



# **City of San Clemente**

## **Personnel Rules**

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**CITY OF SAN CLEMENTE PERSONNEL RULES  
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## CITY OF SAN CLEMENTE PERSONNEL RULES

### RULE 1.0 - PERSONNEL ADMINISTRATION

#### 1.1 Purpose and Application of Rules.

These rules establish the personnel system for the City. These rules shall apply to all offices, positions and employments in the service of the City except those exempted by the Municipal Code or by resolution of the City Council or as noted herein. Positions excluded from these rules include, but may not be limited to all temporary, hourly, part-time, Department Head, and Division Head employees, benefited or non-benefited, unless expressly noted differently within a given section herein.

#### 1.2 The Personnel Officer.

The City Manager may delegate the duties and responsibilities of Personnel Administration and those powers specified in the Personnel Ordinance to any qualified officer or employee of the City or may recommend that such services be performed under contract.

#### 1.3 Duties of the Personnel Officer.

The Personnel Officer shall interpret, apply, and administer these rules and shall make amendments as required.

#### 1.4 Amendment of Rules.

Proposed amendments to these rules may be made by the Personnel Officer for adoption by the City Council. Thirty (30) calendar days prior to Council consideration, notice shall be given to recognized employee organizations on any amendments which affect wages, hours, and other terms and conditions of employment: and upon request, the City shall provide the opportunity to meet and confer with any recognized employee organization so requesting in accordance with the Employer/Employee Relations Rules. As provided in Section 3500 et. seq. of the Government Code, in cases of emergency, when the City Council determines that amendment(s) to these rules must be adopted immediately without prior notice or meeting and conferring with a recognized employee organization, the City shall provide such notice and the opportunity to meet at the earliest practical time following the adoption of the amendment(s). Amendments shall become effective upon adoption by the City Council unless otherwise specified.

#### 1.5 Violation of Rules.

Violation of these rules may be cause for disciplinary action.

### RULE 2.0 - DEFINITIONS

**2.1 Appointing Authority:** Means the City Manager or his/her designee and Department Heads. In the case of the City Manager and City Attorney, the City Council is the Appointing Authority.

**2.2 Authorized Position:** A position appearing in the staffing detail of the current Staffing Chart authorized or amended by the City Council. Usually, this is a position expected to last for an indefinite period of time and would not be considered temporary.



- 2.3 Benefited Part-Time Employee:** Means an employee who works at least 20 hours but less than 40 hours per week on a regularly scheduled basis in an authorized part-time position, designated as such in the currently adopted or amended Staffing Chart. A Benefited Part-Time Employee is at-will and does not have property interest rights in the position. The City's rules and regulations do not apply, except as expressly stated herein.
- 2.4 Competitive Service:** Means all positions not designated as exempt from the competitive service by the Municipal Code or by resolution of the City Council.
- 2.5 City Hall Working Day:** Means a day in which City Hall offices are normally open during regular business hours, which are M-Th 7:30 a.m. – 5:30 p.m. and alternating Fridays 8 a.m. – 5:00 p.m.
- 2.6 Days:** Means calendar days unless otherwise stated.
- 2.7 Demotion:**  
**Voluntary** - Means the appointment of an employee to a classification having a lower salary range at the request of the employee. No employee shall be demoted to a position for which he or she does not possess the minimum qualifications.  
**Involuntary** - Means the appointment of an employee to a classification having a lower salary range as the result of disciplinary action or as the result of "bumping" in-lieu of layoff or as part of a classification study. No employee shall be demoted to a position for which he or she does not possess the minimum qualifications. Pre-disciplinary procedures shall be complied with prior to the demotion of any regular employee for disciplinary purposes.
- 2.8 Department Head:** Means positions designated by either the municipal code or resolution that have overall responsibility for a specific department, as determined by the City Manager. Department Heads are at-will, are not covered by the Personnel Rules, and serve at the pleasure of the City Manager. These positions are exempt from the Fair Labor Standards Act.
- 2.9 Discharge:** Means a disciplinary action separating the employee from employment with the City. Whenever an employee is to be discharged, the Personnel Officer shall be notified. Pre-disciplinary procedures shall be complied with prior to the discharge of any regular employee.
- 2.10 Division Head:** Means positions designated by either the municipal code or resolution that have overall responsibility for a specific division within a department. Division Heads are at-will, are not covered by the Personnel Rules, and serve at the pleasure of the Department Head. These positions are exempt from the Fair Labor Standards Act.
- 2.11 Eligibility List:** Means a list of individuals who have achieved a minimum qualifying score in an examination for employment with the City. Individuals are placed in "blocks" on an eligibility list and anyone on an eligibility list may be hired to fill a vacancy.

- 2.12 Flexible Staffing:** The non-competitive promotion of an employee from certain designated classifications in a classification series to certain higher-level classifications in the same classification series. An employee promoted to a flexibly-staffed position shall serve a promotional probationary period in accordance with these rules.
- 2.13 Job Sharing:** Means work in which two employees voluntarily share the responsibility of one full-time position with salary and benefits pro-rated. Job Share employees are treated the same as full-time employees in regards to probationary appointments, and the rules and regulations govern such job share appointments. If one of the employees terminates, a Department Head may 1) fill the position full-time, or 2) replace the vacancy with another job share employee. The Department Head's decision is final and binding. When a job share employee is unavailable to work, the other job share employee shall be available to fill in and work the additional hours of the other employee as required by the department.
- 2.14 Layoff:** Means the separation of an employee from employment with the City when, in the judgment of the City Council, it becomes necessary to eliminate a position or multiple positions.
- 2.15 Limited Term Employee:** A type of temporary employee. A limited term assignment usually has an anticipated ending date, but may be an extended period of time (a year or more, depending upon the needs of the City). Limited term assignments may include City benefits, as recommended by the appointing authority and approved by the Personnel Officer or designee. Any benefits received shall be expressly stated on the Personnel Action Form at the time the assignment is made. Limited-term assignments are at-will and can end at any time without advance notice or right of appeal.
- 2.16 Manager:** Means a position that is designated as a manager by the City and is not in the employee association, and who may have responsibility for a work unit. These positions are exempt from the Fair Labor Standards Act. These positions are not at-will and are subject to the Personnel Rules.
- 2.17 Personnel Ordinance:** Means Chapter 2.48 of the San Clemente Municipal Code which creates a human resources system for the City.
- 2.18 Probationary Employee:** An employee serving a probationary period, following a probationary appointment to an authorized position.
- 2.19 Promotion:** The movement of an employee from one class to another class having a higher maximum rate of pay.
- 2.20 Reassignment:** Means the movement of an employee from one classification to another classification which has the same salary range and requires substantially the same qualifications. If the reassignment involves a change from one department to another, both Department Heads must consent thereto unless the City Manager requires the reassignment.

- 2.21 Reclassification:** A change in allocation of an individual position by raising it to a higher class, reducing it to a lower class, or moving it to another class at the same pay level on the basis of substantial changes in the kind, difficulty, and/or responsibility of duties performed in such positions.
- 2.22 Reemployment:** Means the appointment of an employee who was laid off to a position in the same classification as his or her former position in accordance with these rules. Such an employee shall receive credit for former service when computing vacation, sick leave, and advancement through the salary range.
- 2.23 Regrading:** Movement of a classification and/or position pay range from one range to another.
- 2.24 Regular Full-Time Employee:** An employee appointed to an authorized position after having successfully completed the probationary period for the position. A Regular Full-Time Employee has a property interest in the position and can only be dismissed from the position by the City for cause, or as the result of a layoff as outlined in these rules.
- 2.25 Reinstatement:** Means the re-appointment, without examination, of a probationary or regular employee within 24 months after he/she has resigned in good standing to a vacant position in the same or comparable class. No credit shall be received for prior service in terms of benefits accrued after reinstatement unless otherwise recommended by the appointing authority and approved by the Personnel Officer. The employee shall begin a new probationary period as required by a new employee.
- 2.26 Resignation:** Means the voluntary separation of an employee from employment with the City. In order to resign in good standing, an employee shall provide a written statement, indicating the last day of employment and reasons for leaving, at least two weeks prior to leaving. Once a resignation has been submitted, it may only be withdrawn by approval of the Personnel Officer upon the recommendation of the Department Head.
- 2.27 Supervisor:** Means a position that has direct responsibility for the work product and assignments of lower level staff and who formally evaluates subordinates on an annual basis. These positions may be represented by the employee association. These positions are subject to the Personnel Rules.
- 2.28 Suspension:** Means a disciplinary action taken by the appointing authority to prevent an employee from working his/her normal number of hours and thereby exempting him/her from compensation for those hours. Persons under suspension shall not accrue sick leave and vacation during such suspensions. Pre-disciplinary procedures shall be complied with prior to the suspension of any regular employee, except as specifically authorized in these rules. Under most circumstances, employees designated as exempt from the Fair Labor Standards Act may not be suspended without pay for a period of less than one full week.
- 2.29 Temporary Employee:** An employee whose appointment to a position is designated as temporary. Temporary employees are at-will and do not have property interest rights in the position. The provisions of the rules and regulations do not apply, except as expressly noted.

- 2.30 Termination:** Means the act of separation from employment for any reason other than discharge or resignation.
- 2.31 Transfer:** Movement of an employee from one position to another position within the same classification. If the transfer involves a change from one department to another, both Department Heads must consent thereto unless the City Manager requires the transfer.
- 2.32 Y-Rate:** Means an employee's salary is frozen at the present level due to assignment to a lower salary rate. The employee's rate continues to be frozen until such time as subsequent general salary increases exceed the employee's salary at the "~~Y~~"-rate. The incumbent's salary anniversary date shall not change during the "~~Y~~"-rated period.

### **RULE 3.0 - RECRUITMENT AND SELECTION - COMPETITIVE SERVICE**

#### **3.1 Filling Vacancies.**

All vacancies in the competitive service shall be filled by reinstatement, transfer, demotion, reemployment, or by appointment from an eligibility list established by an open, or closed/promotional, recruitment. In the absence of persons eligible for appointment in these ways, temporary or acting appointments may be made in accordance with the Personnel Ordinance and these rules.

#### **3.2 Fair Employment Practices.**

Any technique or procedure used in recruitment and selection of employees shall be designed to measure only the job-related qualifications of applicants. No recruitment or selection technique shall be used which, in the opinion of the Personnel Officer, is not justifiably linked to successful job performance.

#### **3.3 Types of Recruitment.**

The determination of the type of recruitment to be conducted shall be made by the Personnel Officer after consultation with the affected Department Head or designee. Recruitments may be conducted in any of the following manners:

##### **3.3.1 Open:**

Open recruitments shall be those in which any individual may apply. An open recruitment may be conducted on a continuous basis when deemed necessary by the Personnel Officer. A continuous recruitment does not have a specified filing period, but continues at the discretion of the Personnel Officer.

##### **3.3.2 Closed/Promotional:**

Closed/promotional recruitments shall be those in which any current employee may apply.

Prior to certification of an eligibility list, a recruitment may be reopened for any type of recruitment. Applications received prior to reopening the recruitment shall be included (merged) with applications for the reopened recruitment.

**3.4 Applications.**

Application for employment with the City shall be made on forms provided by the Personnel Officer. Any false statement or willful omission of information on the application forms may be grounds for rejection of the application or subsequent discharge of the employee.

Applications must be signed by the applicant and received by the Personnel Officer within the filing period prescribed on the job announcement. Such filing periods may be extended as deemed necessary by the Personnel Officer.

The Personnel Officer may reject any application which on its face does not demonstrate that the applicant meets the minimum qualifications of the position or class for which the application was submitted.

**3.5 Job Announcements.**

All examinations shall be announced in a bulletin which shall specify at least the major job responsibilities, minimum and desirable qualifications, minimum and maximum compensation, and the selection process to be used. Job announcements shall be posted on appropriate bulletin boards in City facilities.

**3.6 Examinations.**

Examinations for employment shall be competitive and shall include any technique that, in the opinion of the Personnel Officer, fairly measures the job-related qualifications of applicants. As pertains to the job classification, examination techniques may include written tests, interviews, and performance tests. Examinations may be open or closed/promotional at the discretion of the Personnel Officer.

Examinations for employment shall be competitive and shall include any technique that, in the opinion of the Personnel Officer, fairly measures the job-related qualifications of applicants. As pertains to the job classification, examination techniques may include written tests, interviews, and performance tests. Examinations may be open or closed/promotional at the discretion of the Personnel Officer.

**3.7 Conduct of Examinations.**

The Personnel Officer shall construct, develop and administer all examinations for City employment, except that the City may contract with any qualified agency, organization or individual to develop and/or administer examinations provided that the procedures utilized meet the specifications as provided in these rules.

**3.8 Eligibility List.**

An eligibility list shall be established following an examination, listing the names of those applicants who have achieved a score meeting or exceeding a passing point and placing them in blocks (e.g., Qualified, Well Qualified, and Highly Qualified). Such applicants shall be deemed as qualified for appointment, pending further review by the appointing authority and other qualifying procedures such as reference checks, medical examinations and/or background investigations. Open eligibility lists shall be valid and in effect for a period of six (6) months. Open eligibility lists may be extended to a maximum duration of eighteen (18) months, at the discretion of the Personnel Officer, prior to expiration.

Closed/Promotional eligibility lists for positions shall be in effect for twelve (12) months and may be extended to a maximum duration of eighteen (18) months, at the discretion of the Personnel Officer, prior to expiration.

Names of those not chosen from an open eligibility list that is in effect less than six (6) months may be merged with names on a newly established list for the same classification but such names shall not remain on the new open list for more than six (6) months from the date of their original examination unless the list is extended under these rules. The names of individuals placed on an eligibility list as the result of a continuous recruitment shall remain on the list for a period of six (6) months unless the list is extended under these rules. Names on such lists shall be merged with others already on the list. The existence of an eligibility list prepared from an open recruitment shall not preclude the City from recruiting to establish a closed/promotional list. The names of employees on promotional eligibility lists who resign, terminate or are discharged from the service shall automatically be dropped from such lists.

### **3.9 Removal of Names From Eligibility List.**

The name of any person appearing on any eligibility list may be removed by the Personnel Officer:

- 3.9.1** If the eligible person requests that his/her name be removed.
- 3.9.2** If the eligible person fails to respond to a written notice by the City that he/she is being considered for appointment. This provision shall not apply to closed/promotional lists.
- 3.9.3** Upon notice from an eligible applicant declining appointment or invitation to continue in the selection process. Current City employees whose names are on a list may decline and request that their names remain on the list for future consideration.
- 3.9.4** Upon recommendation of the Department Head and approval of the Personnel Officer after the eligible person has been considered for employment and such employment would not be in the best interest of the City. This provision shall not apply to the names of regular or probationary employees.
- 3.9.5** If two (2) or less names of applicants, willing and able to accept appointment, are available on a list, that list may be voided by the Personnel Officer and a new recruitment and examination announced.
- 3.9.6** If the eligible person has made any false statement of material fact or willful omission of information in the application process.
- 3.9.7** When a person is appointed from an eligibility list to a position in the classification for which the list was developed. Except in the case of a probationary discharge, a person's name may be placed back on an eligibility list prior to completion of the probationary period at the request of the employee

with the approval of the Personnel Officer. A subsequent appointment from the list shall require a new probationary period to be served.

**3.10 Notification of Applicants.**

Applicants may be notified in writing of the results of the examination. Probationary and regular employees competing in closed/promotional recruitments shall have the right to review their own written examination answer sheet and to challenge questions within ten (10) City Hall working days after the results are mailed. The Personnel Officer will review challenged items with an employee, to the extent that it does not compromise the security or future uses of a test. Any error in computation, if called to the attention of the Personnel Officer within the ten (10) City Hall working days shall be corrected. The Personnel Officer's decision with respect to challenges shall be final and cannot be appealed.

**3.11 Certification of Eligibility.**

When a vacancy occurs, the appointing authority may request of the Personnel Officer that the vacancy be filled by reinstatement, demotion, transfer, reemployment or by appointment from an appropriate eligibility list. When an appointment is to be made from any eligibility list, the Personnel Officer shall certify names from an appropriate list. The appointing authority shall further review the job-related qualifications of those certified before making selection decisions.

The Personnel Officer may certify names from a list for a higher classification in order to fill a vacancy in a lower classification, when job duties are of a similar nature. In no case shall names be certified from a list for a lower classification to fill a vacancy in a higher classification. In the event a person does not satisfactorily complete his/her probationary period in a lower level classification, his/her name shall be removed from the eligibility list for the higher level classification from which he/she was appointed.

**3.12 Selection and Pre-Appointment Actions.**

Before selection, applicants may be required to undergo a background investigation. The appointing authority shall notify the Personnel Officer prior to selecting a new employee. An applicant's offer of employment may be conditioned on successful completion of a medical examination for fitness to perform the job to which he or she is appointed. An offer of employment may also be conditioned on successfully passing a drug screen.

**3.13 Employment of Family Members and Co-habitants.**

Members of the same family or household are eligible for employment with the City of San Clemente. It is the policy of the City to prevent family relationships and relationships involving members of the same household from adversely influencing employment selections, job assignments, promotions, performance evaluations, and other personnel matters.

For reasons of supervision, safety, security, or morale, the City may prohibit members of the same family or household from working in the same department, division, or City facility. For purposes of this policy, "members of the same family" is defined as spouses, domestic partners (as defined by Family Code section 297 et seq.), children, sisters, brothers, mothers, fathers, grandparents, step-children, grandchildren, in-laws, aunts,

uncles, nieces, nephews, cousins, and any other persons related by blood, or marriage, domestic partnership, or by means of a "foster" relationship.

This policy is intended to prevent, but is not limited to, the following:

- Situations that might result in unfair preferential treatment of other employees and/or the public;
- Professional decisions that might be disadvantageous for the operations of the City;
- An employee being in a position to supervise, control, and/or influence a family member or member of the same household; and
- An employee having access to the personnel file and/or other confidential information of a family member or member of the same household.

This policy applies to family members or members of the same household of all employees and elected or appointed officials of the City. Each instance will be determined on a case-by-case basis for consistency with the City's interest in the promotion of safety, security, morale, and efficiency. Employees and officials have a duty to disclose relationships that are addressed by this policy.

If two employees become subject to the restrictions of this policy after they are hired, the Personnel Officer, division head, or department head will meet with the affected individuals and their representative(s), and make reasonable efforts to reassign one of the affected individuals to a different position or area within the City based on City needs, operation, or efficiency. Notwithstanding any provisions in these Personnel Rules, any such reassignment that results in a salary reduction is not disciplinary.

If continuing employment of both employees cannot be accommodated in a manner the Personnel Officer, division head, or department head finds to be consistent with the City's interest in the promotion of safety, security, morale, and/or efficiency, then the two employees retain sole discretion to determine who will separate from City employment. Absent the resignation of one employee, the less senior employee shall be separated. Notwithstanding any provision in these Rules, any such separation is not considered to be disciplinary and is not subject to any grievance or appeal.

### **3.14 Physical/Mental Requirements.**

The City shall require that all applicants and employees be in such physical and mental condition to perform the duties of their jobs and may require medical or psychological evaluation at City expense. No employee shall hold any position in a classification in which he/she cannot physically and mentally perform the essential functions of the position, with or without reasonable accommodation, at a satisfactory level or without hazard to himself/herself or others.



## **RULE 4.0 - APPOINTMENTS**

### **4.1 Types of Appointments.**

Appointments to City service are divided into the following categories:

**4.1.1 Probationary** - Shall be the appointment of a person to an authorized position which the employee must serve a probationary period of a certain designated time span to demonstrate satisfactory job performance.

**4.1.2 Regular** - Shall be the appointment of a person who has satisfactorily completed his/her probationary period to an authorized position.

**4.1.3 Acting** - Shall be the temporary assignment of a regular or probationary employee to a higher level classification to fill a vacant position or to provide a replacement for an employee who remains on a leave of absence for a minimum of ten (10) consecutive working days. During the time a person holds an acting appointment, that person shall continue to occupy the position which he/she held prior to the acting appointment and receive all the benefits which are afforded to his/her normally assigned position. Acting appointments may end at any time without advance notice or right of appeal.

**4.1.4 Temporary** - Shall be the appointment in one of the categories listed below of a person to a position intended to be occupied on an intermittent basis to cover increased workloads of limited duration, necessary vacation relief and other situations involving fluctuating staff. Assignments to a temporary position do not include benefits, except as specifically noted in this section, and are not covered by the City's rules and regulations, except as specifically noted herein. A temporary appointment may end at any time without advance notice or right of appeal. Types of the temporary appointments include the following:

**A. Limited Term Appointment** - Any appointment with an anticipated ending date. A limited term appointment does not receive benefits, except as authorized by the Personnel Officer.

**B. Emergency** - An appointment made to meet the immediate needs of an emergency (i.e., civil disaster).

**C. Provisional** - In the absence of individuals eligible or acceptable for appointment from appropriate eligibility lists, a provisional appointment may be made by the appointing authority of an individual who meets the training and experience requirements for the position. Such an appointment shall be limited to one year duration. Extension beyond one year shall be subject to the approval of the City Manager. The City Manager shall specify the term of the extension. If the position is one that falls under representation by one of the City's recognized employee associations, the appropriate association shall be informed of the extension. Such an appointment may be made during the period of suspension of an employee, or pending final action on proceedings to

review suspension, demotion, or discharge of an employee. Provisional appointments may also be made under other circumstances deemed for the good of the service by the Personnel Officer. A provisional employee may be removed at any time without advance notice or right of appeal. An employee in a provisional appointment may accrue fringe benefits as specifically authorized by the Personnel Officer.

Employees whose appointments are temporary, except as required by the Public Employee's Retirement System (PERS) contract or as specified in these rules or by City Resolution or Ordinance, shall not be covered by the City's group insurance, disability, retirement, or any other benefit program; nor do they accrue vacation, holiday or sick leave benefits, except as specifically noted in this section (4.0). Temporary employees are exempt from the competitive service except as noted herein.

**4.1.5 Part-Time** – Shall be the appointment to a position working less than forty (40) hours per week that does not have a specific end date.

Some of the part-time positions may receive some benefits, as specifically outlined in this subsection (4.1.5). Benefits are prorated according to the following schedule: an employee whose regularly assigned work schedule is at least twenty (20) hours but less than thirty (30) hours per week will receive one-half ( $\frac{1}{2}$ ) of the designated amount of sick leave, holiday leave, and vacation leave as full-time employees. An employee whose regularly assigned work schedule is at least thirty (30) hours but less than forty (40) hours per week will receive three-quarters ( $\frac{3}{4}$ ) of the designated amount of sick leave, holiday leave, and vacation leave as full-time employees. Use of leave shall be governed as set forth in these rules. If receiving benefits, the only other benefits part-time positions may receive are those determined by the City. If receiving benefits and an employee works more hours in a week than his/her regularly assigned work schedule, no additional benefits will accrue for the additional hours worked.

A part-time appointment is at the sole discretion of the Appointing Authority and can end at any time without advance notice or right of appeal.

**4.1.6 Job Share** – Shall be the appointment to an authorized position that is shared between two individuals. The incumbents receive a prorated share of fringe benefits extended to full-time employees. For purposes of the medical, dental and vision coverage, each of the two individuals is covered by the City at an amount equal to one-half ( $\frac{1}{2}$ ) of the cap for the employee+family plan, as chosen by the City.

A job share incumbent shall serve a probationary period in accordance with the City's rules. Once a job share incumbent passes probation, he/she shall have a property interest in his/her job and can only be discharged for cause, in accordance with the City's rules. Job share appointments and incumbents are

subject to all of the City's rules, except as specifically excluded herein. A job share employee shall be available to fill in for the other job share employee in cases where the employee is on leave.

When a job share appointment becomes vacant, the City shall retain the right to eliminate the other job share appointment and create a full-time appointment.

## **RULE 5.0 - PROBATIONARY PERIODS**

### **5.1 Probationary Period.**

The first 2080 hours worked after an employee has been hired into an authorized, full-time position shall be a probationary period during which he or she will be considered as in training. The probationary period is an extension of the examination process and the employee's performance shall be carefully observed. Periods of time on paid or unpaid leave (excluding holidays), exceeding fourteen (14) days (consecutive or not) shall automatically extend the probationary period by that number of days the employee is on leave. An employee shall be notified in writing of the reason(s) the probationary period is extended and the length of the extension. Prior to the anniversary date of hire or anniversary date of promotion, the Department Head shall determine whether the employee shall be granted a regular appointment. The regular appointment, when granted, shall become effective on the appointment anniversary date.

If, in the opinion of the employee's supervisor, an employee's performance merits an early advancement to regular status after six (6) months of service as an initial probationary employee, he/she may so recommend to the appointing authority for his/her determination. This provision shall not apply to promotional probationary appointments.

Probationary appointments may be terminated by the Department Head at any time without advance notice or the right of appeal or hearing. Notification of termination shall be in writing and shall be given to the probationary employee with a copy to the Personnel Officer.

The probationary period may be extended, under certain circumstances, upon recommendation of the Department Head and approval of the Personnel Officer. Such extension shall be for no longer than 1040 hours worked of actual and continuous service. If the Department Head determines that the probationary period should be extended, the probationary employee shall be given notice in writing prior to the expiration of the original probationary period.

#### **5.1.1 Probationary Period for Promotions and Demotions.**

When an employee is promoted to a higher classification or demoted, the probationary period shall be 1040 hours. A new probationary period need not be served when demoting to a classification in which an employee previously held regular status, or to a lower classification in the same classification series when the employee has held regular status in a higher classification in that classification series. All other provisions of Personnel Rule 5.1 shall apply to probationary periods which result from a promotion.

If an employee is serving his or her initial probationary period and is promoted by either reclassification or a competitive exam, the employee shall obtain regular status in the position he or she promoted from. The employee shall be required to serve a promotional probationary period in accordance with the City's rules.

An employee rejected during the probationary period from a position to which he/she has been promoted, shall be reinstated to a position in the classification from which he/she was promoted unless he/she is discharged from City service as provided in these rules.

## **RULE 6.0 - EMPLOYEE PERFORMANCE EVALUATION**

### **6.1 Policy.**

It is the policy of the City that regular reports are made as to the efficiency, competency, conduct and merit of its employees. To this end, it is the responsibility of the City Manager, the Department Heads and their subordinate supervisors that these ratings be made. It is also the responsibility of the Personnel Officer to provide and prescribe the forms and procedures to be used in such reports of performance and to assist in the training of supervisory and management personnel of the City so that the program of performance reporting will be carried on in a timely and effective manner.

### **6.2 Schedule.**

Reports shall be prepared and submitted to the Personnel Officer at the midpoint of the probationary period for probationary employees. Informal review (i.e., feedback concerning the employee's job performance) occurs on an on-going basis during the probationary period. A report for regular employees shall be prepared within fourteen (14) days prior to the anniversary date each year and shall be submitted to the Personnel Officer. In addition, a report may be prepared at any time by request of the employee or at the discretion of the employee's supervisor.

A performance evaluation includes completing the form, having it signed by the appropriate supervisor, Department Head, and employee and an interview in which the supervisor provides the employee with the written evaluation and discusses performance, goals, and objectives.

It is the responsibility of the supervisor to ensure that performance evaluations are conducted no later than thirty (30) days after the employee's anniversary date.

If an employee has worked under multiple supervisors during the review period, the most-current supervisor completes the evaluation after consulting with the prior supervisor(s).

A final review and approval of all employee performance evaluations is completed by the Human Resources Manager prior to the evaluation being placed in an employee's personnel file.

**6.3 Effects of Improvement Needed or Unsatisfactory Rating.**

Any employee who receives an overall "Unsatisfactory" or "Improvement Needed" rating (i.e., anything below an Overall Performance Rating of 3) will not be eligible to participate in any Closed promotional examination until a satisfactory rating is established.

An overall "Unsatisfactory" or "Improvement Needed" rating shall result in the withholding of any merit increase for which the employee may be eligible.

When an employee receives an overall "Improvement Needed" or "Unsatisfactory" rating, he/she shall be re-evaluated within three (3) months to document performance. If the employee's performance has improved to such an extent that the appointing authority believes it is justified, the improvement shall be indicated on the report and he/she may grant the merit step increase which had been withheld, effective the first day of the current pay period of the re-evaluation. If performance has not improved to a satisfactory level, the merit increase may be withheld for another three (3) month evaluation period. This process may be repeated until satisfactory job performance has been achieved.

**RULE 7.0 - LAYOFF**

**7.1 Intent.**

For reasons of economy or efficiency, reductions or elimination of City services may be required and it may be necessary to lay off City employees. The layoff procedure is intended to give consideration to seniority whenever the layoff of employees is necessary, and to competency whenever seniority is tied for purposes of layoff.

**7.2 Benefits.**

Only full-time, benefited employees are eligible for the following. Limited-term employees are not eligible for these benefits unless specifically designated otherwise.

**7.2.1** All full time employees shall receive four weeks of severance pay based on their current salary.

**7.2.2** Full time employees who are laid off and at the time of layoff and are enrolled under the group health insurance plan (i.e., medical, dental, and vision only) will continue to be covered with their premiums paid by the City, for a period of six (6) months as long as the affected employee is eligible for unemployment insurance, or until the affected employee is employed elsewhere and covered by health benefits, whichever is shorter. COBRA eligibility may still apply.

**7.3 Definitions.**

**7.3.1 Bumping:** Means an employee who is scheduled for layoff from a particular classification and who may "bump", or move, into a position in the same classification in a different department/division in the City or to a lower classification for which he/she is deemed qualified and meets the criteria as determined under the "ranking" formula and that does not require participation in the competitive service process.

**7.3.2 Layoff:** Means the termination of an employee due to reductions or reorganization of City services.

**7.4 Procedure.**

**7.4.1 Determination Of Need For Layoff.**

The determination of need for layoff shall be made by the City Manager. Classifications to be affected and the number of positions to be laid off will be determined by the City Manager, subject to the approval of the City Council.

**7.4.2 Ranking.**

Within each classification where a layoff may occur, employees will be ranked by seniority with the most senior employees given a rank of one (1) and the next most senior employee given a rank of two (2), and so forth. For the purpose of this section only, seniority includes all periods of full-time service at or above the classification level where layoff is to occur. Length of service includes most recent City 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.

**7.4.3 Order Of Layoff.**

Employees will be laid off in the inverse order of their seniority in their classification in the department. A lay off out of the inverse order of seniority may be made if, in the City's judgment, retention of special job skills are required. In each classification, employees shall be laid off according to employment status in the following order, unless special skills are required: temporary, part-time, probationary and regular.

In cases where there are two or more employees in the same classification in the department from which the lay off is to be made who have the same seniority, such employees will be laid off on the basis of the last evaluation rating in the class, providing such rating has been on file at least 30 days and no more than 12 months prior to lay off, as follows: First, all employees having an overall rating of "Needs Improvement". If, under these same circumstances, two or more employees have overall ratings of "Meets or Exceeds Expectations", then a blind draw conducted by the Human Resources office and in the presence of the affected employees will occur, and the employee whose name is drawn shall be the one designated for layoff. This same process shall be used if multiple positions will be eliminated and employees laid off.

**7.4.4 Notification.**

Employees to be laid off shall be given fourteen (14) calendar days written notice prior to the effective date of the layoff.

**7.4.5 Bumping Rights.**

An individual laid off from a particular classification may "bump" into a related position for which he/she is qualified, as determined by the Personnel Officer,

where the incumbent has less seniority (qualification is presumed where the person has held the position previously with the City or where a lower position is in a normal line of promotion). After an employee is informed of an impending layoff or opportunity to "bump" he/she must inform the Human Resources Manager within five (5) working days of his/her intent to take the option of the layoff or exercise the applicable bumping rights. The process will be repeated at the next classification level where an employee bumps in and creates an overage in that classification.

Any incumbent who is scheduled for layoff will be placed in an available vacant position for which the incumbent is deemed qualified by the Personnel Officer before the bumping process is exercised.

**7.4.6 Discussion With Affected Employees.**

Viable employment options with the City will be discussed with the affected employees at the earliest possible opportunity as determined by the City.

**7.4.7 Reemployment Lists.**

The names of probationary and regular employees who have been laid off shall be placed on appropriate reemployment lists in the order of their competency rating, from highest to lowest. Such names shall remain on such lists for a period of two (2) years from the date of separation unless such persons are re-employed by the City.

When a reemployment list is to be used to fill vacancies, the Human Resources Manager shall certify from the top of such lists and the number of names equal to the number of vacancies. An employee who is reemployed shall receive credit for former service for purposes of seniority, sick leave and vacation accrual rates, and salary adjustment. The reemployed employee shall be placed at the step he/she was at at the time of layoff, and he/she shall serve a six (6) month probationary period. Completion of the six (6) month probationary period shall place the employee into "regular" status.

**RULE 8.0 - EMPLOYEE BENEFITS**

**8.1 Vacation Leave.**

**(See SCCEA MOU for vacation accrual rate, service eligibility requirements, and cash-out options)**

**8.1.1 Eligibility for Leave.**

Only full-time, probationary, and other designated employees as noted in these rules are eligible for vacation leave. Vacation time may be requested at any time, but must be approved beforehand by a Department Head, manager, or supervisor.

**8.1.2 Scheduling of Vacation.**

The time of the year at which an employee may take vacation shall be determined by the Department Head with consideration for the wishes of the employee and first regard for the needs of the City. Timely advance notice will

be given to the employee when circumstances preclude an employee from taking a previously-approved vacation as scheduled.

**8.1.3 Accumulation.**

If an employee's written request to take vacation is refused on the grounds that the City's needs preclude the employee from taking time off, and such refusal results in the employee exceeding the accrual limit, or cap, the employee will be compensated in cash at straight time for the hours accrued in excess of the accrual limit during the time period in which his/her requested leave was denied.

**8.1.4 Holidays During Scheduled Vacation.**

In the event that one or more holidays, designated in these rules as a recognized municipal holiday, fall within the vacation leave, such holiday(s) shall not be charged as vacation leave, and with the approval of the Department Head, the vacation may be extended accordingly.

**8.1.5 Vacation Pay at Termination.**

Employees who terminate employment shall be paid the amount equivalent of the base hourly rate times the unused vacation leave earned prior to the effective date of separation.

**8.1.6 No Vacation Accrued During Leave Without Pay.**

Vacation time is accrued on those hours which are considered as regularly scheduled time worked. Vacation time shall not accrue for an employee who is on any authorized or unauthorized leave of absence without pay.

**8.1.7 Vacation Cap.**

Employees shall be allowed to accrue up to an amount equal to two (2) times the annual vacation accrual. Employees represented by SCCEA and that were hired by the City prior to July 4, 1983, will be allowed to accrue up to two-and-one-half (2½) times the annual vacation accrual. Once the maximum accrual amount, or cap, is reached, no additional vacation leave shall be granted until such time as the vacation leave balance falls below the allowable cap.

**8.1.8 Illness While On Vacation.**

An employee who becomes ill while on vacation may have such period of illness charged to his/her accumulated sick leave instead of to vacation, provided that immediately upon return to duty, the employee submits to the appointing authority a written request for sick leave and satisfactory proof of illness acceptable to the supervisor or manager.



**8.1.9 Vacation Accrual.**

Each regular full-time, probationary and job share employee shall accrue vacation leave with pay.

Vacation accrual occurs according to the following schedule:

<b>YEARS OF SERVICE</b>	<b>ANNUAL LEAVE</b>	<b>MONTHLY ACCRUAL</b>
0 - 4 Years	13 working days; not to exceed 104 hrs	8.66 hours
5 - 9 Years	15 working days; not to exceed 120 hrs.	10.00 hours
10 - 15 Years	20 working days; not to exceed 160 hrs.	13.33 hours
16 - 20 Years	20.5 working days; not to exceed 164 hrs.	13.66 hours
21 – 25 Years	21 working days; not to exceed 168 hrs.	14.00 hours
26 or more Years	22 working days; not to exceed 176 hrs.	14.67 hours

**8.1.10 Annual Cash-Out Option.**

Once each calendar year, as determined by the City, employees will have the option of cashing in up to thirty-two (32) hours of accrued but unused vacation leave. To qualify, the employee must have a minimum of one-hundred (100) hours of vacation leave available after the cash-out option is exercised. Managers and Executive employees will have the option of cashing in up to forty (40) hours of vacation leave once each calendar year, as determined by the City. The rate paid for each hour shall be the hourly rate at the time the cash-out request is processed by the Finance office.

**8.2 Sick Leave.**

**(See SCCEA MOU for Sick Leave accrual rate)**

Sick leave is leave from duty which may be granted by the City to an employee because of illness, injury, exposure to contagious disease, illness or injury of a member of the employee's immediate family (defined in this section as spouse, child, domestic partner, parent, or child of a domestic partner or spouse) requiring the employee's attendance, and medical, dental and optical appointments to the extent that such appointments cannot be scheduled outside the work day.

**8.2.1** An employee may be granted sick leave only in case of actual sickness as defined above. In a calendar year, an employee's accrued sick leave may be used because of the illness of an immediate family member up to the amount of sick leave they would accrue in six (6) months at the employee's accrual rate at the time of leave.

**8.2.2** Every full-time regular and probationary employee shall accrue sick leave at the rate of eight (8) hours per calendar month. For ease of administration, employees receive 3.69 hours of sick leave each pay-period, regardless of when an employee begins or ends employment.

**8.2.3** All employees shall provide verbal notification to their supervisor or department designee within one (1) hour after the beginning of the scheduled work shift if they are going to be absent from work due to sick leave.

**8.2.4** If it is determined by the employee's supervisor that the employee provided notice of absence after the one (1) hour period, the employee shall not be entitled to sick leave compensation for that period of time from the start of the shift up to the time of notice unless it is determined that extenuating circumstances prevented the employee from reporting the absence within the specified time frame.

**8.2.5** If an employee becomes ill during working hours, he/she shall notify his/her immediate supervisor before leaving, except in the case of an emergency. In the event an employee is not able to reach his/her immediate supervisor, the employee shall report the impending absence to the next level of supervision within the work unit (e.g., if the Utilities Operations Supervisor is unavailable, then the Utilities Manager is to be contacted).

**8.2.6** The City will allow an employee to use sick leave in accordance with state law.

\* **8.2.7** For employees hired before January 1, 2001, upon resignation, layoff, service retirement or retirement for non-service connected with disability, an employee will receive a payout for unused sick leave at his/her hourly rate of pay as follows:

<b>EMPLOYEE'S CONTINUOUS FULL-TIME CITY SERVICE</b>	<b>PORTION OF ACCRUED SICK LEAVE PAID OUT</b>
10 up to but not including 20 years	35%
20 years or more	50%

A retiree may elect to keep the funds on account (non-interest bearing) with the City to pay for monthly health insurance premiums.

**8.2.8** In the event of an employee's death, the estate of an employee shall be paid the hourly rate of the employee at the time of death times the accumulated and unused sick leave balance according to the following percentages:

<b>EMPLOYEE'S CONTINUOUS FULL-TIME CITY SERVICE</b>	<b>PORTION OF ACCRUED SICK LEAVE PAID OUT</b>
0 up to but not including 10 years	25%
10 up to but not including 20 years	35%
20 years or more	50%

**8.2.9** Observed holidays occurring during sick leave shall not be charged as hours against an employee's accrued sick leave balance.

**8.2.10 Special Sick Leave.**

All regular full-time employees shall be granted twenty-four (24) hours of special sick leave annually, on January 1 each year, to be used only when members of the immediate family are ill and require the immediate attention of the employee. For purposes of just this section (8.2.10), "members of the immediate family" includes mother, father, brother, sister, son, daughter, spouse, domestic partner, step-child, child of a domestic partner, or in-law. The City Manager may make exceptions to this definition of "immediate family" that is in keeping with its intent. The City Manager's decision is final and cannot be appealed.

**8.2.10.1** Employees with less than one year of service shall be granted two (2) hours of special leave for each full month of service. Employees beginning employment on the first through the fifteenth of the month shall accrue two (2) hours of special sick leave, and employees beginning employment after the fifteenth of the month shall accrue one (1) hour of special sick leave for that initial month.

**8.2.11** An employee may be required to furnish documentation issued by a licensed physician or registered nurse or other satisfactory evidence of illness, injury, medical condition or medical or dental office calls for the employee or his/her immediate family member when the City/department has notified the employee in advance of such a requirement or when the employee or his/her immediate family member has been under the care of a physician.

**8.2.12 Illness While on Vacation.**  
Refer to section 8.1.8.

**8.2.13 No Sick Leave Accrued During Leave Without Pay.**  
Sick Leave time is accrued on those hours which are considered as regularly scheduled time worked. Sick Leave time shall not accrue for an employee who is on any authorized or unauthorized leave of absence without pay.

**8.3 Bereavement.**

All full-time employees shall be entitled to five (5) work days of bereavement leave with pay for attendance at the funeral and/or to tend to related activities associated with a funeral or memorial service of a member of the employee's immediate family, to a maximum of forty (40) hours per incident. Nine (9) hours may be granted on the basis of relation by blood, marriage, or domestic partnership. All such leave shall be available immediately upon employment. For the purposes of this section (8.3) only, immediate family (or step family) shall include grandfather, grandmother, father, mother, father-in-law, mother-in-law, brother, sister, spouse, domestic partner, child or grandchild. A relation based on blood, marriage, or domestic partnership is defined as aunt, uncle, first cousin, brother-in-law, sister-in-law, niece, and nephew.

**8.4 Holidays.**

**8.4.1** All full-time employees shall be entitled to eleven (11) eight (8)-hour holidays with pay, as follows:

January 1	"New Year's Day"
Third Monday in January	"Martin Luther King's Birthday"
Third Monday in February	"Presidents Day"
Last Monday in May	"Memorial Day"
July 4	"Independence Day"
First Monday in September	"Labor Day"
Fourth Thursday in November	"Thanksgiving Day"
Fourth Friday in November	"The Day After Thanksgiving"
December 25	"Christmas Day"
December 24 OR December 26	"Day before or after Christmas"
December 31	"New Year's Eve"

Any day declared by the President of the United States or the Governor of California as a holiday, provided that the City Council of the City of San Clemente also recognizes such day as a holiday.

**8.4.2** In addition to the holidays listed above, all full-time employees shall be entitled to one (1) eight (8)-hour floating holiday per calendar year. The floating holiday must be scheduled and approved by the employee's Department Head prior to the time being taken off.

**8.4.3** For those employees whose normal work week is Monday through Friday, when a holiday falls on a Sunday, the next day (Monday) shall be taken off in lieu of the holiday.

For those employees whose normal work week is Monday through Friday, when a holiday falls on a Saturday, the previous day (Friday) shall be taken off in lieu of the holiday. If Friday is a day that City Hall is normally closed, the holiday will be observed the upcoming Monday. The exception to this is if the Friday after Thanksgiving falls on a dark Friday, then that holiday will be observed on Veteran's Day. See SCCEA MOU for other exceptions.

**8.4.4** In order for an employee to be eligible for holiday pay, he/she must work or be on paid leave on the entire work day immediately preceding and succeeding the holiday.

**8.4.5** If an employee is required to work on any of the above holidays, he/she may be granted an additional day's pay in lieu of the holiday or granted a holiday at some other day during the pay period before, pay period including, or pay period immediately following the holiday as approved by the Department Head.

**8.5 Tuition Reimbursement.**

Employees enrolled in a course of study (on non-working time) related to one's job duties and designed to improve the job related knowledge and ability of the employee shall be reimbursed for the cost of tuition and books upon successful completion of the course with a grade of "C" or better. The City shall pay no more than the per-semester tuition of the California State University system of a full-time student, up to an annual maximum of two times (2x) the tuition based on the academic year.

Upon voluntary termination of employment with the City, employees who have received educational reimbursement benefits shall be required to reimburse the City for the total amount of any benefits received during the two (2) year period prior to the effective date of termination.

During the budget preparation process, the department should identify those employees who will be taking advantage of education reimbursement during the next fiscal year. Employees should submit a course outline and anticipated costs for these courses to their Department Head during the budget process.

Requests will be sent to the Human Resources Manager for review during the budget process. Approved requests will be included in the next fiscal budget.

Individual departments will budget sufficient funds each year to cover costs of any employees in their respective departments who have received approval for a course of study.

Prior to enrollment in a reimbursable course, the employee must submit a written request for approval by the Department Head and the Human Resources Manager.

Upon successful completion of the course, the employee shall submit a grade card or certification indicating satisfactory completion of the course to the Human Resources Manager for reimbursement by the City.

**8.6 Replacement of Personal Property.**

Any employee who, in the normal course of his/her employment and as a result thereof, suffers damage or loss of items of personal property that are necessary to fulfill the requirements of his/her position, shall be entitled to replacement or repair thereof upon investigation and recommendation by such employee's Department Head, and approval by the Human Resources Manager. No payment may be made if the loss or damage was

the result of employee negligence. No payment shall exceed one-hundred dollars (\$100.00) per claim.

The above shall not prohibit an employee from filing a claim for damages against the City to recover the cost of replacement or repair of personal property lost or damaged on the job, provided that such a claim shall not be filed in addition to seeking reimbursement under this Rule.

**8.7 Private Motor Vehicle Reimbursement.**

Employees shall be reimbursed for use of their private motor vehicles used on City business at the current IRS rate. At a minimum, the reimbursement request shall state the date, miles driven, and purpose of the activity.

**8.8 Group Life and Health Insurance.  
(See SCCEA MOU for health benefits)**

The provisions governing the group life and health insurance programs are as follows:

**8.8.1 City Contribution.**

The City shall pay on behalf of all eligible City employees that part of the individual or individual and dependent coverage of group life, dental, vision and medical insurance programs contracted for by the City as may be set forth in the appropriate Memorandum of Understanding or unilaterally implemented by the City Council.

**8.8.2 Group Insurance Coverage - Industrial Disability Leave.**

Group insurance benefits coverage, and the City's contribution to those benefits, shall continue for employees on industrial disability leave until the point of termination of employment or twelve (12) months, whichever is earlier. Employees who have an employee contribution toward the group insurance coverage shall continue to contribute the amount he/she normally would contribute were he/she on the payroll.

**8.8.3 Group Insurance Coverage - Non-Industrial Medical Leave Without Pay.**

Group insurance benefits coverage, and the City's contribution to those benefits, shall be afforded to employees on approved medical leave without pay for a maximum period of six (6) months of such leave. During this period the City will pay its share of group insurance premiums, if the employee elects to maintain such coverage and contributes from his/her own funds the amount he/she normally would contribute were he/she on the payroll.

**8.8.4 Group Insurance Coverage - Personal Non-medical Leave Without Pay.**

Group insurance benefits coverage, and the City's contribution to those benefits, shall be afforded to employees on approved non-medical leave without pay for a maximum period of three (3) months of such leave. During this period the City will pay its share of group insurance premiums, if the employee elects to maintain such coverage and contributes from his/her own fund the amount he/she normally would contribute were he/she on the payroll.

### **8.8.5 Retiree Group Insurance Coverage. (See SCCEA MOU)**

## **RULE 9.0 - RETIREMENT**

### **9.1 Retirement System.**

Employees of the City shall be retired from City service pursuant to and in accordance with the provisions of the City's pension provider. The City Manager, or his/her designee, is authorized to execute all necessary and appropriate documents to accomplish retirement of employees.

### **9.2 Findings and Determinations.**

The City Manager, or his/her designee, is further authorized to make such findings and determinations on behalf of and in the name of the City pursuant to disability retirements of employees of the City. These findings and determinations include, but are not limited to, the existence of a disability that prevents the employee from substantially performing the duties of his/her job, whether or not such disability is industrial within the meaning of the law, and other such determinations as may be required by the Public Employees' Retirement System and/or any other City pension provider. Such determinations and decisions made by the City Manager shall be based on such medical reports and other evidence he/she may consider relevant and probative, and his/her decision shall be final, with a copy of the written findings given to the employee.

### **9.3 Administrative Hearing.**

If, within five (5) City Hall working days of receiving the written findings of the City Manager, the employee so requests in writing, the City Manager shall hear the case of an employee, whose application for industrial disability has been denied, in an informal, administrative hearing. At such hearing, the employee may submit such information in support of his/her contention that the application for retirement should be approved. The City Manager shall consider such information and render a decision to the employee in writing, within five (5) City Hall working days of the administrative hearing. Time limits specified in this Rule may be extended by mutual agreement between the City and the employee.

## **RULE 10.0 - CLASSIFICATION AND COMPENSATION**

### **10.1 Preparation of Classification Plan.**

The Human Resources Manager, or a person or firm employed for that purpose, shall ascertain and record the duties and responsibilities of all classifications positions in the competitive service and, after consultation with management, shall recommend a classification plan for the classifications' positions. The classification plan shall consist of classes of positions in the competitive service defined by class specifications, including title, a description of typical responsibilities and essential functions of positions in each class, a statement of the training, experience and other qualifications to be required of applicants for positions in each class. The classification plan shall be so developed and maintained that all positions substantially similar with respect to duties, authority, and character of work are included within the same class.

In the preparation of the classification plan, the Human Resources Manager shall allocate every position in the competitive service to one of the classes established by the plan. If

a new classification is needed, the classification plan shall be amended by resolution of the City Council to provide for the new classification and any associated position(s). The Human Resources Manager, with the approval of the City Manager, may amend any existing classification specification.

#### **10.2 Classification Descriptions.**

Classification descriptions cover essential duties, general character and attributes common to positions being described. They are intended to facilitate Human Resources administration, help structure departments, and aid in employee selection. Classification descriptions are not intended to be exhaustive. Specific expressions or illustrations describing typical duties and qualifications of a classification do not exclude other duties and qualifications not specifically mentioned. An employee may not refuse assigned work because it is not explicitly included in the classification description for the position.

The Personnel Officer shall be responsible for the administration and maintenance of the Classification Plan. A review of the existing Classification Plan to ensure that it is effectively maintained and that it reflects any significant changes in duties and responsibilities of positions shall be conducted from time to time. Such a review may involve only selected classes or the entire Classification Plan.

#### **10.3 Reclassification.**

Positions, the duties of which have changed materially so as to necessitate reclassification, shall be allocated to a more appropriate class, whether new or already created, in accordance with the following guidelines.

- 10.3.1** The duties and responsibilities of a position shall have changed substantially by the addition or deletion of duties and/or the qualifications required to perform the job have changed substantially.
- 10.3.2** Reclassifications may be initiated by management to achieve the most effective organization of the work force.
- 10.3.3** Reclassification of a position may be made at any time. An employee in a position that is reclassified may be required to qualify through an examination to retain a position that is reclassified to a higher level position unless it is determined in the reclassification study by the Personnel Officer that the incumbent is currently performing a substantial amount of the new duties and responsibilities of the reclassified position and that performance is deemed satisfactory by the appointing authority.

#### **10.4 Compensation Plan.**

The Human Resources Manager, or the person or firm employed for that purpose, shall prepare a pay plan covering all classes of positions in the service, showing the minimum and maximum rates of a pay range. The Human Resources Manager, or the person or firm employed for that purpose, shall thereafter make such further studies of the compensation plan as needed.



The City Manager shall submit the proposed pay plan to the City Council who shall establish or amend the proposed plan. Thereafter, no position shall be assigned a salary higher than the maximum or lower than the minimum salary provided for that classification, except as provided for in this policy.

**10.5 Pay Plan Structure.**

The basic pay plan for all classifications in the competitive service shall consist of monthly salary ranges. Each step in the range shall be approximately five percent (5%) greater than its predecessor up to a maximum salary in the range.

Each classification shall be assigned to a pay range by resolution of the City Council. Amendments to the pay plan shall be prepared by the Human Resources Manager and submitted to the City Council for their approval.

**10.6 Advancement Through the Pay Plan.**

STEP A This step is the minimum rate and is normally the hiring rate for the class.

STEP B This step is a rate to which a qualified, experienced and conscientious employee may expect to advance following the completion of six (6) months of satisfactory service in Step A.

STEP C This step is the rate to which a qualified, experienced and conscientious employee may expect to advance following the completion of one (1) year of satisfactory service in Step B.

STEP D This step is the rate to which a qualified, experienced and conscientious employee may advance following the completion of a minimum of one (1) year of satisfactory service in Step C.

STEP E This step is the rate to which a qualified, experienced and conscientious employee may advance following the completion of one (1) year of satisfactory service in Step D.

Salary steps are not automatic. Each change in salary must be accompanied by a written performance review as provided in these rules.

**10.6.1 Withholding/Deferral of a Step Increase.**

If a Department Head recommends that advancement of the employee to the next higher salary step be postponed pending further review of the employee's job performance, the employee will not be assigned a new salary anniversary date providing that said postponement does not exceed a period of three (3) months. During or at the conclusion of the period of postponement, the Department Head may recommend no increase based on performance or that the employee be advanced to the next higher salary step. The Human Resources Manager shall notify the Finance Manager in writing and such notification constitutes authorization for the Finance Manager to make payment to the employee at the specified higher rate. Such payment shall commence on the first day of the nearest pay period.

The employee shall be notified in writing of any postponement and any decision regarding denial or approval of advancement to the next salary step subsequent to the postponement. The notification may be done through the performance evaluation process.

**10.6.2 Salary Anniversary Date.**

A person appointed to the first step of the salary range, for the class to which his/her position is allocated, shall have a salary anniversary date that shall be six (6) months from the appointment date.

A person appointed at a step higher than the first step of the salary range for the class to which his/her position is allocated, shall have a salary anniversary date that shall be one (1) year from the appointment date.

**10.7 Compensation at Appointment.**

When the education, training and experience of a proposed employee are superior and justify a beginning salary in excess of the first step, the Department Head may authorize an appointment up to Step C and the City Manager may authorize an appointment at any higher step in the range.

**10.8 Compensation - Benefited Part-Time Employees.**

Benefited part-time employees shall be paid the hourly equivalent of the monthly salary paid to a full-time employee in the classification to which they are assigned. They shall move through the steps in their range in the same manner prescribed for full-time employees.

**10.9 Compensation - Temporary Employees.**

Temporary employees shall be paid an hourly rate established by the appointing authority as appropriate for the work to be performed and within the budgeted amounts in temporary employee salaries.

**10.10 Compensation on Promotion.**

Any employee who is promoted to a position in a classification allocated to a higher salary range than the classification in which he/she formerly occupied, shall receive the nearest higher monthly salary at the step within the new range that is at least five percent (5%) higher than the previous base salary, but in no case shall he/she be compensated above the top step of the new salary range. Payment in the new salary range shall begin on the first day of the current pay period in which the appointment became effective. The effective date of the promotion shall be the employee's new salary anniversary date.

**10.11 Compensation on Demotion.**

The salary of an employee who is demoted to a position in a classification allocated to a lower salary range shall be determined as follows:

- A. Involuntary Demotion:** Involuntary demotion may be warranted as a disciplinary measure, or exercised in lieu of layoff, or as part of a classification study. An employee who is involuntarily demoted to a position in a classification allocated to a

lower salary range shall have his/her monthly salary reduced to the nearest lower monthly salary rate in the salary range for the class to which he/she was demoted that does not provide additional compensation. In lieu of a reduction in salary in the event of a layoff, the City Manager may approve a "Y"-Y-rate for the employee as defined in these policies. The employee shall not be required to serve a probationary period in the lower classification unless he/she has not completed an initial probationary period. The employee shall retain the salary anniversary date of the higher classification.

- B. Voluntary Demotion:** An employee who requests a demotion to a classification allocated to a lower salary range shall be paid the monthly salary rate in the lower range closest to the salary rate he/she formerly received that does not provide additional compensation. The employee shall retain the salary anniversary date of the higher classification.

**10.12 Compensation on Reinstatement.**

Notwithstanding other provisions in these rules, a person reinstated within two (2) years in a position allocated to a classification in which he/she previously held regular status and from which he/she was separated in good standing, may, with the approval of the City Manager, be appointed to the step of the salary range previously held in that particular classification.

**10.13 Compensation on Transfer.**

Any employee who is transferred from one position to another position in the same classification, or to another position in a classification having the same salary range, shall be compensated at the same step in the salary range as he/she previously received and his/her salary anniversary date shall not change.

**10.14 Compensation on Change in Range Assignment.**

Whenever a classification is reallocated to a new salary range, the salary of an employee in that classification (except an employee in an acting capacity) shall be determined as follows:

- A. Allocation to a Higher Salary Range:** If the classification is reallocated to a higher salary range, the employee shall be compensated at the step in the new salary range that is most nearly equivalent to but not lower than that received in the range to which the class was previously allocated. The employee's salary anniversary date shall not change.
- B. Allocation to a Lower Salary Range:** If the class is reallocated to a lower salary range, the employee shall be compensated at the step in the new salary range that is most nearly equivalent to but not lower than that received in the range to which the class was previously allocated. If the employee's salary at the time of the reallocation is greater than the top step of the new salary range, the salary of the employee shall not change unless it is greater than the maximum step of the lower salary range, in which case, it shall be Y-rated as defined in the rules. The employee's salary anniversary date shall not change.

**10.15 Compensation on Position Reclassification.**

The salary of an employee in a position that is reclassified shall be determined based on the range to which the reclassification is allocated.

**10.15.1 Class with Same Salary Range:** If the position is reclassified to a classification with the same salary range as the previous classification, and if the incumbent is appointed to the reclassified position, the salary rate and the salary anniversary date of the employee shall not change. This provision shall also apply to the change of classification title, provided there is no change in the basic duties of the position.

**10.15.2 Class with Higher Salary Range:** If the position is reclassified to a classification with a higher salary range than the previous classification, and if the incumbent is appointed to the reclassified position, he/she shall be compensated at the step in the new salary range that comes nearest to but not less than five percent (5%) higher than the step held in the previous salary range except that the salary may not exceed the maximum salary rate in the new range. However, the City Manager can approve a salary increase higher than five percent (5%), as recommended by a Department Head when appropriate. The effective date of the reclassification shall be the employee's new salary anniversary date.

**10.15.3 Class with Lower Salary Range.** If the position is reclassified to a classification with a lower salary range than the previous classification, and if the incumbent is appointed to the reclassified position, the employee shall be compensated at the step in the new salary range that is most nearly equivalent to but not lower than that received in the range to which the classification was previously allocated. If the employee's salary at the time of the reallocation is greater than the top step of the new salary range, the salary shall not change and shall be Y-rated as defined in the rules. The incumbent's salary anniversary date shall not change.

**10.16 Compensation Upon Reclassification of Entry-Level Positions Due to Flexible-Staffing.**

The salary of an employee whose position is reclassified due to flexible staffing, pursuant to the provisions of this rule, shall be determined as follows: After the successful completion of at least twelve (12) months of continuous City service with satisfactory evaluations and with the Appointing Authority's approval, in lieu of a merit step increase, the employee may be moved to the lowest step of the agreed-upon higher position that grants the employee no less than a five percent (5%) increase in compensation. The employee's salary anniversary date shall change and he/she shall be required to serve a new probationary period.

**10.16.1 Flexibly Staffed Classifications.**

The following classifications are flexibly staffed:

Accounting Specialist I/II  
Assistant/Associate Planner

Building Inspector I/II  
Customer Service Specialist I/II  
Distribution/Collections Systems Operator in-Training/I/II  
Electrical Instrumentation Technician I/II  
Electrician Assistant/Electrician I/Electrician II  
Facilities Maintenance Specialist I/II  
Human Resources Analyst I/II  
Information Systems Technician/Specialist  
Laboratory Technician I/II  
Maintenance Worker I/II  
Management Analyst I/II  
Office Specialist I/II  
Plant Operator I/II  
Recreation Leader I/II  
Utility Billing Specialist I/II  
Utilities Mechanic in-Training/I/II

Positions are normally filled at the entry, or "I", level. This rule (10.16) does not prevent the City from identifying certain positions that contain primarily routine, repetitive tasks that will preclude the position from moving from the entry level to the "II" level.

#### **10.17 Compensation For Acting Appointment.**

Whenever the needs of the City require an employee to temporarily perform the duties and assume the responsibilities of a higher classification than that in which the employee is currently employed for a period of at least ten (10) consecutive working days, the employee shall receive the salary rate of the higher class in which he/she is performing the required duties. In such cases, the employee shall be paid at the step of the salary schedule of the higher classification which will assure an increase of not less than five percent (5%) greater than the salary of the current position, but in no case shall such salary exceed the top salary step of the higher classification. Benefits shall continue to be based on the employee's regular position.

An employee's immediate supervisor in his/her acting appointment is responsible for seeing that an employee who works in an acting capacity is properly paid. To achieve that, supervisors shall consult with the Human Resources Manager prior to assigning an employee to an acting position.

An employee who is temporarily moved from a non-exempt position to an exempt position will not be eligible to receive over-time during the temporary appointment once he/she is eligible to receive the higher exempt pay rate. Additionally, the employee will be eligible for administrative leave on a pro-rated basis during the acting appointment, as recommended by the Department Head and approved by the City Manager or designee.

Nothing in this section shall limit a supervisor's ability to make emergency assignments. The time worked in a higher classification may be considered as qualifying experience for future examinations and promotions.

## **10.18 Jury Duty Compensation.**

- 10.18.1** Every full-time employee of the City who is called or required to serve as a trial juror shall be entitled to be absent from duties with the City during the period of such service or while necessarily being present in court as a result of such call. No deduction shall be made from the salary of an employee while on jury duty. Jury fees may be retained by the employee.
- 10.18.2** An employee accepted for jury duty shall immediately notify the Department Head in writing and submit the court order requiring attendance as a juror. In the case of an employee receiving a subpoena, the employee shall give the Department Head a copy of the subpoena requiring the court appearance.

Any employee who is released from jury duty with three (3) hours or more remaining in his/her work day shall report back to work.

## **10.19 Overtime.**

It is the policy of the City to avoid unnecessary overtime. In cases of emergency, however, or whenever public interest or necessity requires, any employee may be directed and is expected to perform overtime work. Overtime is all hours an overtime-eligible employee actually works beyond forty (40) hours in a designated work period. All overtime work, except for emergency conditions, must have the approval of the Department Head or his/her designee.

An overtime-eligible employee who does not obtain the approval of his/her Department Head or designee prior to performing said work, or who justifies overtime work without prior approval by reason of emergency conditions that are later determined by the Department Head or his/her designee to be insufficient to justify overtime work, may be subject to discipline.

### **10.19.1 Compensation.**

Employees eligible for overtime who are assigned to work in excess of forty (40) hours in their designated work period shall be compensated at a rate of one-and-one-half (1½) times his/her regular rate of pay. Employees may request and be authorized, if operations permit, to take compensatory time off in lieu of cash at the rate of time-and-one-half. The employee's request to use compensatory time must be granted unless to do so would be unduly disruptive to departmental operations. Such requests shall not be denied for mere inconvenience to the department.

#### **10.19.1.1 Compensatory Time. (See SCCEA MOU)**

### **10.19.2 Assignment.**

Overtime may be assigned by the immediate supervisor. Effort will be made to assign overtime on an equitable basis among those in the department qualified to perform the overtime work.

**10.20 Special Assignment Compensation (Does not apply to SCCEA represented positions)**

The City Manager may approve the temporary assignment of an employee to perform duties outside his/her classification, and the City Manager shall have the authority to place said employee at whatever grade and step he/she deems appropriate for whatever length of time the City Manager determines, as long as the appointment does not replace work normally assigned to a position represented by SCCEA.

**RULE 11 - ATTENDANCE AND LEAVES**

**11.1 Attendance.**

Employees shall be in attendance at their work in accordance with the rules regarding hours of work, holidays and leaves.

**11.1.1 Unauthorized Leave of Absence Without Pay.**

Failure on the part of an employee to return to duty from any authorized leave or to report to duty as scheduled or ordered shall be an unauthorized leave of absence without pay. An employee who fails to return or report to duty within twenty-four (24) hours after notice to return is deemed to have automatically resigned, and such employee shall be separated and exempt from all grievance or appeal rights granted by Ordinance and/or these rules, except as otherwise provided in sections 11.1.1.1–11.1.1.4. Upon the City's conclusive determination that the employee has automatically resigned, the resignation shall be effective as of the last day the employee worked or was on authorized leave.

Notice to return shall have been made when the employee receives direct verbal notice to return to work from an authorized employee or when a written notice is personally delivered to the employee or when written notice with return receipt requested by Certified Mail, addressed to the employee's last known place of address, has been deposited in the United States Mail.

**11.1.1.1** The City shall cause to be served on the employee affected, by certified mail or personal delivery, a written statement of the facts supporting the invocation of automatic resignation. This statement shall clearly inform the employee that he/she has the right to respond orally and/or in writing and shall give the date and time that an informal hearing before the Personnel Officer or City Manager will be held.

**11.1.1.2** If the employee does not submit a written response and does not show up for the informal hearing, unless good cause for the failure is shown, the automatic resignation shall be considered conclusive.

**11.1.1.3** The time for the informal hearing may be continued by the Personnel Officer or City Manager if good cause is shown.

**11.1.1.4** The Personnel Officer or City Manager may conclude or revoke the City's determination of automatic resignation. The Personnel Officer or City Manager's decision is final.

**11.1.2 Authorized Leave of Absence Without Pay.**

Employees employed continuously for at least one year may be granted a leave of absence without pay upon approval by the City Manager and the appropriate Department Head. This policy applies to requirements beyond the Family Care and Medical Leave Policy. Leave without pay may be granted for any of the following reasons:

1. Illness or disability of the employee
2. Illness or disability of a family member
3. Personal reasons acceptable to the City and Department Head
4. Pregnancy Leave

**11.1.2.1** A leave of absence without pay shall be made in accordance with state and federal regulations.

**11.1.2.2** Employees shall exhaust all applicable leave balances (vacation, sick, floating holiday, comp time) prior to taking a leave of absence without pay.

**11.1.2.3** Requests for leave of absence without pay shall be made in writing to the Department Head. The request shall specifically state the reason for the request, the date the leave will commence, and the date of return. The Department Head shall transmit a recommendation that the leave be granted, modified or denied to the City Manager, who shall make the final determination.

**11.1.2.4** Department Heads may grant, without City Manager approval, leaves of absence not to exceed seven (7) calendar days upon notification to the Human Resources Office for unpaid leave that is beyond the requirements of the Family Care and Medical Leave Policy.

**11.1.2.5** If the unpaid leave of absence was as the result of illness or disability of the employee, the employee may be required to submit a fitness-for-duty certification from their or the City's health care provider prior to returning to work.

**11.1.2.6** Failure on the part of an employee to report to work upon expiration of the leave of absence shall constitute the employee's separation from City employment.

**11.1.3 Effect of Leave of Absence Without Pay.**

Any leave of absence without pay that exceeds fourteen (14) calendar days shall result in a new salary anniversary date for the employee. Such date shall



be based on his/her original salary date plus the number of calendar days of his/her leave in excess of fourteen (14) calendar days. While on leave of absence without pay, no payroll deductions can be made. Therefore, the employee may choose to continue those payments by his/her personal payment of said deductions, in accordance with procedures prescribed by the City's Finance Office.

**11.1.4 Current Address Records.**

It shall be the responsibility of the employee to provide the Human Resources and Finance offices with his/her most current mailing address.

**11.2 Hours of Work.**

Daily hours of work (or shifts) for employees shall be assigned by Department Heads as necessary to meet the operational requirements of said departments and in accordance with any existing Memorandum of Understanding.

For purposes of computing vacation and sick leave accrual pursuant to these rules, hours worked for 40-hour employees total two-thousand eighty (2,080) hours per year.

**11.3 Eligibility for Leaves.**

For the purpose of computing entitlement to leaves for illness and vacation, an employee's continuous service shall be based on the effective date on which he/she received initial probationary appointment in the City service. Actual use of accrued sick leave and vacation leave shall be regulated by the rules governing use of such leaves.

**11.4 Family and Medical Leave Policy.**

In accordance with the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA), the City will grant family and medical leave to eligible employees. Any employee employed for at least twelve (12) months and who has been employed for at least 1,250 hours during the twelve (12)-month period immediately preceding the commencement of the leave, is eligible for leave. A leave may be granted for any of the following reasons:

1. The birth of a child or to care for a newborn of an employee;
2. The placement of a child with an employee in connection with the adoption or foster care of a child;
3. Leave to care for a child, parent or a spouse who has a serious health condition;
4. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position;
5. Leave for "qualifying exigency" may be taken arising out of the fact that an employee's spouse, son, daughter, or parent is on covered active duty or call to covered active duty status (under the FMLA only, not the CFRA); or

6. Leave to care for a spouse, son, daughter, parent, or "next of kin" who is a covered servicemember (this leave can run up to 26 weeks of unpaid leave during a single 12-month period) (under the FMLA only, not the CFRA).

#### **11.4.1 Amount of Leave.**

**11.4.1.1** Eligible employees are entitled to a total of twelve (12) weeks of leave during a twelve (12) month period. The twelve (12) month period is calculated by using the date the leave has been requested and looking back twelve (12) months from that date.

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

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

**11.4.1.3 Both Spouses Employed by the City:**

If both husband and wife are employed by the City, they are entitled to individual leave of twelve (12) workweeks except in the following cases:

The aggregate number of workweeks of leave to which both may be entitled is limited to twelve (12) workweeks during any twelve (12)-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child. The aggregate number of workweeks of leave to which both may be entitled is limited to twenty-six (26) workweeks during any twelve (12)-month period if leave is taken to care for a covered servicemember.

These limitations do not apply to leave taken by their spouse to care for the other who is seriously ill and unable to work, or to care for a child or parent with a serious health condition or for his/her own illness.

**11.4.1.4 Employee Leave Benefits While On Family Leave:**

While on leave under this policy, the City of San Clemente will require an employee to concurrently use paid accrued leaves after requesting FMLA and/or CFRA leave, to the extent allowed by law. Whenever the City determines that a non-FMLA/CFRA leave

is FMLA- or CFRA-qualifying, the City will require the employee to use FMLA and/or CFRA leave concurrently. Once the available paid leave accruals are exhausted, the employee will be on authorized leave without pay.

Employees shall use paid sick leave accruals concurrently with FMLA/CFRA leave if they are on leave due to their own serious health condition. Once sick leave is exhausted, employees shall use other paid leaves which they have earned, such as vacation, floating holiday, and compensatory time. Employees may use sick leave concurrently with FMLA/CFRA leave that is needed to care for a parent, spouse, child, or domestic partner with a serious health condition, and would be permitted as sick leave under the City's sick leave policy.

Employees shall use paid vacation, special leave, floating holiday, and compensatory time concurrently with FMLA/CFRA leave, except when leave is concurrent with Pregnancy Disability Leave. However, in no case shall an employee use or be required to use accrued compensatory time earned in lieu of overtime earned in violation of the Fair Labor Standards Act.

Sick leave may only be used if a health care provider certifies in writing that the employee, parent, spouse, child or domestic partner has a serious health condition.

**11.4.1.5** The leave will not constitute a break in service for purposes or longevity, seniority of any benefit plans.

**11.4.1.6** **Employee Health Insurance Coverage:**  
The City will continue to pay its portion of the employee's health insurance premiums for the twelve (12) weeks. The employee is responsible to pay his/her portion of the health insurance premiums.

If the employee does not return to work after his/her leave entitlement has been exhausted or expires, the City may recover its share of the health insurance premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member that would entitle the employee to leave, or because of circumstances beyond the employee's control. The City shall have the right to recover premiums through deductions from any sums due the City (e.g., unpaid wages, vacation pay, etc.).

**11.4.1.7** Employees may make the appropriate contributions for continued coverage for voluntary, non-health benefit plans by payroll

deductions or direct payments made to these plans. Depending on the particular plan, the Human Resources Manager will inform you whether the premiums should be paid to the carrier or to the City of San Clemente.

Coverage on a particular plan may be dropped if an employee is more than 30 days late in making a premium payment. However, the employee will receive a notice at least fifteen (15) calendar days before coverage is to cease, advising him/her that he/she will be dropped if the premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

**11.4.1.8** The FMLA and CFRA leave provisions shall run concurrently in all cases where applicable.

**11.4.1.9** Leave under California's Pregnancy Disability Leave Law qualifies as FMLA leave, but not CFRA leave.

**11.4.2 DEFINITIONS:**

**12-MONTH PERIOD** - means a rolling twelve (12)-month period measured backward from the date leave is taken and continuous with each additional leave day taken.

**CHILD** - means a child under the age of eighteen (18) years of age, or eighteen (18) years of age or older child who is incapable of self-care because of a mental or physical disability. An employee's child is one for whom the employee has actual day-to-day responsibility for care and includes, a biological, adopted, foster or step-child.

**PARENT** - means the biological, adoptive, step, or foster parent of an employee, or an individual who stands or stood in place of a parent to an employee when the employee was a child. This term does not include parents-in-law.

**SPOUSE** - means a husband or wife as defined or recognized under California State law for purposes of marriage.

**DOMESTIC PARTNER** - as defined by Family Code sections 297 and 299.2, shall have the same meaning as "spouse" for purposes of CFRA leave.

**KEY EMPLOYEE** - a salaried employee whose salary is among the highest ten percent (10%) of the City's employees.

**SERIOUS HEALTH CONDITION** - under the FMLA and CFRA, an illness, injury, impairment or physical or mental condition that involves:

- 1. Inpatient Care:** an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom,); or
- 2. Continuing treatment by a health care provider.** A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
  - a)** A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
    - Treatment two or more times within 30 calendar days of the first day of incapacity, unless extenuating circumstances exist by a health care provider, by a nurse or physician's assistant under direct supervision by a health care provider, or by a provider of health care services under orders of, or on referral by a health care provider. The first medical visit must take place within seven (7) days of the first day of incapacity; or
    - Treatment by a health care provider on at least one occasion that must take place within seven (7) calendar days of the first incapacity which results in a regimen of continuing treatment under the supervision of the health care provider. This includes a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
  - b)** Any period of incapacity due to pregnancy or for prenatal care. (This entitles the employee to FMLA leave, but not CFRA leave. Under California law an employee disabled by pregnancy is entitled to pregnancy disability leave.)
  - c)** Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
    - 1.** Requires periodic visits for treatment by a health care provider, at least twice a year for the same

- condition, or by a nurse or physician's assistant under direct supervision of a health care provider;
2. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
  3. May cause episodic rather than a continuing period of incapacity (e.g., asthma). Absences for such incapacity qualify for FMLA leave even if the absence last only one (1) day.
- d) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
- e) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive calendar days in the absence of medical intervention or treatment.

**HEALTH CARE PROVIDER** - includes a medical practitioner, physician's assistant, or clinical social worker authorized to practice under state law and performing within the scope of his/her practice; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; any health care provider from whom an employer or group health plan's benefits manager who will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and a health care provider who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country.

**COVERED ACTIVE DUTY** - means: (1) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with Armed Forces to a foreign country, or (2) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of a member of the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.

**COVERED SERVICEMEMBER** - means (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty; or (2) a covered

veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness

**COVERED VETERAN** - means an individual who was a member of the Armed Forces, including a member of the National Guard or Reserves, and was discharged or released under conditions other than dishonorable within the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

**OUTPATIENT STATUS** - means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to either: (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

**NEXT OF KIN OF A COVERED SERVICEMEMBER** - means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.

**QUALIFYING EXIGENCY** means one or more of the following:

1. Addressing any issue arising from short-notice deployment (within 7 days of deployment);
2. Attending military events and related activities;
3. Addressing certain childcare and school activities concerning the military member's child that arise from the military member's covered active duty or call to covered active duty status;
4. Making or updating financial and legal arrangements arising the military member's covered active duty or call to covered active duty status;
5. Attending counseling provided by someone other than a health care provider, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member;
6. Spending up to 15 calendar days with a military member who is on rest and recuperation leave;
7. Attending or addressing post-deployment activities following either termination of the military member's covered active duty

status or death of the military member while on covered active duty status;

8. Addressing activities related to the parental care for the military member's parent who is incapable of self-care when the care is necessitated by the military member's covered active duty or call to covered active duty status; and
9. Attending or addressing any other activities or events that arise from the military member's covered active duty or call to covered active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

**SERIOUS INJURY OR ILLNESS – means:**

1. in the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; or
2. in the case of a covered veteran means an injury or illness that was incurred by the veteran in the line of duty on active duty in the Armed Forces (or existed before the veteran's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces), and that is either:
  - a) a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or
  - b) a physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or
  - c) a physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or



- d) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

**11.4.3 Procedure.**

Requests for family leave of absence shall be made in writing by filling out the appropriate form and submitting it to Human Resources. The request shall state specifically the reason for the request, the date when it is desired to begin the leave and the probable date of return. Requests for leave under FMLA and CFRA do not require a statement identifying the condition necessitating the leave. The Human Resources Office will notify the employee that the leave has been designated as applicable leave.

The City may designate as qualifying leave a workers' compensation injury which also constitutes a serious health condition. Thus, the employee receives both the workers' compensation benefits and the leave benefits under this section.

**11.4.4 Leave Increments.**

The leave must be taken in increments of at least one hour for recurring medical treatments certified by a health care provider.

**11.4.5 Continuation Of Benefits During Leave Of Absence Without Pay.**

The City shall request certification from the attending health care provider to verify the serious health condition of a family member. Such certification should include the following statements:

- Date on which the serious health condition commenced;
- Probable duration of the condition;
- In the case of caring for a family member, an estimate of the amount of time the employee needs to care for the individual;
- That the serious health condition warrants participation of a family member to provide care during the period of treatment. (In the case of an employee's own serious health condition, these provisions shall also apply as well as notification that the employee is unable to perform the function of his or her position. The City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee, but paid for by the City.)

**11.4.6 Employee Notice of Leave.** Although the City of San Clemente recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need

for leave. If leave is foreseeable, at least thirty (30) calendar days advance notice is required. If the event necessitating the leave becomes known to the employee less than thirty (30) calendar days prior to the employee's need for a leave, the employee shall provide the City as much advance notice as possible. If an employee's need for a family care leave is foreseeable, due to a planned medical treatment or planned supervision of a child, parent, or spouse or domestic partner with a serious health condition, an employer may require the employee to provide reasonable advance notice of the need for the leave and to consult with the City regarding the scheduling of the treatment or supervision so as to minimize disruptions to the operation of the City. Any such scheduling, however, shall be subject to the approval of the health care provider of the child, parent, or spouse, or domestic partner.

- 11.4.7 Right to Reinstatement.** Upon expiration of an authorized leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period. Reinstatement provisions are not applicable if the position is eliminated as a result of a reduction in force or elimination of service while the employee is out on leave.

Whenever possible, a reinstatement date will be agreed upon at the beginning of the leave. The employee will then be reinstated on the date agreed upon. If no date has been agreed upon at the beginning of the leave, or if the reinstatement date differs from the original agreement, an employee may be reinstated as soon as possible after the employee notifies the City of his/her readiness to return.

- 11.4.7.1 Reinstatement of Key Employees.** The City may not deny family care leave when an employee is eligible, but reinstatement may be denied to a key employee who is among the highest paid ten percent (10%) of the City's employees as provided herein. A denial for reinstatement may be given if it is necessary to prevent substantial and grievous economic injury to the operations of the City. The City will notify the employee of the intent to refuse reinstatement at the time the City determines that refusal is necessary to prevent substantial and grievous economic harm to the City.

- 11.4.8 Fitness-for-Duty Certification.** As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform his/her job, the employee must obtain and present a fitness-for-duty certification from the health care provider that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.

**11.4.9 Submittal of Forms.** The request for family leave shall be submitted on forms provided by the City.

**11.5 Military Leave.**

Military leave shall be granted in accordance with the provisions of State and Federal Law. All employees entitled to military leave shall give his/her Department Head written notice of the dates of such leave and shall provide a copy of the documents ordering such military service.

**11.6 Industrial Disability.**

**11.6.1 Industrial Disability Leave.**

The City shall provide Workers' Compensation benefits for all employees as required by state law.

An employee absent from work as a result of injury or illness covered by Workers' Compensation shall utilize sick leave for the first three (3) calendar days of industrial disability leave. Beginning on the fourth calendar day of absence from work for industrial disability leave, the employee shall be paid accrued sick leave to supplement any due temporary disability benefits up to an amount which results in the employee receiving his/her usual gross salary. If the employee has not accrued sick leave or if the employee depletes his/her sick leave accrual during the industrial disability leave period, the employee shall be given the option of utilizing his/her accrued vacation and/or compensatory time to supplement any due temporary disability benefits or shall be placed on industrial disability leave without pay. During a period of industrial disability leave without pay, any due temporary disability payments will be made directly to the employee from the City or from the City's adjusting firm and no City payroll check will be issued to the employee. During this period, all payroll deductions will be suspended; retirement contributions by the City will also be suspended. The City will pay its share of employee and dependent group insurance premiums. Employees who have an employee contribution toward the group insurance coverage shall continue to contribute the amount he/she normally would contribute.

**11.6.2 Documentation of Industrial Disability Leave.**

All City employees who lose time from work as a result of injury or illness covered by Workers' Compensation shall receive a medical examination and, when required, treatment. The City Human Resources Manager may approve industrial leave without medical examination on the day of injury. Medical treatment documentation forms prescribed by the Human Resources Manager shall be returned to the City whenever an employee loses time from work as a result of an industrial disability injury or illness.

**11.6.3 Termination for Medical Reasons.**

If any employee is determined, through review of medical evidence, to be physically or psychologically disabled and unable to perform the duties of his/her position due to industrial injury/illness, the employee may be terminated

for inability to perform the duties of his/her position. Such termination may occur after twelve (12) months of cumulative industrial disability leave or earlier if the medical evidence indicates that the disabling medical/psychological condition is permanent and stationary. The City will make efforts to place the disabled employee in such a position where his/her disability will not affect the performance of duties or endanger him/herself or others. Termination for reasons of medical or psychological disability shall be preceded by written notification to the employee of the intent to terminate and citing the medical/psychological reasons for the termination. If, within five (5) City Hall working days, the employee so requests in writing, the City Manager, or his/her designee, shall provide an opportunity for the employee to respond to the psychological/medical findings in writing or orally and such response shall be considered by the City Manager, or his/her designee. A written decision shall be provided to the employee within ten (10) City Hall working days following receipt of the employee's response. The decision of the City Manager, or his/her designee shall be final.

**11.6.4 Designation of Personal Physician.**

Pursuant to guidelines established in the Labor Code and Workers' Compensation Rules and Regulations, any employee may notify the City in writing of the name of his/her personal physician for treatment of Workers' Compensation injuries which may occur after the date of such notice.

**11.7 Industrial Disability Leave - Public Safety Employees.**

The City shall provide Workers' Compensation benefits for all employees as required by applicable state law for public safety employees.

**11.7.1 Sick Leave.**

Sick leave shall not be used for industrial disability leave or upon receipt of an industrial disability retirement from the Public Employees' Retirement System in the case of public safety employees.

**11.7.2 Termination for Medical Reasons.**

If, after twelve (12) months of cumulative industrial disability leave, an employee is determined (through review of medical evidence) to be physically or psychologically disabled and unable to perform the duties of his/her position due to industrial injury/illness, the employee may be terminated for inability to perform the duties of his/her position. The City will make efforts to place the disabled employee in such a position where his/her disability will not affect the performance of duties or endanger him/herself or others.

Termination for reasons of medical or psychological disability shall be preceded by written notification to the employee of the intent to terminate and citing the medical/psychological reasons for termination. If within five (5) City Hall working days the employee so requests in writing, the City Manager, or his/her designee, shall provide an opportunity for the employee to respond to the psychological/medical findings in writing or orally and such response shall be considered by the City Manager or designee. A written decision shall be

provided to the employee within ten (10) City Hall working days following receipt of the employee's response. The decision of the City Manager or his/her designee shall be final.

#### **11.8 Modified Duty.**

It is the policy of the City to provide temporary modified work assignments to industrially injured employees whenever possible and available in accordance with any work restrictions.

Modified duty assignments are of a temporary nature. Once an injured worker is declared by his/her treating physician to be permanent and stationary, a job analysis may be conducted to determine what, if any, level of accommodation may be required for continued employment.

#### **11.9 Pregnancy Disability Leave.**

An employee who is disabled because of pregnancy, childbirth, or a related medical condition is entitled to an unpaid pregnancy disability leave for up to four (4) months, or the number of days or hours an employee would normally work in seventeen-and-one-third (17 $\frac{1}{3}$ ) weeks. For employees who work more or less than forty (40) hours per week, the number of working days that constitutes four (4) months is calculated on a proportional basis.

##### **11.9.1 Notice Requirements.**

An employee request for reasonable accommodation, transfer, or pregnancy disability leave under the Pregnancy Disability Leave Law must be made to the employee's supervisor or Department Head at least thirty (30) days in advance if the need for the reasonable accommodation, transfer, or leave is foreseeable. The employee shall consult with his/her supervisor or Department Head and make a reasonable effort to schedule any planned appointment or medical treatment to minimize disruption to the City's operations, subject to the health care provider's approval.

If thirty (30) days advance notice is not practicable, because it is not known when reasonable accommodation, transfer, or leave will be required to begin, or because of a change in circumstances, a medical emergency, or other good cause, the employee must give notice as soon as practicable.

If an employee fails to give timely advance notice when the need for reasonable accommodation or transfer is foreseeable, the City may delay the reasonable accommodation or transfer, until thirty (30) days after the date the employee provides notice to the employer of the need for the reasonable accommodation or transfer. However, under no circumstances will the City delay the granting of an employee's reasonable accommodation or transfer if to do so would endanger the employee's health, her pregnancy, or the health of her co-workers.

**11.9.2 Medical Certification.**

Every employee request for reasonable accommodation, transfer, or pregnancy disability leave under the Pregnancy Disability Leave Law must be supported by medical certification to be granted. Medical certification shall be made by the employee's health care provider on a form provided by Human Resources. The medical certification from the employee's health care provider must state that the employee is disabled from working by pregnancy, childbirth or a related medical condition. The certification must state the expected duration of the disability and the expected date of return to work.

**11.9.2.1** The employee shall furnish medical certification from a health care provider at the time the employee requests reasonable accommodation, transfer or leave, or, in the case of unforeseen leave, within two business days after the leave commences.

When providing medical certification thirty (30) days before a foreseeable leave is not practicable, the employee shall provide the medical certification to the employer within 15 calendar days after the City's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

**11.9.2.2** The City may request certification or recertification at some later date if it has reason to question the appropriateness of the reasonable accommodation, transfer, or leave or its duration.

**11.9.2.3** The City may delay granting the reasonable accommodation, transfer or leave to an employee who fails to provide timely certification, until the required certification is provided.

When the need for reasonable accommodation, transfer or leave is not foreseeable, or in the case of recertification, an employee shall provide certification (or recertification) within 15 days of the City's request or as soon as reasonably possible under the circumstances (e.g., medical emergency). If an employee fails to provide a medical certification within a reasonable time under the pertinent circumstances, the City may delay the employee's continuation of the reasonable accommodation, transfer or pregnancy disability leave.

**11.9.2 Compensation During Leave**

Pregnancy disability leaves are without pay. The employee must use sick leave concurrently with pregnancy leave. After an employee's sick leave is exhausted, the employee may use accrued vacation leave, and then any other accrued paid leave (i.e., special leave, floating holiday, and compensatory time) concurrently with the pregnancy leave.

**11.9.3. Benefits During Leave**

The City will continue to maintain and pay for its portion of health insurance coverage for up to four (4) months while the employee is out on pregnancy disability leave. If the employee does not return to work following pregnancy disability leave, the City may recover premiums it paid to maintain health insurance coverage, unless the employee does not return because the employee is taking leave under the CFRA or because of the continuation, recurrence, or onset of a health condition that entitles the employee to leave under the CFRA or other circumstances beyond the employee's control.

Sick leave and vacation leave do not accrue while an employee is on unpaid pregnancy disability leave. (See sections 8.1.6 and 8.2.12.)

**11.9.4 Reinstatement**

Upon the expiration of pregnancy 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. 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.

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 a potential reasonable accommodation.

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

Upon the expiration of pregnancy disability leave, if an employee takes a CFRA leave for reason of the birth of her child, the employee's right to reinstatement to her job is governed by CFRA.

**11.9.5 Pregnancy Disability Leave and FMLA/CFRA Leaves**

Pregnancy disability leave is FMLA qualifying and any pregnancy disability leave will be counted against an employee's FMLA leave entitlement. However, pregnancy disability leave and CFRA leave are two separate leave entitlements.

**RULE 12.0 - GRIEVANCE PROCEDURE. (See SCCEA MOU)**

**12.1** A "grievance" is a formal written allegation by a grievant that he/she has been adversely affected by an existing violation, misinterpretation, or misapplication of one or more specific provision(s) of a current Memorandum of Understanding (MOU). Actions to challenge or change the policies of the City as set forth in these rules must be undertaken under separate processes. Other matters, including discipline, for

which a special method of review is provided by these rules, shall not be within the scope of this procedure.

## **12.2 Informal Procedure.**

**12.2.1** Effort shall be made to resolve a grievance through discussion between the employee and the immediate supervisor. It is the spirit and the intent of this procedure that all grievances are settled quickly and fairly without any subsequent discrimination against employees who may seek to adjust a grievance. Effort should be made to find an acceptable solution at the lowest level of supervision.

If the problems cannot be resolved between the employee and the supervisor, the employee may within seven (7) calendar days from the date of receiving an answer from the supervisor, request and be granted an interview with the division manager, if a division manager exists in order to discuss the grievance. If the potential grievance is not resolved through this informal procedure, the employee may proceed to the formal procedure.

## **12.3 Formal Procedure.**

**12.3.1** Within fifteen (15) calendar days of the occurrence or within fifteen (15) calendar days of when the employee could reasonably have known of the occurrence of the act or omission giving rise to the grievance, the employee must present his/her grievance in writing to the Department Head; however, this formal grievance procedure may be followed only after failure to resolve the problem through the informal procedure.

**12.3.2** The employee shall provide a clear and concise statement of the grievance identifying the specific provision(s) of a Memorandum of Understanding alleged to have been violated, the circumstances involved, the decision rendered through the informal procedure, the specific remedies sought, and, if desired, a request for an interview with the Department Head.

**12.3.3** The Department Head shall render a decision in writing within fifteen (15) calendar days of receiving the appeal. If the Department Head and the employee are unable to arrive at a satisfactory solution, the employee may within fifteen (15) calendar days from the date of the decision by the Department Head submit a written appeal to the City Manager.

**12.3.4** The City Manager or his/her designee shall review the grievance and respond to the employee within twenty (20) calendar days of receiving the appeal. Either the employee or the City Manager or his/her designee may request and be granted a personal interview within the foregoing time limits, to discuss the grievance. The City Manager's, or his/her designee's, response shall be in writing and shall be considered an expression of management's viewpoint and shall be final.



## **12.4 General Provisions.**

- 12.4.1** If at any step of the informal and formal grievance procedures the employee allows the time limit to elapse, the grievance shall be considered withdrawn.
- 12.4.2** Time limits may be extended by mutual, written consent.
- 12.4.3** At any step of the informal or formal grievance procedure, the employee, supervisor, division head, Department Head, and/or City Manager (or his/her designee) may request that a representative of the Human Resources Division participate in any discussion which may take place.
- 12.4.4** The employee may request the assistance of another person of his/her own choosing in preparing and presenting an appeal at any level of review.
- 12.4.5** Employees shall be assured freedom from reprisal for using the grievance procedure.
- 12.4.6** Any failure by the City to respond to a grievance within the time frame contained in this Article shall be deemed a denial entitling the employee to proceed to the next level of appeal. However, the final response as given by the City Manager or his/her designee, shall be in writing within the time frame prescribed.

## **RULE 13.0 – SEPARABILITY.**

If any provision(s) of these rules or the application of such provision(s) to any person or circumstance, shall be held invalid, the remainder of the rules, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

## **RULE 14.0 – WORK RULES.**

### **14.1 Purpose and General Information.**

In order to maintain an orderly and safe place to work, the following work rules have been established. These rules are not meant to be exhaustive, but are a general outline of behavior or actions that are not acceptable for employees of the City of San Clemente. The rules are established to ensure that all employees are aware of these rules and are aware that documented, willful violation of these rules may result in disciplinary action.

Individual departments may have individual work rules and regulations specific to their own operation.

### **14.2 Severity of Infraction.**

The nature of disciplinary action taken depends on the severity of the offense, the nature of the offense and the circumstances surrounding the offense. All of these must be considered by the supervisor when determining when and if disciplinary action should be

taken. The purpose of discipline is to improve the performance, efficiency and morale of City employees. Any action or willful misconduct which reflects discredit to the City, hinders the performance of City functions or is improper employee conduct, is cause for disciplinary action.

#### **14.3 General Work Rules**

No employee shall engage in, encourage or assist in any of the following activities or behavior noted below. Specific grounds for discipline include:

- 14.3.1** Incompetence, inefficiency, negligence or dereliction of duty;
- 14.3.2** Dishonesty, intemperance, discourteous treatment of the public or a fellow employee, any act of omission or commission harmful to City interests, or any other willful misconduct;
- 14.3.3** Offensive, disgraceful or prejudicial conduct;
- 14.3.4** Drunkenness, the use, or possession during working hours of alcoholic beverages, narcotics, habit-forming drugs or other substances which might impair mental or physical fitness;
- 14.3.5** Conviction for any felony crime, or for a misdemeanor involving moral turpitude;
- 14.3.6** Making false or fraudulent statements;
- 14.3.7** Willful or intentional violation of any lawful regulation, order or direction made or given by a supervisor or manager;
- 14.3.8** Possession of explosives, firearms, weapons of any type or hazardous substances while on the job or on City property unless specifically authorized;
- 14.3.9** Misuse or abuse of public property, waste of public supplies or misuse of public funds;
- 14.3.10** Failure to hold and maintain necessary licenses, certifications or endorsements;
- 14.3.11** Falsifying reports or records;
- 14.3.12** Willful or intentional violation of announced City policies or department rules;
- 14.3.13** On-going conduct harmful to efficiency or morale;
- 14.3.14** Deliberately and knowingly disclosing information known to be confidential in nature;
- 14.3.15** Stealing, willful damage, willful abuse or willful destruction of City property or the property or equipment of another employee or the public;

- 14.3.16** Removing City property from City premises without authorization/permission;
- 14.3.17** Reckless driving or illegal operation of a City vehicle;
- 14.3.18** Unauthorized use of City property or City vehicles;
- 14.3.19** Indecent or morally offensive behavior while on duty and in violation of state, local and/or federal law;
- 14.3.20** Fighting, coercing, interfering with or threatening injury or harm to other employees, the public or supervisors;
- 14.3.21** Careless, reckless or unsafe conduct, endangering the employee him/herself, fellow employees, the public or City or private property;
- 14.3.22** Discourteous treatment of the public, fellow employees or supervisors;
- 14.3.23** Sleeping while on duty;
- 14.3.24** Deliberately delaying or restricting services or work efforts or inciting others to do the same;
- 14.3.25** Selling, soliciting or distributing literature or goods on City premises and time without permission;
- 14.3.26** Posting unauthorized material on City bulletin boards or removing or defacing notices thereon without permission. City bulletin boards are considered to be those bulletin boards located on City premises in facilities furnished and maintained by the City;
- 14.3.27** Leaving regularly assigned work locations without supervisor's knowledge and permission except to take usual breaks and lunch periods or to perform assigned work duties;
- 14.3.28** Deliberate failure to observe scheduling rules regarding assigned work days, starting and quitting times, breaks and lunch periods established by a supervisor;
- 14.3.29** Misuse of time on the job;
- 14.3.30** Unauthorized tardiness or excessive absenteeism;
- 14.3.31** Insubordination, which is the refusal to perform any work as directed by a supervisor, manager, Division Head, and/or Department Head; except in such cases where the activity directed would violate a local, state or federal safety regulation or is illegal;

- 14.3.32 Political campaigning of any kind on City premises, while on duty or while in a City uniform or using one's official City title or position in connection with political campaign literature or activities;
- 14.3.33 Any form of harassment or discrimination in the workplace. This includes but is not limited to harassment or discrimination based on sex, race, national origin, religion, disability, age, or sexual orientation;
- 14.3.34 Unauthorized absence;
- 14.3.35 Abuse of sick leave privileges;
- 14.3.36 Dishonesty; and
- 14.3.37 Any act or acts which are incompatible with or contrary to the public service.

**14.4 Exception for At-will Employees.**

- 14.4.1 At-will employees are not subject to the Human Resources policies and/or rules relating to disciplinary procedure and appeals.

**14.5 Authorized Disciplinary Actions.**

- 14.5.1 **Authorized Actions.**  
Employees are subject to the following disciplinary actions:

- 14.5.1.1 Termination;
- 14.5.1.2 Suspension without pay;
- 14.5.1.3 Demotion;
- 14.5.1.4 Written Reprimand;
- 14.5.1.5 Oral Warning;
- 14.5.1.6 Counseling.

If the City determines that it is in its best interest to have an employee meet with a trained, professional counselor, the City may, at any time, require an employee to attend mandatory counseling. Such counseling shall be scheduled during an employee's regular work schedule, no leave time shall be required to be used by the employee, and the cost of such counseling sessions shall be borne by the City. The City shall have the right to terminate any counseling, and the choice of professional counselor is at the City's sole discretion. If the City terminates the mandatory counseling, and the employee elects to continue seeing a counselor, the employee shall use his/her own leave time, if the

request is approved, and shall be responsible for all costs associated with such counseling.

**14.6 Relief of Duty.**

A Department Head or manager may temporarily relieve an employee from duty, with pay, pending completion of an investigation to determine if disciplinary action is to be taken. If disciplinary action is required, paid time off defined as administrative leave, will be reflected at that time, in the employee's payroll record.

**14.7 Assistance.**

Supervisors, managers and Department Heads considering disciplinary action are encouraged to consult with the Human Resources Manager before imposing discipline. The Human Resources Manager must be consulted before imposing discipline at or above the level of a Written Reprimand.

**14.8 Disciplinary Authority.**

**14.8.1 Managers and Supervisors.**

Depending upon the circumstances, supervisors and managers are expected to counsel employees before more severe disciplinary action is taken. Supervisors and managers may also issue oral warnings, written reprimands, and relieve employees from duty (with pay) pending completion of investigations. Managers may recommend more severe disciplinary action to the Department Head.

**14.8.2 Department Heads.**

Department Heads may issue counseling, oral warnings, written reprimands, relieve employees from duty (with pay) pending completion of investigations, suspend employees without pay, demote employees, and may terminate an employee.

**14.8.3 Pre-disciplinary Procedures.**

**14.8.3.1** The following procedures shall be followed when, in the judgment of the Department Head, an employee in the competitive service has committed an act or omission that justifies a particular disciplinary action. In the case of any member of the staff of the City Manager's office, the City Manager shall, for the purpose of this section (14.8.3), be considered to be a Department Head.

**14.8.3.2** The progressive discipline process includes the following:

- Counseling
- Oral Warning
- Written Reprimand

- Suspension/Demotion
- Termination

Based upon the specifics of an employee's behavior, he or she may receive any level of discipline. A Counseling, an Oral Warning, or a Written Reprimand are not appealable; however, an employee may submit a written response if desired.

**14.8.3.3** In case of termination, demotion or suspension with loss of pay, a manager or the Department Head shall advise the employee of the contemplated disciplinary action and the reasons therefore in writing and shall give the employee a copy of the charges and any and all materials upon which the action is based. The employee shall have the opportunity to respond either orally or in writing to the Department Head prior to the effective date of the action.

A post disciplinary hearing shall be provided at the employee's request, subject to the appeals procedure outlined in 14.8.4.5 below. Notwithstanding the referenced appeals procedure that provides for City Manager discretion in the selection of an advisory hearing officer, the San Clemente City Employees' Association ("Association") may request the use of an advisory hearing officer, selected in the same manner as noted in Article XXXIV – Disciplinary Hearings, of the SCCEA MOU. In such cases where the Association requests a hearing officer selected in such a manner, the Association and the City shall share equally in the full cost and expenses of the hearing officer, and the appeal shall be heard by such hearing officer. The hearing officer request referenced in this paragraph shall only apply to positions represented by SCCEA.

#### **14.8.4 Appeal Procedures.**

**14.8.4.1** The appeal procedure described herein shall apply only to the demotion, suspension with loss of pay, or termination of a full-time regular employee in the competitive service. Additionally, it shall not be applicable to at-will employees, nor to a counseling, an oral warning, or a written reprimand.

**14.8.4.2** Following a review of a proposed disciplinary action by the employee's manager, the manager shall cause to be served on the employee affected, by certified mail or personal delivery, a statement signed by the manager of the specific charges against the employee. This statement shall clearly inform the employee that he/she has the right to respond orally and/or in writing and shall give the date and time that a predisciplinary Skelly Conference will be held.

- 14.8.4.3** If the employee does not submit a written response and does not show up for the Skelly Conference, unless good cause for the failure is shown, the proposed action of the manager shall be considered conclusive and shall take effect as prescribed by the manager, if the Department Head supports the proposed action.
- 14.8.4.4** The time for the Skelly Conference may be continued by the Department Head if good cause is shown.
  - 14.8.4.4.1** The Department Head may confirm or alter the proposed disciplinary action. However, in no case shall a higher level or amount of discipline be imposed by the Department Head.
  - 14.8.4.4.2** The decision of the Department Head may be appealed to the City Manager as outlined below.
- 14.8.4.5** The City Manager may hear the appeal or may appoint a hearing officer to conduct the hearing on the appeal under the following considerations:
  - 14.8.4.5.1** At the hearing, the City Manager or hearing officer shall determine the relevancy, weight and credibility of all the testimony and evidence and shall base his/her findings upon the preponderance of the evidence.
  - 14.8.4.5.2** Each side will be permitted an opening statement and a closing argument. The City Manager or hearing officer shall first hear testimony from the City's witnesses and the evidence to sustain the charges. The employee will then present his/her witnesses and evidence in his/her defense. All testimony shall be taken under oath or affirmation.
  - 14.8.4.5.3** Each side will be allowed to ask questions of the other at the hearing.
  - 14.8.4.5.4** Both the City and the employee may be allowed to be represented by legal counsel or other designated representatives.
  - 14.8.4.5.5** The City Manager or hearing officer may, and shall, if requested by the City and/or the employee, subpoena witnesses and/or require the production of records or other material evidence.

**14.8.4.5.6** The City or employee or his/her representative may request that a formal audio recording of the hearing be made. The cost of an audio tape recording of the hearing shall be borne by the City. If any other type of recording is requested, the requesting party shall pay for all related costs. If another type of recording is requested by the employee or his/her representative, and, as a result of a final decision, the employee is cleared of all charges and disciplinary action, the employee or his/her representative shall be reimbursed for the cost of the recording.

If a written transcript of a tape recording is requested, the full cost shall be borne by the requesting party.

**14.8.4.5.7** If the City Manager requested a hearing officer, the hearing officer must render his/her recommendation to the City Manager within thirty (30) calendar days after hearing the appeal, unless there are extenuating circumstances.

If the City Manager appoints a hearing officer, within thirty (30) calendar days of receipt of the hearing officer's recommendation, the City Manager may adopt the proposed recommendation in its entirety or may reduce the proposed penalty and adopt the balance of the recommendation, or the City Manager may decide the matter upon the record, including any transcript, with or without taking additional evidence, or may refer the case to the same hearing officer to take additional evidence.

In the absence of a hearing officer, the City Manager shall rule on the appeal within thirty (30) calendar days after conclusion of the hearing, unless there are extenuating circumstances, and may sustain or reject the charges and shall determine the appropriate disciplinary action, provided, however, the City Manager may not increase the disciplinary action. The City Manager's decision shall be final, and shall be provided to the employee, the Department Head, and the Human Resources Manager in writing.



**RULE 15.0 – CATASTROPHIC ILLNESS AND INJURY DONATION.**

**15.1** Banks for individuals in need shall be established to accept donations of accrued vacation, compensatory time, or administrative leave in accordance with the following guidelines:

**15.1.1** All donations are voluntary and subject to taxation in accordance with applicable state and federal regulations. Employees receiving the donated time shall be responsible for the payment of taxes.

**15.1.2** Employees may donate vacation, compensatory time, or administrative leave to the eligible employee. In no event shall sick leave be donated.

**15.1.3** Leave donations must be made in two hour increments.

**15.1.4** All leave donations will be submitted to Human Resources and remain confidential.

**15.1.5** Leave donations will be accepted during approved periods of request for donations.

**15.1.6** Once a donation is made, it cannot be revoked.

**15.2** Use of donated time shall be in accordance with following guidelines.

**15.2.1** Additional City paid leaves such as vacation and sick leave shall not continue to accrue on donated time. Holiday compensation shall not be given when on catastrophic leave. Catastrophic leave shall be used to cover any holiday that occurs during the leave.

**15.2.2** Use of donated time shall be coordinated with other applicable benefits whenever possible (long term disability income). At no time shall the combined leaves result in total payments greater than the employee's base salary.

**15.3** Eligibility criteria for accessing the leave donation bank.

**15.3.1** All regular and benefited part-time employees shall be eligible.

**15.3.2** Either of the following: (1) The employee must be experiencing a diagnosed catastrophic or life threatening illness/injury; or (2) The employee's assistance is required to care for an immediate family member with a diagnosed catastrophic or life threatening illness/injury.

**15.3.3** When on leave the employee shall first exhaust his/her personal leave accounts such as vacation, compensatory time, floating holiday, administrative leave and special leave before becoming eligible to participate in the catastrophic leave program.

**15.3.4** The employee's department head, or designee, has approved a written request for donations accompanied by a medical statement from the employee's, or immediate family members, attending physician. The statement must include and verify the need for extended medical leave and an estimate of the time the employee will be unable to work.

**ELIGIBILITY** - All non-probationary employees who exhaust all their accrued time on the books and who can reasonably foresee that their illness or injury will continue past the time when they will be on paid status.

**IMMEDIATE FAMILY** - is defined as spouse, children and parents only.

**15.4 Procedure.**

Eligible employees may submit a written request to their Department Head or designee.

The Department Head shall review the request, obtain additional information, if necessary, and make a recommendation to the Human Resources Manager.

The Human Resources Manager shall review the request against the eligibility criteria and, if satisfactory, submit the request to the City Manager for approval.

Human Resources shall notify the Department Head, employee and payroll of the approvals. Payroll shall handle the completion of the time sheet.

When necessary, Human Resources shall post on all employee bulletin boards or other communication media, the need for donated time and necessary authorization forms.

The donation request shall contain no confidential medical information.

Donated hours shall be processed bi-weekly as donations and requests for donations are authorized. Once the request is satisfied or no more hours are donated, the process will be completed until another employee in need is identified.

Employees who wish to donate time, shall complete an authorization form which allows for the transfer of such donated time. All authorizations shall be sent in confidence to the Human Resources Manager. Names of employees who donate time will under no circumstance be released or made public.

The City shall convert the donated time to a dollar value at the hourly base salary rate of the donor. The dollar value of the donated time shall then be converted to catastrophic leave at the hourly base rate of the recipient of the donation. The appropriate number of catastrophic leave hours will be added to the recipient's

catastrophic leave account for use during his/her leave due to the catastrophic illness or injury condition.

Human Resources shall be responsible for the administration of the donation requests.

## **RULE 16.0 - MISCELLANEOUS.**

### **16.1 Work Schedules.**

**City Business Hours:** City Hall departments/divisions will be open to the public between the hours of 7:30 a.m. and 5:30 p.m., Monday through Thursday and 8:00 a.m. and 5:00 p.m. every other Friday, depending on the work schedule. It shall be the responsibility of each Department Head to schedule employees to adequately serve the public between those hours.

All other departments are to schedule their operations to be tied to City Hall business hours as closely as possible. Non-City Hall departments may schedule their hours as necessary to provide effective services to the public. Access to certain services may be limited during periods in the work day. Such limit status must be justified due to workload demand and/or resources. The City Manager must approve all service limit changes.

**Employee Work Schedules:** Unless otherwise approved, employees shall work a 9/80 work schedule comprised of eighty (80) hours over eight (8) nine (9)-hour work days and one (1) eight (8) hour work day per departmental work period.

Alternate work schedules may be approved for individual employees, a work unit within the department, or for an entire department. The basic rules for the 9/80 work schedule and alternative schedules is covered by the SCCEA MOU, under - Work Schedules.

Criteria for approving alternate work schedules shall include, but are not limited to:

1. Productivity, service and accessibility to the public will not be decreased.
2. There will be no adverse effects on the operation of any City department or work unit.
3. There is no cost to the City.

Requests from employees may be submitted in written form to the Department Head with the rationale for making the request. Both the Department Head and the City Manager must approve the request. The decision of the City Manager is final and binding.

### **16.2 Meal and Rest Periods.**

#### **Meal Periods**

Meal periods are required for all employees who work in excess of six (6) hours in a day. Meal periods are unpaid and in most instances allow the employee to leave the work site. If the employee is required to work during the meal period, the time is paid.

Meal periods may be thirty (30) or sixty (60) minutes in duration depending upon the operational needs of the work unit.

Employees should take their meal breaks during the middle of their work period. For example, most employees who work during the hours of 7:30 a.m. to 5:30 p.m. will take their thirty (30) or sixty (60) minute lunch break during the 11:30 a.m. to 2:00 p.m. period.

Employees may meet with managers and provide input for preference of thirty (30) minute or sixty (60) minute meal period. The recommendation of the division manager will be forwarded to the Department Head for final approval. If a work unit or employee wishes to appeal the Department Head's decision, the request and reasons for the appeal must be submitted by the employee or group in writing to the City Manager who will be the final authority.

#### **Rest Periods**

Full time employees are allowed to take two rest periods during their work shift. The rest periods are divided into two (2) fifteen (15) minute breaks; one in the first part of the shift and one in the second part of the shift. Rest periods are considered time worked and therefore paid.

### **16.3 Harassment and Discrimination Prevention.**

It is the policy of the City of San Clemente to assure equal employment opportunity and fair employment practices to all persons. The law holds the City responsible to ensure a workplace free of discrimination and harassment; therefore, the City must be proactive in its prevention efforts. Harassment and/or discrimination of an employee by a supervisor, management employee or co-worker on the basis of race, color, religion, national origin, ancestry, citizenship status, physical or mental disability, medical condition, marital status, sex, sexual orientation, pregnancy, childbirth, or related medical conditions, gender identity, gender expression, genetic information, or age or on any other basis protected by law will not be tolerated. Harassment by supervisory personnel is particularly serious and courts have held employers strictly liable and awarded punitive damages when a manager or supervisor is the perpetrator.

The City is committed to a policy of preventing discrimination and harassment in all employment practices including work assignments, recruitment, selection, promotions, transfers, training, compensation, benefits and discipline. The City resolves to develop and monitor programs and processes that will ensure constant and consistent adherence to this policy. All City employees are expected to adhere to this policy and to fully cooperate in the implementation of the goals and objectives established. In addition, the City requires that all its contractors, subcontractors and vendors not harass or discriminate in the employment and treatment of persons.

#### **Violation of Policy**

Violation of these policies will generally constitute grounds for discipline, up to and including discharge. It is important that all employees understand the City's position relative to this subject. All executives, managers, and supervisors are responsible for implementing and monitoring compliance with these policies. It shall be a violation of City policy for an employee to retaliate in any way against an employee for submitting a

complaint of discrimination and/or harassment or cooperating in an investigation involving same.

### **Harassment**

Harassment includes, but is not limited to:

Verbal Harassment – including, but not limited to, for example, epithets, derogatory comments or slurs on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, sex, sexual orientation or age.

Physical Harassment – including, but not limited to, for example, assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, sex, sexual orientation or age.

Sexual Harassment – including, but not limited to, for example, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature which is conditioned upon an employment benefit, interferes with an individual's work performance or creates an offensive work environment. Harassment in which a supervisor or other authority demands sexual favors in exchange for job benefits is termed "quid pro quo" harassment.

Sexual harassment can be identified as something deliberate, as explicit, coercive sexual behavior which infers an attempt to control, influence or affect the career, salary, job or working conditions of another employee.

Sexual harassment can also be identified as conduct of a sexual nature that is neither explicit nor even specifically directed at the victim, but rather creates a hostile or offensive work environment.

Some subtle forms of sexual harassment are: referring to women as "girls", men as "boys", or using demeaning, inappropriate, and unwelcome terms of endearment while at work; comment(s) directed at the way a person looks, rather than commenting on the quality of his/her work; interrupting a person who is talking about work with comments about his/her appearance or physical attributes; eye contact, staring or gazing at a person in a way that implies a sexual message or relationship; flirting; teasing, touching, joking propositions, or comments filled with sexual innuendo or double meanings; telling (a) joke(s) with a sexual meaning, tone, or implicating; and displaying (a) cartoon(s), calendar(s), picture(s), desk object(s), or pin-up(s) which convey a sexual message, tone, or implication or make a joke of another person's appearance.

### **Discrimination/Harassment Complaint Procedure**

#### Confidentiality

Efforts will be made to protect the privacy of the parties involved in a discrimination or harassment complaint. Files pertaining to complaints handled under this process will be handled with a high a degree of confidentiality. They will be available on a "need

to know" basis as determined by the Human Resources Manager or a designee thereof. Identities should not be disclosed except to the extent necessary to continue the investigation. Statements made by employees should not be disclosed to other employees except as necessary to elicit specific, relevant and necessary information from the employee.

#### Informal Complaint Process

Typically, an employee who feels he or she has a discrimination or harassment complaint should discuss the matter with the immediate supervisor immediately. If the employee chooses, he/she may elect to be represented or may choose to represent him/herself. The right to representation shall not limit supervisory authority to take appropriate, immediate corrective action when circumstances warrant. Ideally, if the employee is comfortable with it, he/she may process the complaint informally through the normal department chain-of-command. However, if at any time the employee does not believe the problem has been satisfactorily resolved or is not comfortable with proceeding through the chain-of-command, the employee should present the complaint to the Human Resources Manager. It is the responsibility of the person receiving the complaint to:

- A. Counsel the employee and outline the options available under the City's discrimination/harassment prevention policies and complaint procedures; and
- B. Assist the employee in immediately bringing the matter to the attention of the appropriate departmental official(s) to resolve the complaint at the earliest possible date; and
- C. Advise the employee that efforts will be taken to maintain confidentiality. However, depending on the information concerning the complaint, it may be necessary to take immediate and corrective action after having been made aware of the situation.

If the employee does not agree with the proposed resolution of the complaint, he/she may then file a formal complaint.

Nothing shall prohibit an employee from bypassing the informal complaint process and filing a formal complaint.

Nothing shall prohibit an employee from filing a complaint with the federal Equal Employment Opportunity Commission or the State Department of Fair Employment and Housing before or after filing a complaint with the City.

#### Formal Complaint Process

An employee who feels he/she has been harassed or discriminated against in violation of the City's Harassment and Discrimination Prevention Policy has the options of filing a formal complaint with 1) either the Department Head of the complainant or of the accused or 2) the Human Resources Manager. (Said official is herein referred to as the Complaint Investigator.) If the Human Resources Manager is not designated as

the Complaint Investigator, he/she shall work with the Complaint Investigator throughout the investigation to clarify City policies and assist ensuring proper conduct of the investigation.

This initial report can be oral or written. In the case of an oral report, the official will gather the pertinent information concerning the allegation and prepare a written statement constituting the complaint for the approval and signature of the complainant. The investigator shall ask the complainant what action would resolve the issue. The written and signed statement of the complaint will initiate a formal investigation into the matter. The City Manager's Office shall be notified that a complaint has been filed and that an investigation is proceeding.

Copies of the signed statement will be made available to the appropriate Department Head(s) and the Human Resources Manager.

Within seven (7) working days of receipt of the signed, written complaint, the investigation will proceed as follows:

- A. The Complaint Investigator shall contact the person(s) who allegedly engaged in discrimination or harassment and inform him or her of the basis for the complaint and give the individual and his/her representative an opportunity to respond. The person(s) accused shall have a right to have a representative present. The Complaint Investigator will give the accused a copy of the complaint. The Complaint Investigator will make a record of any response. The Complaint Investigator will give appropriate warning to the accused regarding future contact with the complainant.
- B. That/those person(s) shall then have seven (7) working days to respond to the complaint orally, in writing, or both. The response shall be directed to the Complaint Investigator. In the case of an oral response, the Complaint Investigator will prepare a written statement for the approval and signature of the person who allegedly engaged in discrimination or harassment.
- C. Upon receipt of the response, the Complaint Investigator will review, research and investigate, as necessary, to determine whether discrimination or harassment has occurred. The investigation may be expanded to include interviews with witnesses and supervisors as appropriate. The Investigator shall maintain a confidential record of information gathered in the investigation. The investigation shall be completed as quickly as possible. The Investigator has a duty to act in a reasonably timely manner given the circumstances and avoid delay.
- D. Within seven (7) working days of completion of the investigation, the Department Head(s) and Human Resources Manager will consult to review the proposed findings and consider the appropriate action to be taken. Action may include discipline, up to and including discharge.

Files should be made available to the accused employee, if there is a recommendation for discipline in conformity with the Skelly decision. The Department Head of the accused shall have the authority to determine what action will be taken after such consultation. The Human Resources Manager's review shall be for the purpose of ensuring compliance with the law and consistency with City policy.

A Department Head or the Human Resources Manager will be excluded from this procedure in cases where he/she is named as a person responsible for the alleged discrimination/harassment. In such cases, the authority to consider what action to take shall rest with the remaining officers and the Assistant City Manager. In such cases, the Assistant City Manager shall have the authority to determine what action will be taken.

- E. The Department Head shall notify both parties, in writing, of the findings and conclusions with copies to the Human Resources Manager, other Department Head, if appropriate, and the City Manager's Office. This decision shall be final unless the employee has a right to appeal the action taken against him/her under the City rules or a Memorandum of Understanding. The complainant shall be notified of the corrective action taken with due respect for the privacy rights of the affected employee(s).
- F. The person who allegedly engaged in discrimination or harassment retains all rights provided for in the Memorandum of Understanding and the City rules.

#### **16.4 Alcohol and Drug Use.**

City Employees are expected and required to report to work on time and in an appropriate mental and physical condition for work. It is the City's intent and obligation to provide a drug-free, healthful, safe and secure work environment.

Any unlawful manufacture, distribution, dispensing, possession or use of alcohol and/or a controlled substance is prohibited in the workplace or while conducting City business off City premises. Violations of this policy will result in disciplinary action up to and including discharge and may have legal consequences.

In the event that the use of drugs or alcohol impairs an employee's work, the City encourages counseling and other courses of treatment. Employees who voluntarily seek treatment may use sick leave to attend a bona fide treatment or counseling program. As part of a disciplinary action, the City may condition continued employment on successful completion of treatment or counseling programs and future avoidance of drugs and alcohol.

The City may discipline or dismiss an employee possessing, using, or being under the influence of drugs or alcohol during working hours. The City may also discipline or dismiss an employee who exhibits an on-going alcohol or drug dependency that impairs work performance or poses a safety risk.



An employee may be required to submit to drug or alcohol testing when reasonable suspicion exists that an employee is using drugs or alcohol and such use has impaired the performance of his or her job duties. The form describing the reasonable suspicion shall be provided by the Human Resources office, and a manager or supervisor shall obtain the approval of the City Manager, Human Resources Manager, or a designee of either before subjecting an employee to a drug or alcohol test based on reasonable suspicion.

Employees using any prescription or over-the-counter drug that might impair work performance shall immediately notify the appropriate supervisor. At the option of the supervisor, an employee may be reassigned to less hazardous duties.

**16.5 Smoking.**

Smoking by employees is prohibited in all City facilities and vehicles, including restrooms and lunch/break rooms.

**16.6 Contact With News Media.**

Only the City Manager, representatives designated by the City Manager and Department Heads may speak to the news media in an official capacity on behalf of the City on policy matters. Important policy questions and questions concerning pending or actual litigation should be referred to the Department Head or City Manager. Department Heads may designate specific employees to give out procedural, factual or historical information on particular subjects.

**16.7 Political Activities.**

Employees have the same right to campaign in support of or in opposition to a candidate or a ballot proposition as any other citizen. However, public funds and facilities may not be used, nor may the employee campaign on City time or in a City uniform or while representing the City in any way. Nor may employees allow any other person(s) to use City facilities or funds for political activities.

**Examples of Prohibited Activities (this list is not intended to be exhaustive):**

- Using City stationery, postage or copying equipment to make campaign literature;
- Compiling a mailing list from a list of business licenses or utility customers;
- Publishing a statement supporting a candidate using City equipment or correspondence;
- An employee using his/her job title or position to influence the outcome of an election (i.e., endorsements which include reference to the employee's City job title);
- An employee using City telephones to make calls in support of a candidate (at any time);
- An employee using City vehicles (including assigned vehicles) to attend rallies, to drop off mailers at a printer or to distribute campaign materials.

**Examples of Permitted Activities (this list is not intended to be exhaustive):**

- Stating an opinion regarding any political issue in ordinary conversation among workers, (and not with the public) during working hours, providing that

such a conversation does not interfere with the employee's assigned job duties;

- Stating an opinion regarding a political issue while on breaks or lunch time in non-public areas of City facilities;
- Campaigning by individual employees of the City so long as it is not done on City time and no City funds or equipment are used to subsidize the campaigning;
- Endorsements by employees so long as the employee does not use his/her title or City position and clearly indicates the opinion is an individual one and that it is not expressed or implied that the City itself is supporting the measure;
- Wearing a pin or button promoting or opposing a cause or candidate while on duty, provided the employee does not have direct citizen contact;
- Making individual campaign contributions.

#### **16.7.1 Federally Funded Programs.**

Political activities of employees whose positions are funded with federal money are governed by rules established by the United States Civil Service Commission and the Office of Personnel Management. Additionally, City employees who administer federal funds may also have their political activities limited under federal contract or rules.

#### **16.8 Duties in Adversarial Litigation.**

An employee who is asked or required to testify in person or by deposition in any trial or hearing to which the City is a party should immediately notify the Department Head, City Manager and the office of the City Attorney. If the request comes directly to the City, the Human Resources Manager will notify the employee(s) involved.

No employee may voluntarily serve as an expert witness on behalf of the City's adversary party. Employees must be subpoenaed by the adversarial party.

If employees are required by the City to testify, the time will be treated as hours worked.

#### **16.9 Driver's License Requirements.**

Based on the requirements of a job classification, an employee may be required to hold a valid California driver's license.

In the case of a required license being revoked, suspended, lost or in any other way not current, valid and in possession of the employee, the employee shall within the next working 24 hours notify the supervisor and Department Head. The employee is immediately prohibited from driving duties and shall not resume driving until proof of a valid current license is provided to the employee's immediate supervisor. Pending the duration of license suspension, revocation or other inability to drive, an employee may be subject to disciplinary action, up to and including discharge.

**16.10 Use of Vehicles on City Business.**

City vehicles may be available for employees to use while conducting City business. Except for incidental personal business which may be accomplished along the route (such as stopping at a bank), City vehicles are to be used only for City business.

Employees may opt to use their personal vehicles on City business. Use of personal vehicles by employees is preferred when attending conferences and training. An employee using a personal vehicle shall only use the vehicle if he/she has current and valid state mandated minimum insurance coverage. If no City vehicle is available, or when using a personal vehicle to attend a conference or training, the employee may seek reimbursement of expenses as provided for under the mileage reimbursement policy. If an employee using a personal vehicle is involved in an accident or any damage is incurred to the vehicle, claims shall be made to the employee's personal automobile insurance carrier.

**16.11 Employees Serving as City Volunteers.**

An employee may volunteer for City events and activities, provided such activities are different than those normally performed by the employee in his/her regularly assigned position.

**16.12 Fitness-for-Duty Exam.**

An employee may be required by the City to submit to medical or psychological examination to evaluate fitness or prognosis from an injury or illness. In most cases the employee's treating physician may submit the evaluation; however, when another opinion is required by the City, that examination shall be paid for by the City. An examination may be required by a Department Head or the Human Resources Manager to determine if the employee is able to perform the essential functions of his/her job when there is significant evidence: 1) the employee appears to be unable to perform or has difficulty performing one or more essential functions of his/her job; or 2) there is reason to question the employee's ability to safely or efficiently complete work duties.

Results of an evaluation will be sent in confidence to the Human Resources Manager.

The Human Resources Manager shall notify the Department Head and employee of the results. All records shall be kept in a confidential file separate from the employee's personnel file, unless it is used to substantiate an employment action.

**16.13 Outside Employment.**

City employees are not allowed outside employment that may provide a conflict of interest or interferes with the employee's regular work schedule or job performance.

Employees shall submit a written request to the Department Head describing the type of outside employment that is being pursued. A determination shall be made by the Department Head or designee within three (3) working days as to whether or not the second job will be in conflict with the employee's primary job at the City.

A Department Head shall approve or disapprove the request, and if the request is disapproved, an employee may provide a written appeal to the City Manager, who shall make

a decision as soon as is reasonable, and the City Manager's decision shall be final and binding.

**16.14 City Computers, Internet and Email.**

These services are for legitimate business use only in the course of employees' assigned duties.

All materials, information and software created, transmitted, downloaded or stored on the City's computer system are the property of the City and may be accessed by authorized personnel at any time. Employees do not have a reasonable expectation of privacy in City property or equipment.

Employees may access the Internet for non-business use during mealtime or other breaks.

Inappropriate Internet or e-mail use includes but is not limited to: (1) transmitting obscene, harassing, offensive, defamatory, or unprofessional messages; (2) accessing any site that is sexually or racially offensive or discriminatory; (3) displaying, downloading, or distributing any hostile, offensive or sexually explicit material; (4) soliciting, advancing or proselytizing for religious or political causes, commercial ventures, outside organizations, or other non-job-related solicitations; (5) propagating computer viruses; and (6) transmitting any of the City's confidential or proprietary information, including customer or client data, trade secrets, or other materials covered by the City's confidentiality policy.

Any material placed in the City's computer system by a user can be considered public record subject to the same rules and regulations as paper-based communications. Questions about message retention should be directed to the City Clerk's Office.

Any software or other material downloaded into the City's computers may be used only in a manner consistent with the licenses and copyrights of the vendors, authors or owners of the material. Prior written authorization from the Information Systems Manager is required before introducing any software into the City's computer system. Employees may not download or install entertainment software or games.

Any violation of this policy may result in the loss of computer access and disciplinary action, up to and including termination.

**16.15 Workplace Violence.**

Violence, or the threat of violence, against or by any employee of the City or any other person is unacceptable and will not be tolerated.

Should an employee demonstrate or threaten violent behavior, she/he may be subject to disciplinary action, up to and including termination, and/or criminal prosecution.

Violent acts are considered, but not limited to, striking, punching, slapping, assaulting, fighting, challenging someone to a fight, grabbing, pinching, touching someone in an unwanted way, threatening, possessing or using any weapon or anything that could be construed to be a weapon, or any other act or conduct that implies or could be construed to bring or threaten bodily harm.

**16.16 Complaint Process**

Employees whose complaint pertains to matters covered by a current Memorandum of Understanding shall follow grievance procedures set forth in the MOU. For interpretation(s) of the provisions of the policies and procedures or other work-related issues not covered by the grievance procedure, the following shall be used:

Employees questioning or objecting to the interpretation or application of City policies or procedures deserve a fair and timely response to concerns without fear of reprisal.

General inquiries regarding City practices can be directed to a manager or the Human Resources Manager.

Informal resolution of differences is encouraged. If possible, the employee and the employee's immediate supervisor should find an acceptable solution. In addition, the employee may speak with the Human Resources Manager in an effort to resolve concerns by informal means.

A disagreement that cannot be resolved informally may be put in a written, formal complaint. The written complaint shall contain, at a minimum: a clear and complete account of action or inaction by the City or an employee that adversely affects the employee making the written complaint, the specific provision of the rules that has been violated and/or misapplied, the date of the circumstance(s) leading to the complaint or the date when the employee first became aware of the circumstances, and the remedy sought by the employee.

The formal complaint shall be filed with the Department Head within fifteen (15) calendar days of any occurrence leading to the complaint (or fifteen (15) calendar days after the employee becomes aware of the circumstances).

The Department Head shall discuss the complaint with the employee and try to resolve it within fifteen (15) calendar days.

If a written complaint is not resolved by the Department Head, the employee may submit the complaint within seven (7) calendar days directly to the City Manager or his/her designee. The City Manager or his/her designee may respond to the written complaint within fifteen (15) calendar days. The City Manager's, or his/her designee's, decision shall be final and binding.

By mutual consent, the steps and time limits may be waived.

**16.17 Personnel File**

A central personnel file for each employee is created and maintained by the Human Resources Manager. This is the City's official record for each employee. Supervisors may have working files, but they do not constitute the official record of the City.

An employee may review the contents of his/her central personnel file. Inspection request for the central personnel file are made to the Human Resources Manager, who will set aside a time and place for the employee to review his/her file.

Only the employee, employee's supervisor and Department Head, Human Resources office staff, Finance and Administrative Services Director, and City Manager have access to the files. The Human Resources Manager may authorize other Department Heads and managers to review personnel files for specific purposes, such as reviewing the file of an employee who is being considered for transfer or promotion to that particular manager's division.

Except for routine employment verifications of employment, information in the central personnel files is not shared with anyone, except as required by law or at the written request of an employee. Employment verification includes information such as name, dates of employment, job title, classification, and pay range.

The Human Resources Manager shall notify any employee when a lawful request has been made for information from his/her personnel file, except for inquiries verifying employment information.

The decision to release or not release information from the central personnel files is made by the Human Resources Manager.

#### **16.18 References**

Only the Human Resources Manager and appropriate Department Heads shall provide employment references for full-time employees. Department Heads and managers may give references regarding temporary employees and volunteers.

For full-time employees, employment references are limited to objective information documented in the central personnel files.

A signed waiver from the individual shall be obtained before any reference information is shared.