time, political contributions, through the mail or other means, from City officers or employees, if the solicitation is part of a solicitation made to a significant segment of the public which may include City officers or employees;

- f.** Soliciting or receiving during off-duty time, political contributions from a City employee organization if the funds, when collected, were not earmarked for a clearly identifiable candidate for a federal, state or local office; or
  
- g.** Soliciting or receiving, during off-duty time, political funds or contributions to promote the passage or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of City officers or employees.

## **ARTICLE 21. DISCIPLINE POLICY**

### **Section 1. Policy Coverage**

The following categories of persons can be terminated at-will and have no rights to any of the pre- or post-disciplinary processes or procedures in this Policy: (1) temporary employees; (2) probationary employees (3) any person who serves pursuant to a contract; and (4) any person who is designated “at-will” in any City policy, document, acknowledgement, memorandum of understanding, resolution or ordinance.

Notwithstanding any provision in this policy, any regular employee who is exempt from the overtime provisions of the Fair Labor Standards Act (FLSA), and who is paid on a salary basis, is not subject to any disciplinary penalty which is inconsistent with his or her FLSA overtime-exempt status.

### **Section 2. Causes for Discipline**

Regular employees may be counseled, advised against, reprimanded, suspended, demoted or discharged for disciplinary causes.

The City does not intend for this policy to prohibit or regulate any activity or comments that are protected by applicable law. Nothing in this policy makes unlawful any employee activity protected by applicable law (including but not limited to activity or comments protected by the Constitution, activity or comments protected by other applicable laws, and comments about wages, hours, or terms or conditions of employment and protected and concerted activity protected by applicable law). This policy will not be interpreted in a manner as to restrict or regulate employee behavior or comments protected by applicable law.

The list of disciplinary causes below is not all inclusive.

- 1.** Violation of the City’s Personnel Rules and Policies, Code of Ethics or any department rule, City administrative policy or City regulation, ordinance or resolution;
- 2.** Absence without authorized leave per Article 13. Leaves of Absence, Section 12. Unauthorized Leave;
- 3.** Excessive absenteeism and/or tardiness per Article 11. Work Week, Hours of Work, and Absence Control, Section 3. Absence Control, Subdivision 2. Excessive Tardiness/Absenteeism;

4. Use of leave in a manner not authorized;
5. Falsification of records or making any false statement, omission or misrepresentation of a material fact, such as, for example, providing wrong or misleading information or other fraud in securing appointment, promotion, or maintaining employment, or falsifying timecards, reimbursement of expense requests, or any other employment-related or City-related document;
6. Unsatisfactory job performance such as, for example, incompetency or failure to comply with the minimum standards required of employee's position, unsatisfactory, careless, or negligent job performance, inexcusable neglect of duties required of employee's position;
7. Inefficiency such as, for example, inattention to duties, loafing, idling, or wasting time during work hours;
8. Malfeasance (a legally unjustified or harmful act performed by a public official or employee) or misconduct, which shall be deemed to include, but shall not be limited to the following acts or omissions:
  - a. Conviction of a felony. "Conviction" shall be construed to be a determination of guilt of the accused by a court, including a plea of guilty or nolo contendere (no contest), regardless of sentence, grant of probation, or otherwise.
  - b. Damaging City property, equipment, or vehicles, or wasting City supplies through negligence or misconduct.
9. Insubordination or refusal to comply with instructions given by a supervisor or failure to perform reasonable duties to which assigned;
10. Dishonesty;
11. Theft;
12. Violation of the City's or a department's confidentiality policies, or disclosure of confidential City information to any unauthorized person or entity. Each employee is responsible for safeguarding confidential information obtained during employment. It is the responsibility of the employee not to reveal or divulge such information unless it is necessary for the employee to do so in the performance of their duties or unless the disclosure is protected by law (such as, for example, concerted and protected labor activity disclosures and disclosures protected by Constitutional provisions or other applicable law);

- 13.** Misuse of any City property, including, but not limited to: physical property, tools, equipment, vehicles, computers, City communication systems, or Intellectual Property;
- 14.** Mishandling of public funds;
- 15.** Falsifying any City record;
- 16.** Discourteous treatment of the public or other employees;
- 17.** Failure to cooperate with employee's supervisors or fellow employees;
- 18.** Violation of the City's Drug-Free Workplace Policy;
- 19.** Violation of the City's Use of City Property and Equipment Policy;
- 20.** Violation of the City's Policy Against Harassment, Discrimination and Retaliation;
- 21.** Violation of the City's Workplace Security Policy;
- 22.** Unapproved outside employment or activity that violates the City's Outside Employment policy, or other enterprise that constitutes a conflict of interest with service to the City or an incompatible activity;
- 23.** Any conduct that impairs, disrupts or causes discredit to the City, to the employee's City employment, to the public service, or to another employee's employment;
- 24.** Failure to comply with OSHA Safety Standards, City safety and risk management policies, and the City's Injury and Illness Prevention Plan (IIPP);
- 25.** Failure to report to his or her supervisor any employee conduct that results in contact with criminal authorities (such as police) which may affect employment with the City;
- 26.** Altering, falsifying, and tampering with time records, or recording time on another employee's time record; or
- 27.** Working overtime without prior authorization.

**28.** Accessing software files, information, documents, communications, and email messages without specific authorization of the employee or the City Manager, except for IT-required access for system administration purposes only.

### **Section 3. Investigation**

When an act of an employee that may be cause for disciplinary action is reported to the City; it may be necessary to conduct an investigation to determine the facts and/or to confirm the allegations. The investigation may be performed by the City or independent investigator. The objective of the investigation shall be to determine if a disciplinary offense did occur, the nature of the offense, and that it was committed by the employee to be disciplined. Investigations shall be conducted as confidential as possible.

If the incident appears to be of criminal nature, the City Attorney and the Santa Clara County Sherriff shall be notified immediately and subsequent investigation shall be under the direction of the Sherriff.

The City may place an employee on administrative leave with pay pending an investigation when the City believes that the employee's presence at the work site is detrimental to the investigation or the operations of the City.

### **Section 4. Counseling and Discipline**

Counseling includes any informal discussion with the employee which is designed to assist the employee to develop or improve job skills, abilities or conduct. The purpose of the counseling may be to clarify City rules, solve a problem, or discuss particular weaknesses. Counseling may be provided by the employee's supervisor, department director, Human Resources Manager, or an independent professional selected by the City.

Progressive discipline is warranted when counseling has failed and performance standards are not met or when the employee's conduct warrants more serious action. Progressive discipline advises the employee of the action needed to improve the deficiency and a time table for improvement.

While most disciplinary infractions are subject to progressive discipline some offenses, because of their nature or severity, are recognized as subject to immediate disciplinary suspension or discharge by the City. The specific circumstances of the situation will determine if the appropriate discipline is a disciplinary suspension or discharge.

### **Subdivision 1. Verbal Warning**

If the infraction is serious, the verbal warning may not be the first step in the progressive discipline process. The employee's supervisor will give a verbal warning, which includes specific requirements for improvement. Verbal warnings are given with the expectation the problem can be solved, but it is the employee's responsibility to solve the problem.

The supervisor will provide the Human Resources Division written documentation of the verbal warning to be retained in the employee's personnel file. A verbal warning cannot be appealed.

If a verbal warning does not result in appropriate correction and within an appropriate time frame, a written warning may be issued by the supervisor in a meeting with the employee.

### **Subdivision 2. Written Warning**

If the infraction is serious, the written warning may be the first step in the progressive discipline process. The written warning includes an explanation of what behavior needs to be corrected, how the situation must be corrected and timeframe by which it is anticipated that the situation will be corrected. Written warnings are given with the expectation the problem can be solved, but it is the employee's responsibility to solve the problem.

The supervisor will provide the Human Resources Division a copy of the written warning to be retained in the employee's personnel file. A written warning cannot be appealed under this policy.

The employee has the option to submit a written rebuttal to the written warning to the Supervisor with a copy provided to the Human Resources Division to be retained in the employee's personnel file.

### **Subdivision 3. Disciplinary Suspension**

A department director may suspend an employee without pay from his or her position for cause. The duration of suspensions vary depending upon the seriousness of the infraction. Disciplinary suspensions are retained in the employee's personnel file.

In accordance with the Fair Labor Standards Act, exempt employees may not be suspended for less than one week (except in the case of major safety violations).

Employees have the right to the conference and appeal process outlined in this Article, Section 5. Skelly Process – Pre-Disciplinary Procedure for Suspension or Discharge.

**Subdivision 4. Discharge**

The City may discharge an employee from his or her position for cause. Documents related to discharge shall become a part of an employee's personnel file. Employees have the right to the conference and appeal process outlined in this Article, Section 5. Skelly Process – Pre-Disciplinary Procedure for Suspension or Discharge.

**Section 5. Skelly Process – Pre-Disciplinary Procedure for Suspension or Discharge**

For a discharge or a suspension for which Skelly rights are applicable, only regular employees (non probationary employees and non at-will employees) have the right to the conference and appeal processes outlined in this Section.

**Subdivision 1. Notice of Intent to Discipline** The employee will be provided a written notice of intent to discipline, copied to the City Manager that contains the following:

- a. The level of discipline intended to be imposed;
- b. The specific charges upon which the intended discipline is based;
- c. A summary of the misconduct upon which the charges are based;
- d. A copy of written materials, reports, or documents upon which the intended discipline is based;
- e. Notice of the employee's right to respond to the department director regarding the charges within 5 calendar days from the date of the Notice, either by requesting an informal conference, or by providing a written response, or both;
- f. Notice of the employee's right to have a representative of his or her choice at the informal conference, should he or she choose to respond orally; and
- g. Notice that the failure to respond at the time specified shall constitute a waiver of the right to respond prior to the imposition of discipline.

**Subdivision 2. Employee's Response and the Skelly Conference**

- a. If the employee requests an informal conference to respond orally to the charge(s), the conference must be scheduled at least 7 calendar days after the date of the Notice of Discipline (see Subdivision 1). The conference will be an informal meeting with the department director, at which the employee has an opportunity to rebut the charges against him or her and present any mitigating circumstances. The department director will consider the employee's presentation before recommending any final disciplinary action.
- b. The employee's failure to make an oral response at the arranged conference time, or the employee's failure to cause his or her written response to be delivered by the date and time specified in the notice, constitutes a waiver of the employee's right to respond prior to the imposition of the discipline. In that case, the proposed disciplinary action will be imposed on the date specified.

**Subdivision 3. Final Notice of Discipline**

- a. After considering the employee's response, or after the expiration of the employee's time to respond to the Notice of Intent, the department director shall: (1) dismiss the notice of intent and take no disciplinary action against the employee or (2) modify the intended disciplinary action or (3) impose the intended disciplinary action. In any event, the department director shall prepare and provide the employee with a notice, copied to the City Manager that contains the following:
  - b. The level of discipline, if any, to be imposed and the effective date of the discipline;
  - c. The specific charges upon which the discipline is based;
  - d. A summary of the misconduct upon which the charges are based;
  - e. A copy of written materials, reports, or documents upon which the discipline is based; and
  - f. A statement of the nature of the employee's right to appeal.

## **Section 6. Evidentiary Appeal to the City Manager**

**Subdivision 1. Request for Appeal Hearing** A regular, for-cause employee may appeal from a final notice of discipline by delivering a written answer to the charges and a request for appeal to the City Manager or designee. The written answer and request for appeal must be received no later than 10 calendar days from the date of the department director's decision.

**Subdivision 2. Delegation** The City Manager or designee reserves the right to delegate his or her authority to decide the appeal to an outside hearing officer to be chosen by the City Manager or designee.

**Subdivision 3. Date and Time of the Appeal Hearing** The City Manager will set a date for an appeal hearing within a reasonable time after receipt of a timely written answer and request for appeal. An employee who, having filed a timely written answer and request for appeal, has been notified of the time and place of the appeal hearing, and who fails to appear personally at the hearing, may be deemed to have abandoned his or her appeal. In such a case, the City Manager may dismiss the appeal.

**Subdivision 4. Identification of Issues, Witnesses and Evidence** No later than 10 weekdays (two weeks) prior to the appeal hearing, each party will provide each other and the City Manager with that party's statement of the issues to be decided, a list of all witnesses anticipated to be called (except rebuttal witnesses), a brief summary of the subject matter of the testimony of each witness, and a copy of all evidence (except rebuttal evidence) anticipated to be submitted at the hearing. The City will use numbers to identify its evidence; the employee shall use alphabet letters. Neither party will be permitted to call any witness during the hearing that has not been identified pursuant to this section, nor use any exhibit not provided pursuant to this section, unless that party can show that they could not have reasonably anticipated the need for the witness or exhibit. The City Manager will state at the beginning of the hearing his or her decision as to the precise issue(s) to be decided.

### **Subdivision 5. Conduct of the Appeal Hearing**

- a. Subpoenas** The City Council has authority, and may delegate the authority to the City Clerk, to issue subpoenas in the name of the City prior to the commencement of the hearing. Each party is responsible for serving his/her/its own subpoenas. City employees who are subpoenaed to testify during working hours will be released with pay to appear at the hearing. City employees who are subpoenaed to testify during nonworking hours will be compensated for the time they actually testify unless the City agrees to a different arrangement.

**a Continuances** The City Manager may continue a scheduled hearing only upon good cause shown.

**b Record of the Proceedings** All disciplinary hearings may, at the discretion of the parties, be either recorded by a court reporter or tape recorded.

**c The City Manager's Authority During the Hearing** The City Manager has the authority to control the conduct of the hearing and to affirm, modify, or revoke the discipline.

**e. Conduct of the Hearing**

(1) The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner the City Manager decides is the most conducive to determining the truth.

(2) Any relevant evidence may be admitted if it is the type of evidence upon which responsible persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions.

(3) Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but over timely objection shall not be sufficient in itself to support a finding, unless such evidence would be admissible over objection in civil actions. An objection is timely if made at the time the hearsay is offered as evidence.

(4) All privileges recognized in civil proceedings apply.

(5) Irrelevant and unduly repetitious evidence may be excluded.

(6) The City Manager shall determine relevancy, weight and credibility of testimony and evidence.

(7) During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon the request of either party.

(8) All witnesses shall be sworn in for the record prior to testifying at the hearing. The City Manager or the court reporter shall request each

witness to raise his or her right hand and respond to the following: “Do you swear or affirm that the testimony that you are about to give at this hearing is the truth, the whole truth, and nothing but the truth?”

**f. Burden of Proof at the Hearing** The City has the burden of proof by a preponderance of the evidence.

**g. Right to Due Process** The employee shall have the following due process rights during the hearing:

(1) The right to be represented by legal counsel or another chosen representative, at his or her own expense;

(2) The right to call and examine witnesses on his or her behalf;

(3) The right to introduce evidence;

(4) The right to cross-examine opposing witnesses on any matter relevant to the issues;

(5) The right to impeach any witness regardless of which party first called him or her to testify; and

(6) The right to rebut evidence against him or her.

**h. Hearing to be closed to the Public** The hearing will be closed to the public unless the employee requests that it be open.

**i. Presentation of the Case** The parties will address their remarks, evidence, and objections to the City Manager. All parties and their counsel or representatives shall not disparage the intelligence, morals, or ethics of their adversaries, the representatives of the adversaries, or of the City Manager. The City Manager may terminate argument at any time and issue a ruling regarding an objection or any other matter. The City Manager may alter the order of witnesses, limit redundant or irrelevant testimony, or directly question the witness. The hearing shall proceed in the following order unless the City Manager directs otherwise:

(1) The City shall be permitted to make an opening statement.

(2) The employee shall be permitted to make an opening statement.

(3) The City shall produce its evidence (followed by cross-examination of each witness by the employee).

(4) The employee shall produce his or her evidence (followed by cross-examination of each witness by the City).

(5) The City, followed by the employee, may offer rebuttal evidence.

(6) Closing arguments of no more than 20 minutes (or other time limit set by the City Manager) shall be permitted at the discretion of the City Manager. The City shall have the right to argue first, the employee may argue second, and the City may reserve a portion of its argument time for rebuttal.

**j. Written Briefs by the Parties** The City Manager or the parties may request that written briefs be submitted. The City Manager will determine whether to allow written briefs, the deadline for submitting briefs, and the page limit for briefs.

**Subdivision 5. Written Findings and Decision** The City Manager shall render a statement of written findings and decision within 30 days after the hearing has been completed and the briefs, if any, have been submitted. The City Manager's decision is final.

**Subdivision 6. Proof of Service of the Written Findings and Decision** The City Manager shall send his or her final statement of written findings and decision, along with a proof of service of mailing, to each of the parties and to each of the parties' representatives. A copy shall also be distributed to the Human Resources Manager.

**Subdivision 7. Statute of Limitations** The City Manager's written findings and decision is final. There is no process for reconsideration. Pursuant to Code of Civil Procedure section 1094.6, the parties have 90 days from the date of the proof of service of mailing of the written findings and decision to challenge the decision in the Superior Court in and for the County of Santa Clara.

## **ARTICLE 22. EMPLOYER-EMPLOYEE RELATIONS POLICY**

### **Section 1. Policy**

**Subdivision 1. Statement of Purpose** This Policy implements Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 *et seq.*) captioned "Local Public Employee Organizations," by providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations. For subjects governed by these rules, these rules prevail over PERB regulations under Government Code section 3509(a) unless applicable law provides a contrary result. However, nothing contained herein shall be deemed to supersede the applicable provisions of state or City law which establish and regulate City employment or which provide for other methods of administering employer-employee relations. This Policy is intended, instead, to strengthen employer-employee relations through the establishment of uniform and orderly methods of communications between employees, employee organizations and the City.

It is the purpose of this Policy to provide procedures for meeting and conferring in good faith with Exclusively Recognized Employee Organizations regarding matters that directly and significantly affect and primarily involve the wages, hours and other terms and conditions of employment of employees in appropriate units and that are not preempted by federal or state law. However, nothing in this Article shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy, which include among others: The exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards of service; determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other lawful reasons; determine the content of job classifications; subcontract work; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

### **Section 2. Definitions**

As used in this Article, the following terms shall have the meanings indicated:

**a. "Appropriate unit"** means a unit of employee classes or positions, established pursuant to Section 3.

**b. "City"** means the City of Saratoga, and, where appropriate, refers

to the City Council or any duly authorized City representative.

**c. "Confidential Employee"** means an employee who, in the course of his or her duties, has access to confidential information relating to the City's administration of meeting and conferring, grievances, and employer-employee relations. A confidential employee will either be excluded from units (such as the Human Resources Manager) or will have a limited role as appropriate to protect confidential information.

**d. "Consult/Consultation in Good Faith"** means to communicate orally or in writing with all exclusively recognized employee organizations for the purpose of presenting and obtaining views or advising of proposed actions in a good faith effort to reach a consensus.

**e. "Day"** means calendar day unless expressly stated otherwise.

**f. "City Manager"** specific to the employer-employee relations policy means the City Manager or his/her duly authorized representative.

**g. "Employee Organization"** means either of the following: (1) Any Organization that includes City employees and that has as one of its primary purposes representing those employees in their relations with the City, or (2) any organization that seeks to represent City employees in their relations with the City.

**h. "Exclusive representative"** means an employee organization that has been recognized or certified as an exclusive or majority bargaining agent pursuant to MMBA (Section 32016 of PERB regulations).

**i. "Exclusively Recognized Employee Organization"** means an Employee organization which has been formally acknowledged by the City as the sole employee organization representing the employees in an appropriate representation unit under this Article Section 3, Subdivisions four or five. The Exclusively Recognized Employee Organization has the exclusive right to meet and confer in good faith concerning statutorily required subjects pertaining to unit employees, and has the corresponding obligation of fairly representing such employees.

**j. "Impasse"** means that the representatives of the City and an Exclusively Recognized Employee Organization have reached a point in their meeting and conferring in good faith where the parties have exhausted the prospects of reaching agreement and their differences on matters to be included in a Memorandum of Understanding, and concerning which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile. A deadlock on major issues may suffice even if the parties may make progress on minor issues.

k. **"Director Employee"** means an employee having responsibility for formulating, administering or managing the implementation of City policies and programs.

l. **"Proof of Employee Support"** means (1) an authorization card recently signed and personally dated by an employee, or (2) a verified authorization petition or petitions recently signed and personally dated by an employee, or (3) employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as proof of employee support for any employee organization. The only authorization which shall be considered as proof of employee support hereunder shall be the authorization last signed by an employee. The words "recently signed" shall mean within ninety (90) days prior to the filing of a petition.

m. **"Supervisory Employee"** means any employee having authority, as authorized by the City Manager, in the interest of the City, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjudge their grievances, or effectively to recommend such action if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

### **Section 3. Representation Proceedings**

**Subdivision 1. Filing of Recognition Petition by Employee Organization** An employee organization which seeks to be formally acknowledged as an Exclusively Recognized Employee Organization representing the employees in an appropriate unit shall file a petition with the City Manager containing the following information and documentation:

1. Name and address of the employee organization;
2. Names and titles of its officers;
3. Names of employee organization representatives who are authorized to speak on behalf of the organization;

4. A statement that the employee organization has, as one of its primary purposes, the responsibility of representing employees in their employment relations with the City;
5. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national or international organization, and, if so, the name and address of each such other organization;
6. Certified copies of the employee organization's constitution and bylaws;
7. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice to the employee organization for any purpose;
8. A statement that the employee organization has no restriction on membership based on race, color, religion, religious creed, sex, gender, gender identity, gender expression, national origin, age, sexual orientation, genetic information or characteristics, mental or physical disability or medical condition and any other characteristic(s) protected under applicable law;
9. The job classifications or position titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein;
10. A statement that the employee organization has in its possession proof of employee support as herein defined to establish that a majority of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the City Manager or to a mutually agreed upon disinterested third party; and
11. A request that the City Manager formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.
12. The Petition, including the proof of employee support and all accompanying documentation, shall be declared to be true, correct and complete, under penalty of perjury, by the duly authorized officer(s) of the employee organization executing it.

**Subdivision 2. City Response to Recognition Petition** Upon receipt of the Petition, the City Manager shall determine whether:

1. There has been compliance with the requirements of the Recognition Petition, and
2. The proposed representation unit is an appropriate unit in accordance with Section 3, Subdivision 7 of this Article.
  - a. If an affirmative determination is made by the City Manager on the foregoing two matters, he/she shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit and shall take no action on said request for thirty (30) days thereafter.
  - b. If either of the foregoing matters are not affirmatively determined, the City Manager shall offer to consult thereon with such petitioning employee organization and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefore in writing.

(1). The petitioning employee organization may appeal such determination in accordance with Section 3, Subdivision 10 of this Policy.

**Subdivision 3. Period for Challenging Petition**

1. Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the exclusively recognized employee organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some, but not all the classifications or positions set forth in the recognition petition being challenged), by filing a petition evidencing proof of employee support in the proposed unit of at least thirty percent (30%) and otherwise in the same form and manner as set forth in Section 3, Subdivision 1.

- a. If such challenging petition seeks establishment of an overlapping unit, the City Manager shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard.
- b. Thereafter, the City Manager shall determine the appropriate unit or units in accordance with the standards in Section 3, Subdivision 7.

- c. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the City Manager to amend their petitions to conform to such determination or to appeal such determination pursuant to Section 3 Subdivision 10.

**Subdivision 4. Granting Recognition without an Election**

1. If the proof of employee support shows that a majority of the employees in the appropriate unit have designated the petitioning employee organization to represent them, and if no other employee organization filed a challenging petition, the petitioning employee organization and the City Manager shall request the California State Mediation and Conciliation Service, or another agreed upon neutral third party, to review the count, form, accuracy and propriety of the proof of support.
2. If the neutral third party makes an affirmative determination, the City Manager shall formally acknowledge the petitioning employee organization as the Exclusively Recognized Employee Organization for the designated unit without an election.

**Subdivision 5. Election Procedure**

1. The City Manager shall arrange for a secret ballot election to be conducted by a party agreed to by the City Manager and the concerned employee organization(s), in accordance with such party's rules and procedures subject to the provisions of this Policy.
2. All employee organizations who have duly submitted petitions which have been determined to be in conformance with the requirements of this Section 3 shall be included on the ballot.
  - a. The ballot shall also reserve to employees the choice of representing themselves individually in their employment relations with the City.
  - b. Employees entitled to vote in such election shall be those persons employed in regular positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election.

3. An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election.
  - a. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election are also applicable to a run-off election.
4. There shall be no more than one valid election under this Policy pursuant to any petition in a 12-month period affecting the same unit.
5. In the event that the parties are unable to agree on a third party to conduct an election, the election shall be conducted by the California State Mediation and Conciliation Service.
  - a. Costs of conducting elections shall be borne in equal shares by the City and by each employee organization appearing on the ballot.

**Subdivision 6. Procedure for Decertification of Exclusively Recognized Employee Organization**

1. A Decertification Petition, alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit, may be filed with the City Manager in a decertification "open period," which is at any time following the first full year of recognition.
2. A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:
  - a. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
3. A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

- a. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
- b. The name of the established appropriate unit and of the incumbent Exclusively Recognized Employee Organization sought to be decertified as a representative of that unit.
- c. An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.
- d. Proof of employee support that at least thirty (30%) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization.

(1). Such proof shall be submitted for confirmation to the City Manager or to a mutually agreed upon disinterested third party within 10 days of the filing of the decertification petition.

4. An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a Petition under this Section in the form of a Recognition Petition that evidences proof of employee support of at least thirty percent (30%), that includes the allegation and information required under paragraph 2 (d) of this Subdivision, and otherwise conforms to the requirements of Section 3, Subdivision 1.

- a. The City Manager shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Section.

- (1) If his/her determination is in the negative, he/she shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefore in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 3 Subdivision 10. The petitioning employees or employee organization may also submit a modified petition that addresses the concerns within 10 days. If the original petition is timely filed in an open period, the modified

petition does not have to be filed in the open period. (PERB Dec. No. 2163) (2011).

- (2) If the determination of the City Manager is in the affirmative, or if his/her negative determination is reversed on appeal, he/she shall give written notice of such Decertification or Recognition Petition to the incumbent Exclusively Recognized Employee Organization and to unit employees.
  - b. The City Manager shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Section 3 Subdivision 5. If a numerical majority of all valid votes cast in a decertification election are in favor of decertifying the Exclusively Recognized Employee Organization, that Exclusively Recognized Employee Organization will no longer represent employees.
  - c. During the "open period" specified in the first paragraph of this Subdivision, the City Manager may on his/her own motion, when he/she has reason to believe that a majority of unit employees no longer wish to be represented by the incumbent Exclusively Recognized Employee Organization, give notice to that organization and all unit employees that he/she will arrange for an election to determine that issue.
    - (1) In such event any other employee organization may within fifteen (15) days of such notice file a Recognition Petition in accordance with this Section, the City Manager shall act on it in accordance with the requirements of Section 3 of this Article.
5. If, pursuant to this Subdivision, a different employee organization is formally acknowledged as the Exclusively Recognized Employee Organization, such organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

**Subdivision 7. Policy and Standards for Determination of Appropriate Units**

1. The policy objectives in determining the appropriateness of units shall be the effect of a proposed unit on the efficient operations of the City, the unit's

compatibility with the primary responsibility of the City and its employees to effectively and economically serve the public, and the effective representation of employees based on recognized community of interest considerations.

- a. These policy objectives require that the appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest. Factors to be considered shall be:
  - (1) Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
  - (2) History of representation in the City and similar employment; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.
  - (3) Consistency with the organizational patterns of the City.
  - (4) Effect of differing legally mandated impasse resolution procedures.
  - (5) Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.
  - (6) Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.
- b. The City Manager shall, after notice to and consultation with affected employee organizations, allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate or delete modified classifications or positions from units in accordance with the provisions of this Section. The decision of the City Manager shall be final.

**Subdivision 8. Procedure for Modification of Established Appropriate Units**

1. Requests by employee organizations for modifications of established appropriate units may be considered by the City Manager only during the "open period" specified in Section 3 Subdivision 6. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Section 3 Subdivision 1, shall contain a complete

statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Section 3 Subdivision 7 hereof.

The City Manager shall process such petitions as other Recognition Petitions under Section 3 Subdivision 1. Such petitions will be processed under the Section 3 requirements and shall require a numerical majority of all valid votes cast in two categories to be in favor of the modification for the modification to be authorized. The two categories, each of which requires a numerical majority of the valid votes cast in each category, are: (1) employees who are currently in the unit; and (2) employees who are in the positions for which the modification is sought.

2. The City Manager may by his/her own motion propose that an established unit be modified.

a. The City Manager shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard.

b. Thereafter the City Manager shall determine the composition of the appropriate unit or units in accordance with Section 3 Subdivision 7 and shall give written notice of such determination to the affected employee organizations.

c. The City Manager's determination may be appealed as provided in Section 3 Subdivision 10.

d. If a unit is modified pursuant to the motion of the Human Resources Manager hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Exclusively Recognized Employee Organization for such new appropriate unit or units pursuant to Section 3 Subdivision 1.

### **Subdivision 9. Procedure for Processing Severance Requests**

1. An employee organization may file a request to become the recognized employee organization of a unit alleged to be appropriate that consists of a group of employees who are already a part of a larger established unit represented by another recognized employee organization. a. The timing, form and processing of such request shall be as specified in Section 3 Subdivision 8 for modification requests.

### **Subdivision 10. Appeals**

1. An employee organization aggrieved by an appropriate unit determination of the City Manager; or an employee organization aggrieved by a determination of the City Manager that a Recognition Petition (Section 3 Subdivision 1), Challenging Petition (Section 3 Subdivision 3), Decertification Petition (Section 3 Subdivision 6), Unit Modification Petition (Section 3 Subdivision 8) or employees aggrieved by a determination of the City Manager that a Decertification Petition (Section 3 Subdivision 6) has not been filed in compliance with the applicable provisions of this Section, may, within ten (10) days of notice of the City Manager's final decision, request to submit the matter to mediation by the California State Mediation and Conciliation Service, or may, in lieu thereof or thereafter, appeal such determination to the City Council within fifteen (15) days of notice of the City Manager's determination or the termination of mediation proceedings, whichever is later.
  - a. Appeals to the City Council shall be filed in writing with the City Clerk, and a copy thereof served on the City Manager and the City Human Resources Manager.
2. The City Council shall commence to consider the matter within thirty (30) days of the filing of the appeal.
  - a. The City Council may, in its discretion, refer the matter to a third party to hear. The third party will provide the City Council with a written, advisory decision for City Council consideration.
3. Any decision of the City Council on the use of such procedure and/or any decision of the City Council determining the substance of the dispute shall be final and binding.

### **Section 4. Administration**

**Subdivision 1. Submission of Current Information by Recognized Employee Organizations** All changes in the information filed with the City by an Exclusively Recognized Employee Organization under items 1. through 12. of its Recognition Petition under Section 3 Subdivision 1 of this Policy shall be submitted in writing to the City Manager within fourteen (14) days of such change.

**Subdivision 2. Employee Organization Activities -- Use of City Resources** Access to City work locations and the use of City working time, facilities, equipment and other resources by employee organizations and those representing them shall be authorized only to the extent provided for in Memoranda of Understanding and/or administrative procedures, shall be limited to lawful activities consistent with the provisions of this Policy that pertain directly to the employer-employee

relationship, shall not include such internal employee organization business as soliciting membership, campaigning for office, and organization meetings and elections, and shall not interfere with the efficiency, safety and security of City operations.

**Subdivision 3. Administrative Rules and Procedures** The City Manager is hereby authorized to establish such rules and procedures as appropriate to implement and administer the provisions of this Policy after consultation with affected employee organizations.

**Section 5. Impasse Procedures**

1. The parties will meet and confer in good faith and try to reach an agreed-upon MOU at least 4 months before the MOU expires (before March 1 of the year in which the MOU expires if the MOU expires June 30). If the meet and confer process has reached impasse, as defined in these personnel rules, either party may initiate the impasse procedures by filing with the other party a written request for an impasse meeting, together with a statement of its position on all issues.
2. An impasse meeting shall then be scheduled promptly by the City Manager.
  - a. The purpose of such meeting shall be:
    - (1) To review the position of the parties in a final effort to reach agreement on a Memorandum of Understanding; and
    - (2) If the impasse is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.
3. Impasse procedures are as follows:
  - a. If the parties agree to submit the dispute to mediation, and agree on the selection of a mediator, the dispute shall be submitted to mediation.
    - (1) All mediation proceedings shall be private.
    - (2) The mediator shall make no public recommendation, nor take any public position at any time concerning the issues.

- (3) The costs of mediation shall be divided half to the City and half to the Exclusively Recognized Employee Organization. (Government Code section 3505.2).
- b. If the parties fail to agree to submit the dispute to mediation or fail to agree on the selection of a mediator, or fail to resolve the dispute through mediation within 30 days after the mediator is appointed, either party may submit the impasse to fact-finding. For subjects governed by these rules, these rules prevail over PERB regulations under Government Code section 3509(a), unless applicable law provides a contrary result. To the full extent allowed by applicable law, the City under the rules may initiate fact-finding unless applicable law determines that City-initiated fact-finding is unlawful under such a rule as this.
  - c. The parties may agree on the appointment of one or more factfinders.
  - d. If they fail to so agree on one or more fact-finders, a fact-finding panel of three (3) shall be appointed under the process provided in the MMBA: One member of the panel shall be appointed by the City Manager, one member shall be appointed by the Exclusively Recognized Employee Organization, and the third shall be selected under the MMBA process. If the third cannot be mutually agreed upon from the PERB list, the parties will alternatively strike names with the last name becoming the third fact finder.
  - e. Fact-Finding Process
    - (1) The fact-finding panel will oversee presentations to ensure efficient sharing of information. The fact-finding panel will encourage prepared summaries and budget spreadsheets. Exhibits are to be exchanged with the other party and provided to the 3 fact-finding panel members at least three days before the hearing begins.
    - (2) The fact-finding panel will allow tape recording to maintain a record of the fact-finding hearing unless the parties agree to a court reporter with that cost to be equally divided between the City and the Exclusively Recognized Employee Organization.
    - (3) Closing arguments will be verbal. No written briefs can be submitted after the hearing is closed.

- (4) The fact-finding panel will hear evidence on an issue-by-issue basis and make findings and recommendations on an issue by-issue basis.

f. The following constitute the jurisdictional and procedural requirements for fact-finding:

- (1) The fact-finders shall consider and be guided by applicable federal, state and local laws.
- (2) The fact-finders shall determine and apply the criteria in Government Code section 3504.5 in arriving at their findings and recommendations on each issue separately:
  - (a) As relevant to the issues in dispute, the fact-finders' consideration of overall compensation and consideration of wage comparisons shall compare the total compensation, hours and conditions of employment of the employees involved in the fact-finding proceeding with the total compensation, hours and conditions of employment of other employees performing similar services in comparable public and private agencies in the same and comparable communities. "Total compensation" shall mean all wage compensation, including but not limited to premium, incentive, minimum, standby, out-of-class and deferred pay; all paid leave time (including but not limited to PTO and holidays); all allowances, including but not limited to educational and uniform benefits; and employer payments for all health, welfare and pension benefits.
  - (b) The fact-finders shall then adjust the results of the above comparisons based on the other criteria in Government Code section 3505.4.
  - (c) The fact-finder(s) shall then determine preliminary recommendations based on the comparisons as adjusted above which, however, shall be reduced as appropriate based on the financial ability of the City to implement them. In assessing the City's financial resources and ability, the fact-finder(s) shall be bound by the following:
    - (1) other legislatively determined and projected demands on agency resources, i.e., budgetary priorities as established by the governing body;
    - (2) allowance for equitable compensation increases for other employees and employee groups for the corresponding fiscal period(s);
    - (3) revenue projections not to exceed currently

authorized tax and fee rates for the relevant fiscal year(s); (4) assurance of sufficient and sound budgetary reserves; and (5) constitutional, and statutory limitations on the level and use of revenues and expenditures.

(d) The fact-finders shall make written findings of fact, and advisory recommendations for the resolution of the issues in dispute, which shall be presented in terms of the criteria, adjustments, and limitations specified above. The written findings of fact and advisory recommendations are due within 30 days of the date the impasse is initially submitted to fact-finding, unless the parties agree in writing to a further extension of time. The fact-finding report is to be issued no later than 20 days before the MOU expires (June 10 of the year in which the MOU expires on June 30). Any member of a fact-finding panel shall be accorded the right to file dissenting written findings of fact and recommendations. The fact-finder or chairperson of the fact-finding panel shall serve such findings and recommendations on the City Manager and the designated representative of the Exclusively Recognized Employee Organization. If these parties have not resolved the impasse within ten (10) days after service of the findings and recommendations upon them, the factfinder or the chairperson of the fact-finding panel shall make them public by submitting them to the City Clerk for consideration by the City Council in connection with the City Council's legislative consideration of the impasse at a public hearing.

4. If the parties did not agree on mediation or the selection of a mediator and did not agree on fact-finding, or having so agreed, the impasse has not been resolved, the City Council may take such action regarding the impasse as it in its discretion it deems appropriate as in the public interest. Any legislative action by the City Council on the impasse shall be final and binding to the extent the law so provides.
5. The cost and expenses for the services of a mediator and fact-finder or chairperson of a fact-finding panel utilized by the parties, and other mutually incurred costs of mediation and fact-finding, shall be borne equally by the City and Exclusively Recognized Employee Organization.

a. The cost for a fact-finding panel member selected by each party, and other separately incurred costs, shall be borne by such party.

## **Section 6. Construction**

1. This Policy shall be administered and construed as follows:
  - a. Nothing in this Policy shall be construed to deny to any person, employee, organization, the City, or any authorized officer, body or

other representative of the City, the rights, powers and authority granted by federal or state law.

- b. This Policy shall be interpreted so as to carry out its purpose as set forth in Section 1 and so as to comply with applicable law and binding legal interpretations.
  - c. Nothing in this Policy shall be construed as making the provisions of California Labor Code Section 923 applicable to City employees or employee organizations, or of giving employees or employee organizations the right to participate in, support, cooperate or encourage, directly or indirectly, any strike, sickout or other total or partial stoppage or slowdown of work. In consideration of and as a condition of initial and continued employment by the City, employees recognize that any such actions by them are in violation of their conditions of employment except as expressly otherwise provided by legally preemptive state or contrary local law. In the event employees engage in such actions, they shall subject themselves to discipline up to and including termination, and may be replaced, to the extent such actions are not prohibited by preemptive law; and employee organizations may thereby forfeit rights accorded them under City law or contract.
2. If any provision of this Policy, or the application of such provision to any persons or circumstances, shall be held invalid, the remainder of this Policy, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

## Article 23. ANTI-BULLYING POLICY

### **ARTICLE 23. ANTI-BULLYING POLICY**

#### **Section 1. Policy Coverage**

The City of Saratoga considers workplace bullying unacceptable and will not tolerate behavior that the City determines to be bullying. It is the policy of the City of Saratoga that all employees should be able to work in an environment free of bullying that violates this policy.

This policy applies to all employees of the City of Saratoga. It applies during normal working hours, at work related or sponsored functions, and while traveling on work related business.

Any employee who feels he or she has been victimized by bullying is encouraged to report the matter to his or her supervisor or Human Resources.

This policy does not preclude any speech, behavior, or postings protected by free speech rights or other Constitutional or legal protections.

#### **Section 2. Definition**

Workplace bullying is unwelcome or unreasonable behavior of individuals (or a group) directed towards an employee (or group of employees), which are intended to intimidate, degrade, humiliate, undermine, or which create a risk to the health or safety of the employee(s). Bullying behavior is often persistent and part of a pattern, but it can also occur as a single incident. It is usually carried out by an individual but can also be an aspect of group behavior.

Workplace bullying may involve an abuse or misuse of power or involve employees bullying their peers, rather than a supervisor bullying an employee.

Tough or demanding bosses are not bullies as long as they are directing work to obtain the best performance by setting high yet reasonable expectations.

Some examples of bullying behavior may include:

- Making false statements which are malicious.
- Blame without factual justification.
- Exclusion or isolating people from normal work interaction.
- Behavior or communication that humiliates or demeans an employee.
- Physical intimidation or aggressive behavior.
- Using patronizing titles or nicknames.
- Unwelcome, persistent teasing.
- Setting impossible deadlines.
- Spreading gossip, rumors and innuendo of a malicious nature.

## Article 23. ANTI-BULLYING POLICY

Context is important in understanding bullying.

### **Section 3. Responsibilities**

#### **I. Directors, managers, and supervisors**

- Ensure that all employees are aware of the anti-bullying policy and procedures
- Ensure that any incident of bullying is dealt with regardless of whether a complaint of bullying has been received
- Provide leadership and role-modeling in appropriate professional behavior
- Respond promptly, sensitively and confidentially to all situations where bullying behavior is observed or alleged to have occurred

#### **II. Employees**

- Be • familiar with and behave according to this policy
- If • you are a witness to bullying, report incidents to your supervisor or Human Resources
- Where appropriate, speak to the alleged bully(ies) to object to the behavior

### **Section 4. Corrective Action and/or Disciplinary Measures**

Where appropriate, an investigation will be undertaken and appropriate corrective action and/or disciplinary measures will be taken as necessary in accordance with Article 21. Discipline Policy.

**RESOLUTION NO. 12-064**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SARATOGA,  
STATE OF CALIFORNIA, ADOPTING THE CITY OF SARATOGA  
UPDATED PERSONNEL RULES AND POLICIES**

**WHEREAS**, the City of Saratoga is authorized and directed under the provisions of Section 2-40.050 (Adoption of Personnel Rules) of the Saratoga Municipal Code to adopt Personnel Rules and Policies (hereinafter referred to as the Personnel Rules) for the administration of the personnel system created in Chapter 2-40 of the Saratoga Municipal Code; and

**WHEREAS**, the City of Saratoga is authorized to amend previously established Personnel Rules pursuant to Section 2-40.050 of the Saratoga Municipal Code; and

**WHEREAS**, the objectives of these Personnel Rules are to comply with complex federal and state laws and regulations, ensure consistent treatment of employees, avoid misunderstandings that could potentially lead to lawsuits, orient new employees and serve as an ongoing employment resource, educate employees responsible for leading, supervising, managing, and/or directing the work of others and serve as an ongoing management resource, serve as an internal control so employees cannot take free license to make creative or unauthorized decisions, and establish legal protections; and

**WHEREAS**, these Personnel Rules set forth procedures which insure similar treatment for those who compete for original employment and promotion, and define any of the obligations, rights, privileges and prohibitions which are placed upon all employees in the competitive service of the City of Saratoga; and

**WHEREAS**, the Human Resources Manager, on behalf of the City, has satisfactorily met and consulted with the City's bargaining units, and if required by law, agreed and finalized Articles for review and adoption by the City Council; and

**WHEREAS**, the City proposed, and the City's bargaining units agreed, to remove the Arbitration and Grievance Policy and Procedure from the Personnel Rules because this is addressed in the bargaining unit's duly executed Memorandum of Understanding ("MOU") as needed. The City's bargaining units also agreed to add Article 23. Anti-Bully Policy; and

**WHEREAS**, many policies in the Personnel Rules are not modified by the terms and conditions of employees whose classifications are included in a bargaining unit's MOU or Employment Agreement or Policy adopted by the City Council by Resolution. However, if a provision of these Personnel Rules actually conflicts with any provision of an applicable MOU, resolution, law, City ordinance, Employment Agreement or Policy, or state or federal law, the MOU, resolution, law, City ordinance, Employment Agreement or Policy, or state or federal law will prevail over the information contained in the Personnel Rules; and

**WHEREAS**, at the same time, within the limits of administrative feasibility, considerable latitude shall be given the City Manager in the interpretation of these Rules and Policies pursuant to Saratoga Municipal Code Section 2-20.050 (Powers and Duties of the city Manager); and

**WHEREAS**, these Personnel Rules supersede/replace previous Personnel Rules and resolutions; and

**NOW, THEREFORE BE IT RESOLVED**, that the City Council of the City of Saratoga hereby approves and adopts the City of Saratoga Personnel Rules and Policies dated December 5, 2012.

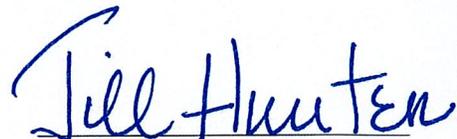
The above and foregoing resolution was passed and adopted by the Saratoga City Council at a regular meeting held on December 5, 2012 by the following vote:

AYES: Council Member Chuck Page, Manny Cappello, Howard Miller, Vice Mayor Emily Lo, Mayor Jill Hunter

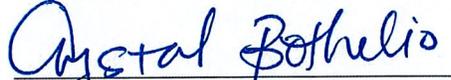
NOES: None

ABSENT: None

ABSTAIN: None

  
Jill Hunter, Mayor

ATTEST:

  
Crystal Bothelio, City Clerk

DATE: 12/6/2012

**RESOLUTION NO. 14-067**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SARATOGA  
AMENDING THE CITY OF SARATOGA  
PERSONNEL RULES AND POLICIES**

**WHEREAS**, the City of Saratoga is authorized and directed under the provisions of Section 2-40.050 (Adoption of Personnel Rules) of the Saratoga Municipal Code to adopt Personnel Rules and Policies (hereinafter referred to as the Personnel Rules) for the administration of the personnel system created in Chapter 2-40 of the Saratoga Municipal Code; and

**WHEREAS**, the City of Saratoga is authorized to amend previously established Personnel Rules pursuant to Section 2-40.050 of the Saratoga Municipal Code; and

**WHEREAS**, the objectives of these amendments to the Personnel Rules are to comply with a recent significant update to state law requiring paid sick leave and to increase flexibility on petitions for employee organizations; and

**WHEREAS**, the Human Resources Manager, on behalf of the City, has met and consulted with the City's bargaining units wishing to meet and confer regarding these amendments; and

**WHEREAS**, many policies in the Personnel Rules do not modify the terms and conditions of employees whose classifications are included in a bargaining unit's MOU or an Employment Agreement. However, if a provision of these amendments to the Personnel Rules actually conflicts with any provision of an applicable MOU, Employment Agreement or state or federal law, the MOU, Employment Agreement or state or federal law will prevail over the amendments to the Personnel Rules; and

**WHEREAS**, at the same time, within the limits of administrative feasibility, considerable latitude shall be given the City Manager in the interpretation of these Rules and Policies pursuant to Saratoga Municipal Code Section 2-20.050 (Powers and Duties of the city Manager).

**NOW, THEREFORE BE IT RESOLVED**, that the City Council of the City of Saratoga hereby approves and adopts the amendments to the City of Saratoga Personnel Rules and Policies attached as Attachment B replacing (1) Article 5, Section 9 regarding Temporary, Provisional, or Seasonal Employees; (2) Article 6, Section 3 regarding Paid Time Off (PTO); and (3) Article 22, Section 3, Subdivision 6 regarding the Procedure for Decertification of Exclusively Recognized Employee Organization; these amendments to the Personnel Rules supersede/replace previous Personnel Rules and resolutions.

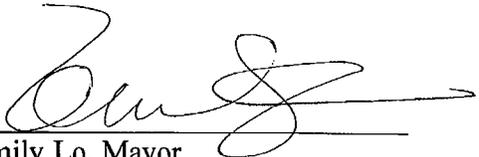
The above and foregoing resolution was passed and adopted by the Saratoga City Council at a regular meeting held on November 19, 2014 by the following vote:

AYES: Mayor Emily Lo, Vice Mayor Howard Miller, Council Member Manny Cappello, Chuck Page, Jill Hunter

NOES: None

ABSENT: None

ABSTAIN: None

  
\_\_\_\_\_  
Emily Lo, Mayor

ATTEST:

  
\_\_\_\_\_  
Crystal Bothelio, City Clerk

DATE: 11/20/2014

## Attachment B

### ARTICLE 5. EMPLOYEE STATUS

**Section 9. Temporary, Provisional or Seasonal Employee** An employee who is assigned to work on a particular project or for a job of limited or indefinite duration is a temporary employee. A temporary employee: (1) does not hold regular status, (2) does not serve a probationary period, (3) can be dismissed at-will from City employment at any time without right of procedural due process, appeal, grievance or hearing, and (4) is not entitled to earn, accrue, or participate in any City health and welfare benefits, accrue Paid Time Off (PTO) or other paid leaves, or receive any other benefits afforded to regular position appointments with the exception of Subdivision 1. Healthy Workplaces, Healthy Families Act of 2014.

**Subdivision 1. Healthy Workplaces, Health Families Act of 2014** Effective July 1, 2015, temporary, provisional, or seasonal employees will accrue paid sick days in accordance with the requirements of applicable state law.

**Accrual requirements:** Paid sick days will be accrued at a rate of one hour per every 30 hours worked up to a permissible accrual cap of 48 hours, or 6 eight-hour days, unless the law is interpreted to allow a lower accrual cap, in which case that lower cap will apply. Accrual of paid sick leave requires the employee to have worked for the City for 30 days. After 30 days of work, paid sick leave accrues beginning at the commencement of employment or July 1, 2015, whichever is later.

**Carry-over and cap on accruals:** Unused, accrued sick days carry over from the first year of employment to the next year, up to a permissible cap of 48 hours, or 6 eight-hour days. An employee is not allowed to accrue more than 48 hours of paid sick leave. Once an employee has accrued a total of 48 hours paid sick leave, no additional paid sick leave will accrue until the employee uses accrued paid sick leave and reduces the balance to less than 48 hours. Thereafter, paid sick leave benefits will continue to accrue on a prospective basis only until the employee reaches the 48-hour maximum. No retroactive credit will be given for the time when accrued paid sick leave was at the accrual cap (unless the law is interpreted to require this).

**Use of sick leave:** Employees are entitled to use accrued paid sick days beginning on the 90<sup>th</sup> day of employment. The City will not advance paid sick leave. An employee may only use the paid sick leave that is accrued. An employee may not use more than 24 hours of paid sick leave each year, even if the employee has accrued more than this.

Sick leave must be taken by exempt employees only in increments of one (1) hour or more in a workday. For example, when the employee leaves work for 1 or more hours early due to illness.

Sick leave must be taken by non-exempt employees only in increments of 15 minutes (.25 hour) or more in a workday. For example, when the employee leaves work for 15 minutes or more minutes early due to illness.

**No pay-out of accrued sick leave upon termination:** The City is not required to and will not provide compensation to an employee for accrued, unused paid sick days upon separation of

employment. However, if an employee separates from the City and is rehired within one year, previously unused paid sick days will be reinstated.

**Reasons for which sick leave can be used:** Sick leave may be used for the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or an employee's family member. The definition of "family member" is broad and includes, for instance, children, parents, parents-in-law, spouses, registered domestic partners, grandparents, grandchildren, and siblings, among other persons. Sick leave may also be used for victims of domestic violence, sexual assault, or stalking.

**No discrimination or retaliation:** The City will not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using or attempting to use accrued sick days or other protected activity under Labor Code 246.5(c).

The City will comply fully with the California Healthy Workplaces, Healthy Families Act of 2014 by allowing an employee with accrued paid sick leave the right to use the accrued paid sick leave for the purposes for which leave is allowed to be used under this law. Please contact the Human Resources Division if you have any questions or concerns.

## **ARTICLE 6.     EMPLOYEE BENEFITS**

**Section 3.     Paid Time Off (PTO)** The City provides Paid Time Off (PTO), also referred to as annual leave, benefits to regular full-time employees for the purpose of rest, relaxation, and interruptions from the workplace including vacation, illness, caring for children, school activities, medical/dental appointments, personal business, or emergencies. PTO for the purpose of illness may be used for the same purposes as described in the California Healthy Workplaces, Healthy Families Act of 2014 including but not limited to the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or an employee's family member. The definition of "family member" is broad and includes, for instance, children, parents, parents-in-law, spouses, registered domestic partners, grandparents, grandchildren, and siblings, among other persons. PTO may also be used for victims of domestic violence, sexual assault, or stalking.

The City will comply fully with the California Healthy Workplaces, Healthy Families Act of 2014 by allowing regular full-time employees with PTO the right to use PTO for the purposes for which leave is allowed to be used under this law. Please contact the Human Resources Division if you have any questions or concerns.

The City encourages employees to take time off in order to receive the personal replenishment value intended. All use of PTO is to be scheduled in advance and approved by a supervisor except in the case of illness or an emergency.

PTO must be taken by exempt employees only in increments of one (1) hour or more in a workday. For example, when the employee leaves work for 1 or more hours early to take care of personal business.

PTO must be taken by non-exempt employees only in increments of 15 minutes (.25) or more in a workday. For example, when the employee leaves work for 15 minutes or more minutes early to take care of personal business.

**Subdivision 1. Eligibility** All regular full-time employees are eligible to take and/or accrue paid time off based on their continuous length of service, measured from the date of hire. Continuous length of service is defined as service that is uninterrupted by termination of employment and subsequent rehire by the City. A leave of absence for legally protected reasons may not constitute a break in service when the law specifies that result.

**Subdivision 2. Paid Time Off (PTO) Accrual** The amount of PTO earned each calendar year is based on the employee's continuous length of service. PTO hours are calculated as earned on a bi-weekly accrual schedule. All PTO hours are based on compensated work hours. Therefore, PTO accruals for regular part-time employees scheduled to work less than 40 hours per week, as well as employees on a voluntary reduced work schedule shall be prorated accordingly. Employees will not accrue PTO hours while on unpaid status, (e.g., Short Term Disability (STD), Long Term Disability (LTD)), unless otherwise required by applicable law.

**Subdivision 3. Paid Time Off (PTO) Accrual Schedule for Full-Time Employees** The accrual rates and maximum accrual of hours is the amount stated in the employee groups MOU or the below amount for employees whose amount is not specified in an MOU or for employees who are not governed by an MOU (unrepresented employees).

Years of Service	Days Accrued	Hours Accrued	Maximum Accrual Hours
Years 0 thru 5	22	176	600
After 5 years	27	216	600
After 10 years	32	256	600

**Subdivision 4. PTO Upon Termination** Upon separation from City service, the City will pay 100% of the employee's accrued paid time off (up to the 600 hours accrual maximum or the applicable MOU's specified maximum for accrual of PTO hours) at the employee's regular rate of pay. When an employee voluntarily resigns from employment, no paid time off may be used between the time the notice of resignation is given and the employee's last day of work, unless authorized in a written document signed by the City Manager.

**Subdivision 5. Payout at Retirement** Upon retirement from City service, an employee may choose to use their accrued paid time off for the purpose of obtaining additional service credit under PERS. An employee may choose to use all of his/her accrued paid time off as sick leave for service credit. If an employee chooses to apply less than 100% of his/her accrued paid time off toward PERS service credit, the City will pay 100% of the employee's remaining accrued paid time off at the employee's regular rate of pay.

**ARTICLE 22. EMPLOYER-EMPLOYEE RELATIONS POLICY**

**Section 3. Representation Proceedings**

**Subdivision 6. Procedure for Decertification of Exclusively Recognized Employee Organization**

1. A Decertification Petition, alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit, may be filed with the City Manager in a decertification "open period," which is at any time following the first full year of recognition.
2. A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:
  - a. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
  - b. The name of the established appropriate unit and of the incumbent Exclusively Recognized Employee Organization sought to be decertified as a representative of that unit.
  - c. An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.
  - d. Proof of employee support that at least thirty (30%) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization.
    - (1). Such proof shall be submitted for confirmation to the City Manager or to a mutually agreed upon disinterested third party within 10 days of the filing of the decertification petition.
3. An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a Petition under this Section in the form of a Recognition Petition that evidences proof of employee support of at least thirty percent (30%), that includes the allegation and information required under paragraph 2 (d) of this Subdivision, and otherwise conforms to the requirements of Section 3, Subdivision 1.

a. The City Manager shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Section.

(1) If his/her determination is in the negative, he/she shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefore in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 3 Subdivision 10. The petitioning employees or employee organization may also submit a modified petition that addresses the concerns within 10 days. If the original petition is timely filed in an open period, the modified petition does not have to be filed in the open period. (PERB Dec. No. 2163) (2011).

(2) If the determination of the City Manager is in the affirmative, or if his/her negative determination is reversed on appeal, he/she shall give written notice of such Decertification or Recognition Petition to the incumbent Exclusively Recognized Employee Organization and to unit employees.

b. The City Manager shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Section 3 Subdivision 5. If a numerical majority of all valid votes cast in a decertification election are in favor of decertifying the Exclusively Recognized Employee Organization, that Exclusively Recognized Employee Organization will no longer represent employees.

c. During the "open period" specified in the first paragraph of this Subdivision, the City Manager may on his/her own motion, when he/she has reason to believe that a majority of unit employees no longer wish to be represented by the incumbent Exclusively Recognized Employee Organization, give notice to that organization and all unit employees that he/she will arrange for an election to determine that issue.

(1) In such event any other employee organization may within fifteen (15) days of such notice file a Recognition Petition in accordance with this Section, the City Manager shall act on it in accordance with the requirements of Section 3 of this Article.

4. If, pursuant to this Subdivision, a different employee organization is formally acknowledged as the Exclusively Recognized Employee Organization, such

organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.