



CITY OF NEWPORT BEACH

EMPLOYEE POLICY MANUAL

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

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

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SECTION 1. GENERAL PROVISIONS

1.0 Authority

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

1.1 Title

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

1.2 Scope

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

1.3 Purpose

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

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

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

1.4 Application

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

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

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

1.5 Adoption and Amendment of Rules

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

1.6 Severability

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

1.7 Department Procedures

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

SECTION 2. DEFINITIONS

2.0 Definition of Words and Terms

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

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

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

R. **Employee** shall mean a person occupying a Position identified in the Classification Plan or who is employed to perform work identified in the approved Annual Budget. The term Employee includes the following:

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

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

S. **Eligibility Lists**

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

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

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

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

RR. Work Period shall mean the standard Work Period for each non-exempt Employee Classification within a Department as established by the Department Director. As a general rule the standard Work Period is a fixed regularly recurring period of seven (7) consecutive 24-hour periods beginning midnight on Saturday. However the needs of the City and the desires of Employees differ greatly among various departments and schedules may be adjusted accordingly. The Department Director may establish different Work Periods for different Employees or Classifications. Work Periods must be fixed, in advance, and, once established, can only be changed when the change is intended to be permanent or address seasonal fluctuations in workload and timing. Work Periods in excess of seven (7) Days are applicable only to certain Safety Employees as authorized by, and consistent with, FLSA. Work Periods may not be changed to avoid the requirement to pay overtime pursuant to provisions of the FLSA. The provisions of this definition do not guarantee any specific number of hours to be worked in any 24-hour period, or the hours or Days to be worked in any Work Period. Examples of work periods include:

1. **9/80 Schedule.** The Work Period for the 9/80 Schedule is seven (7) consecutive 24-hour periods beginning at noon on Friday if the Employee takes off an alternating Friday, or noon on Monday if an alternating Monday is taken off. This schedule allows for 8 nine hour Workdays, 1 eight hour Workday.
2. **4/10 Schedule.** The Work Period for the 4/10 Schedule is seven (7) consecutive 24-hour periods beginning midnight on Saturday with four (4) ten (10) hour Workdays during each Work Period.
3. **3/12 Schedule.** The Work Period for the 3/12 schedule and similar schedules is twenty-eight (28) Days with the Days to be worked typically determined by seniority or other method established by MOU.

SS. Workday shall mean the number of hours an Employee is scheduled to work during any 24-hour period.

TT. Written Reprimand shall mean a written notice of unsatisfactory performance or misconduct given to an Employee as discipline.

UU. Y-Rate shall mean maintaining the Base Rate of Pay of an Employee who was voluntarily or involuntarily Transferred, Demoted or Reclassified to a lower Classification until the Employee would be entitled to the same or greater Base Rate of Pay in the lower Classification.

2.1 Construction

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

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

SECTION 3. STANDARDS AND PRACTICES

3.0 Basic Principles

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

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

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

3.1 Fair Employment Practices

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

3.2 Discrimination and Harassment

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

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

3.3 Political Activities

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

3.4 Conflicts of Interest and Acceptance of Gifts and Other Gratuities

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

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

3.5 Incompatible Activities

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

3.6 Drug and Alcohol Free Workplace

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

3.7 Smoking Prohibited

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

3.8 Safety and Health

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

3.9 Communications Equipment and Systems Policy

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

3.10 Personal Telephone Calls

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

3.11 Search of Lockers, Desks, and Other Containers

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

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

3.12 Outside Employment

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

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

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

3.13 Recording of Conversations

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

3.14 Work Place Security and Anti-Violence Policy

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

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

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

C. Act or Threat of Violence Prohibited

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

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

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

3.15 Fitness for Duty

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

3.16 Qualifications

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

3.17 Disaster Service Workers

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

SECTION 4. ADMINISTRATION OF THE PERSONNEL SYSTEM

4.0 City Manager's Duties

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

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

4.1 Supervisor's Duties

The duties of a Supervisor includes the following:

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

- I. Encourage communication between Employees and Supervisors.

4.2 Open Door Policy

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

4.3 Employees Records and Files

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

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

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

F. Miscellaneous Provisions

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

4.4 Classification Plan

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

4.5 New Positions

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

4.6 Compensation Plan

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

SECTION 5. RECRUITMENT AND SELECTION

5.0 Goals

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

5.1 Recruitment

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

5.2 Job Announcements

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

5.3 Personnel Applications

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

5.4 Evaluation of Applications

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

5.5 Selection Techniques

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

5.6 Review of Examination

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

5.7 Eligibility List

- A. Preparation and Availability.** As soon as possible after the completion of the examination process, the Human Resources Director shall prepare and make available to the relevant Department Director an Eligibility List consisting of the names of candidates who successfully completed the process, arranged in order of their final rating.
- B. Duration of Eligibility List.** Eligibility Lists, other than those resulting

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

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

6. The eligible candidate was on an Eligibility List as a result of a promotional examination and, after preparation of the Eligibility List, Separated from the City.
7. Subsequent to preparation of the Eligibility List, the eligible candidate fails to meet minimum qualifications for the Position or an event occurs that would make the person ineligible for the Position.
8. Subsequent to preparation of the Eligibility List, the eligible candidate fails to satisfactorily complete any additional aspect of the selection process such as background checks, reference checks, or pre-appointment interviews.

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

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

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

SECTION 6. APPOINTMENTS

6.0 Appointment Process

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

6.1 Salary at Appointment

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

6.2 Pre-Employment Physical

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

6.3 Nepotism Policy

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

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

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

6.4 Fingerprinting and Background Checks

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

6.5 Criminal Conduct

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

6.6 Appointments from Lists

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

6.7 Emergency Appointments

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

6.8 Interim Appointments

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

6.9 Acting Appointments

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

6.10 Transfer

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

6.11 Promotion

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

shall complete a twelve (12) month Probationary Period. In the event the Employee fails to satisfactorily complete his or her Probationary Period after Promotion the Employee shall be reinstated to his/her former Position at his/her Salary Step effective as of the date of Promotion provided the Employee meets the minimum qualifications for the Classification.

6.12 Demotion

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

6.13 Re-Employed and Reclassified Employees

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

6.14 Re-Employment of Former Employees

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

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

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

SECTION 7. PROBATIONARY PERIOD

7.0 Purpose

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

7.1 Period of Probation

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

7.2 Extension of Probation

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

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

7.3 Rejection of Probationer

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

7.4 Effect of Absence

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

SECTION 8. TRAINING AND CONTINUING EDUCATION

8.0 Purpose

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

8.1 In-House Training

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

8.2 Department Training

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

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

8.3 Training and Travel Reimbursement

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

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

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

8.4 Tuition Reimbursement

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

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

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

SECTION 9. PERFORMANCE EVALUATIONS AND SALARY ADJUSTMENTS

9.0 Employee Performance Evaluation

- A. Purpose and Intent.** The purpose of Performance Evaluations is to enable the Supervisor and/or Department Director to discuss with the Employee being evaluated (i) the positive and negative aspects of the Employee's performance; (ii) the positive aspects of the Employee's performance; (iii) appropriate goals such as development of additional skills; and (iv) aspects of the Employee's performance that should or could be improved. The Performance Evaluation is an opportunity for the Employee to ask his/her Supervisor for clarification of duties or Department objectives and to suggest changes in the Department or Supervisor actions that could help improve Employee's performance, better serve the public, or better fulfill the mission of the Department.
- B. Timing of Evaluation.** Each Regular Employee shall, at a minimum, have his/her performance evaluated in writing at the following times:
1. Eligibility for a Step increase or proposed salary adjustment.
 2. Reclassification or Promotion.
 3. Twelve (12) months after the previous evaluation.
 4. At least once during the Probationary Period.

The evaluation of performance should occur on a daily basis and the written evaluation should reflect the ongoing evaluation that has occurred prior to documentation.

- C. Forms.** The Human Resources Director shall provide each Department with training and forms helpful to assist Supervisors in assessing performance, establishing goals, and recording suggestions from the Employee. The evaluation form is a tool to assist each Supervisor with his/her evaluation but completion of the form does not, in and of itself, constitute an adequate evaluation. The Evaluation shall be conducted in a manner best calculated to achieve the purposes and objectives of this Manual. Departments may use their own evaluation forms and procedures provided that the Department or Human Resources Director have provided appropriate training for Supervisors and use of the forms has been coordinated with the Human Resources Director.

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

9.1 Merit Steps Progression

- A. **Regular Employees.** A Regular Employee shall earn Step increases based upon satisfactory performance of duties (not just longevity) and in accordance with the following:
 - 1. **Normal Progression.** Except for Safety Employees, as a general rule no Step increase shall be granted from the Date of Hire until the successful completion of the Regular Employee's Probationary Period. The Department Director may grant one (1) additional Step increase during a Regular Employee's normal progression in a Classification based on documented outstanding performance. A Regular Employee shall become eligible for a Step increase only if the Regular Employee's overall performance is rated at least satisfactory. Thereafter, eligibility for Step increases for Regular Full Time Employees shall occur at twelve (12) month intervals, provided the Regular Full Time Employee's overall performance is

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

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

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

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

9.2 Reclassification/New Classifications

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

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

SECTION 10. ATTENDANCE AND HOURS OF WORK

10.0 Overtime

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

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

10.1 No Guarantee of Hours

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

10.2 Time Sheets

All Employees must complete appropriate payroll records or timesheets showing hours worked and leave taken. In those cases where the Employee signs time sheets, the Supervisor or Department Director shall confirm the time worked. Where required, the Department timesheets will be reviewed and audited by the Administrative Services Department. Notice of any correction(s) to the timesheet

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

10.3 Constructive Resignation

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

10.4 Lunch and Break Policy

A. Breaks. Regular Full Time Employees may take one (1) paid break during the first half of the Employee's Workday and one during the second half of the Employee's Workday. Breaks shall not exceed fifteen (15) minutes each. Regular Part-time Employees and Provisional Employees are not entitled to a paid break unless they work at least three and one half (3 1/2) hours during the Workday in which the break is to be taken. Breaks may not be accrued, consolidated or aggregated without the approval of the Employee's Supervisor.

B. Meal Periods. Meal periods shall be at least thirty (30) minutes, but no more than sixty (60) minutes per Workday, do not constitute hours worked and are unpaid. Employees are expected to adjust their meal periods to conform to Department schedules and operational needs. The Department Director may schedule staggered meal periods throughout the late morning and early afternoon. Regular Part-time Employees and Provisional Employees must work four (4) or more consecutive hours during a Workday to receive an unpaid thirty (30) minute meal period during that Workday. Meal periods may not be consolidated or aggregated.

SECTION 11. LEAVES

11.0 Flex Leave

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

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

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

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

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

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

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

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

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

D. Method of Use. Flex Leave may not be taken in excess of the amount of

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

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

11.1 Vacation Leave

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

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

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

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

11.2 Sick Leave

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

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

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

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

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

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

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

PERCENT OF UNUSED SICK LEAVE CONVERTED TO PAY

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

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

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

11.3 Bereavement Leave

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

11.4 Holiday Leave

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

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

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

11.5 Jury Duty and Witness Leave

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

11.6 Family and Medical Leave

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

medical certification, the Department Director is able reasonably to accommodate the absence and the City Manager approves the request.

11.7 Leave of Absence Without Pay

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

11.8 Special Paid Leave

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

11.9 Military Leave

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

11.10 Administrative Leave

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

11.11 Voting Leave

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

11.12 Workers Compensation Benefits and Industrial Accident Leave

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

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

SECTION 12. DISCIPLINARY ACTIONS

12.0 General Principles

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

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

12.1 Grounds for Disciplinary Action

Each of the following may be cause for discipline:

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

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

12.2 Definition of Certain Disciplinary Actions

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

12.3 Counseling

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

12.4 Written Reprimand

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

12.5 Performance Improvement Program (PIP)

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

12.6 Disciplinary Suspension

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

12.7 Demotion

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

12.8 Discharge

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

12.9 Resignation – An Alternative to Disciplinary Action

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

12.10 Documentation of Disciplinary Action

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

12.11 Employee Representation

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

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

SECTION 13. DISCIPLINARY PROCEDURES

13.0 Disciplinary Procedures

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

13.1 Administrative Suspensions

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

the time necessary to complete the investigation, to determine whether to impose discipline, to receive the response of the Employee to any proposed discipline and to make a final decision on discipline.

13.2 Skelly Procedure/Due Process

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

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

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

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

13.3 Appeal of Department Director's Decision

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

13.4 Appeal to Civil Service Board

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

decision of the Civil Service Board shall be final. In the case of Non-Civil Service Employees, the decision of the Civil Service Board shall be advisory and the record of the hearing/decision shall be submitted to the City Manager for a final decision.

13.5 Final Decision

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

13.6 Preparation and Attendance

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

SECTION 14. GRIEVANCES

14.0 Matters Subject to Grievance Procedures

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

14.1 Matters Not Subject to Grievance Procedures

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

- A.** Discipline.
- B.** Written reprimands and counseling.

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

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

14.2 Freedom from Reprisal

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

14.3 Consolidation

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

14.4 Resolution

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

14.5 Withdrawal

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

14.6 Resubmission

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

14.7 Employee Representation

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

14.8 Miscellaneous

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

14.9 Grievance Procedure – Step 1

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

14.10 Grievance Procedure – Step 2

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

14.11 Grievance Procedure – Step 3

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

14.12 Time Limits

Grievances shall be processed from one step to the next within the time limit indicated for each step. Time limits shall be strictly enforced. Any time limits established in this Manual can be waived or extended only by mutual agreement confirmed in writing. Any grievance not carried to the next step by the Employee

within the prescribed time limit shall be deemed resolved upon the basis of the previous decision.

SECTION 15. REDUCTIONS IN FORCE

15.0 Reductions in Force/Layoffs

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

15.1 Definitions

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

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

Manager shall determine those Classifications that constitute a Series following a meet and consult process with the relevant Recognized Employee Association.

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

15.2 Procedure

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

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

15.3 Notice

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

15.4 Re-Employment

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

15.5 Severance

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

SECTION 16 ON-CALL TIME AND CALL BACK DUTY

16.0 On-Call Time

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

16.1 Call Back Duty/Pay

- A. **Definition.** Call Back Duty/Pay means a directive to an Employee to return to his/her workplace after his/her Workday and the Employee has left his/her normal workstation. Overtime scheduled or worked during or immediately after the Workday is not considered Call Back Duty/Pay.

- B. **Compensation.** An Employee on Call Back Duty/Pay shall be paid for two (2) hours, or one and one-half (1-1/2) times the hours worked, whichever is greater.

APPENDIX A

CITY OF NEWPORT BEACH DISCRIMINATION AND HARASSMENT PREVENTION POLICY

Section 1. Policy Statement

The City of Newport Beach has a strong commitment to prohibiting and preventing discrimination, harassment and retaliation in the workplace.

The City will take all reasonable steps to prevent discrimination, harassment and retaliation from occurring. The City has zero tolerance for any conduct that violates this Policy. Conduct need not rise to the level of a violation of Federal or State law to violate this Policy.

The City will not tolerate any harassment or discrimination because of, or on the basis of, an individual's Protected Classification such as race, color, national origin, ancestry, religious creed, physical or mental disability, medical condition, marital status, military and veteran status, sex (including pregnancy), gender, gender identity, gender expression, sexual orientation, age, genetic information, or any other basis protected by applicable Federal or State laws; association with an individual who has or is perceived to have a Protected Classification; or the perception that an individual has a Protected Classification.

Section 2. Covered Individuals and Scope of Policy

This Policy covers job applicants as well as all Employees, including provisional, temporary and contract employees; City Council and other members of City Boards and Commissions; and volunteers, unpaid interns or apprentices. This Policy is intended to protect Employees, to the extent possible, from harassment by clients, vendors, independent contractors, or others doing business with the City. As such, Employees shall follow the procedures in this Policy as if the harasser were an Employee of the City. Employees are likewise prohibited from harassing clients, vendors, independent contractors, residents or anyone with whom an Employee deals with on the job. This Policy also protects Employees from retaliation for complaining of discrimination or harassment under this Policy.

A copy of this Policy shall be provided to all persons who are subject to it.

Section 3. Definitions

The following definitions that apply to this Policy are derived from the California Fair Employment and Housing Act ("FEHA") and include, but are not limited to:

Discrimination means treating covered individuals differently and adversely because of or on the basis of the individual's Protected Classification, actual or perceived; because the individual associates with a person who is member of a Protected Classification, actual

or perceived; or because the individual participates in a Protected Activity as defined in this Policy.

Harassment includes, but is not limited to, the following types of behavior that are taken because of a person's actual or perceived Protected Classification: (1) Speech, such as epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This includes inappropriate comments about appearance, dress, physical features, gender identification, or race-oriented stories and jokes; (2) Physical acts, such as assault, impeding or blocking movement, offensive touching, or physical interference with normal work or movement. This includes pinching, grabbing, patting, or making explicit or implied job threats or promises in return for submission to physical acts; (3) Visual acts, such as derogatory posters, cartoons, emails, pictures or drawings related to a protected classification; and (4) Unwanted sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment.

Protected Activity includes making a request for an accommodation for a disability; making a request for accommodation for religious beliefs; making a complaint under this Policy; opposing violations of this Policy; or participating in an investigation under this Policy.

Protected Classification means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (40 and over), sexual orientation, or military and veteran status, or any other basis protected by law. This Policy prohibits discrimination, harassment and retaliation because: (1) of an individual's protected classification; (2) the perception that an individual has a protected classification; or (3) the individual associates with a person who has or is perceived to have a protected classification.

Retaliation means adverse conduct is taken against a covered individual because of the individual's Protected Activity as defined in this Policy. "Adverse conduct" includes, but is not limited to: (1) disciplinary action; (2) counseling; (3) taking sides because an individual has reported harassment or discrimination; (4) spreading rumors about a complainant or about someone who supports or assists the complainant; (5) shunning or avoiding an individual who reports harassment or discrimination; or (6) making real or implied threats of intimidation to prevent or deter an individual from reporting harassment or discrimination.

Supervisor means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of

that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 4. Harassment

Sexual Harassment

Federal and State laws consider sexual harassment to be one form of unlawful discrimination. Sexual harassment includes unwelcome sexual advances, requests for sexual favors or other visual, verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of employment, or
2. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that individual.

Sexual harassment includes many forms of offensive behavior.

A single incident of harassing conduct may have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment, and such conduct is prohibited under this Policy.

The City considers the following conduct to represent some examples of the types of prohibited conduct. This list is neither exhaustive nor all-inclusive.

1. Unwanted sexual advances, including verbal sexual advances, such as propositions or requests.
2. Offering employment benefits in exchange for sexual favors.
3. Making or threatening reprisals after a negative response to sexual advances.
4. Physical conduct: touching, pinching, patting, or coerced sexual conduct.
5. Visual or non-verbal conduct: whistling, leering, ogling, making suggestive or insulting sounds, making sexual gestures, or displaying pictures, posters, cartoons, calendars, objects, reading materials, or other materials that are sexually suggestive, sexually demeaning, or pornographic, or possessing in the work environment any of these materials. Production, transmission, or display of any sexually explicit material electronically via fax, e-mail, through social media, or any other forms of communication.
6. Verbal conduct: making or using derogatory comments, epithets, slurs, sexually explicit jokes, sexual innuendo and insults, comments about an employee's body or dress.

7. Verbal abuse of a sexual nature, including graphic verbal commentary or communications about an individual's body or sexual activities, using sexually degrading words or names to describe an individual, or sending suggestive or obscene letters, e-mails, texts, communication or posts via social media, notes, invitations, or other forms of communication.

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

Other conduct that has the purpose or effect of unreasonably interfering with an Employee's work performance or working conditions on the basis of gender, pregnancy, gender identity and gender expression may constitute prohibited sexual harassment.

Harassment (Other Than Sexual Harassment)

In addition to sexual harassment described above, harassment of Employees based on other Protected Classifications is also expressly prohibited by this Policy.

Such harassment may include visual, verbal or physical conduct based on any Protected Classification.

A single incident of harassing conduct may have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment, and such conduct is prohibited under this Policy. Conduct based on any Protected Classification that constitutes gratuitous sabotage or undermining of a person's work may also be considered Harassment under this Policy.

Section 5. Discrimination

Federal and State laws consider discrimination based on an individual's Protected Classification to be unlawful. The City considers the following conduct to represent some examples of the types of prohibited Discrimination when based on the individual's Protected Classification. This list is neither exhaustive nor all-inclusive.

1. Refusing to hire or employ a person.
2. Refusing to select a person for a training program leading to employment.
3. Treating an individual differently in compensation or in the terms, conditions or privileges of employment.

Section 6. Retaliation

Federal and State laws consider adverse conduct based on an individual's Protected Activity to be unlawful. The City considers the following adverse conduct to represent some examples of the types of prohibited Retaliation when based on the individual's Protected Activity. This list is neither exhaustive nor all-inclusive.

1. Real or implied threats of intimidation to attempt or prevent an individual from reporting alleged wrongdoing.
2. Refusing to hire an individual because of Protected Activity.
3. Denying promotion to an individual because of Protected Activity.
4. Taking any form of disciplinary action because of Protected Activity.
5. Altering work schedules or work assignments because of Protected Activity.

Section 7. Procedure for Reporting and Processing Discrimination, Harassment, and Retaliation Complaints

1. An Employee who believes he or she has been harassed or discriminated against on the basis of a Protected Classification, or retaliated against on the basis of his or her participation in a Protected Activity may provide a written or verbal complaint ("Complaint") to any Supervisor.
2. The Supervisor shall immediately notify his/her Department Director and the Human Resources Director.
3. The Human Resources Department shall complete or delegate the following steps:
 - a. Notify the City Attorney of the complaint in order to initiate an investigation of the incident.
 - b. Meet with the Employee(s) alleging harassment or discrimination.
 - c. Take reasonable steps to protect the complainant from further harassment, discrimination and retaliation.
 - d. Authorize and supervise the investigation of the complaint and/or investigate the complaint.
 - e. Review the factual information gathered during the investigation to determine whether the alleged conduct violates this Policy.
 - f. Report a summary of the determination to the appropriate persons.

- g. Ensure that appropriate disciplinary and/or corrective action is initiated and implemented where conduct in violation of this Policy is found to have occurred.
4. Clients, independent contractors, vendors, or others doing business with the City shall be required to use the Complaint procedure outlined in this Policy for any claim of harassment, discrimination, or retaliation by a City Employee.
5. Every effort will be made to assure the confidentiality of Complaints made under this Policy to the greatest extent allowed by law. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. An Employee who is interviewed during the course of an investigation is prohibited from attempting to influence any potential witness while the investigation is ongoing. An Employee may discuss his or her interview with a designated representative. The City will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.

Section 8. Violation of Policy

Any Employee who violates any provision of this Policy is subject to discipline or remedial action as warranted, up to and including termination.

Section 9. Personal Liability for Harassment or Retaliation

In certain circumstances, an Employee who engages in harassment and/or retaliation may be held personally liable for monetary damages associated with prohibited conduct.

Section 10. Supervisor Responsibilities

All Supervisors are responsible for ensuring a workplace free from discrimination, harassment, and retaliation as defined in this Policy. Supervisors shall be responsible for the following:

1. Completing the training requirements for Supervisors.
2. Promptly filing a report with the Department Director and Human Resources Director whenever the Supervisor receives information about or observes an incident that he or she knows or reasonably suspects could constitute discrimination, harassment, or retaliation. Any verbal report shall be followed up by a written report documenting the incident.
3. Ensuring that appropriate action is taken in response to the Supervisor's report of discrimination, harassment, or retaliation.

4. Ensuring that:

- a. All Employees that they supervise are provided a Department of Fair Employment and Housing (DFEH) informational pamphlet regarding sexual harassment and retaliation prevention.
- b. All Employees that they supervise attend and complete training requirements regarding prevention of sexual harassment and retaliation.
- c. All Employees that they supervise receive a copy of, and opportunity to discuss and ask questions about this Policy.
- d. Materials that violate this Policy are not circulated, presented, transmitted, or openly displayed within the workplace.
- e. All Employees they supervise are informed of their rights to report discrimination, harassment or retaliation and of the assistance available under this Policy.

Section 11. Employee Responsibilities

All Employees are responsible for ensuring a workplace free from discrimination and harassment as defined in this Policy. Employees shall be responsible for completing training requirements required by the City and by State law, and reviewing the DFEH informational packet and this Policy.

Section 12. Employee's Rights

The goal of this Policy is to identify and prevent discrimination, harassment and retaliation. Employees are encouraged to make use of the process described in this Policy. However, any Employee also has the right to report discrimination, harassment and retaliation directly to the DFEH and/or the Federal Equal Employment Opportunity Commission ("EEOC").

Employees may contact DFEH at the following telephone number or website:

Los Angeles: (213) 439-6799
<http://www.dfeh.ca.gov/>

Employees may contact the EEOC at the following telephone number or website:

Los Angeles: (213) 894-1000
<https://www.eeoc.gov/employees>

The City maintains a posted Notice regarding harassment and discrimination at all

Employee work sites, which contains additional information about how to contact these agencies.

Adopted by Council:

03/26/2019

APPENDIX B

CITY OF NEWPORT BEACH **DRUG AND ALCOHOL POLICY**

Section 1. Purpose

The City of Newport Beach (“City”) recognizes the important responsibility it shares in maintaining a safe and secure environment for those who live, work and play in the City. Further, the City is committed to providing its Employees with a safe, efficient and healthful workplace. An Employee performing his/her normal or assigned duties while under the influence of alcohol and/or any drug poses a serious risk to the health, safety, security and image of the City, its Employees and the public. This Policy establishes the rules and procedures regarding the use of drugs and/or alcohol as it pertains to employment and the procedures to be used to test Employees for drug and/or alcohol use.

Section 2. Violation of Policy

The City will not tolerate or excuse any violation of this Policy and a violation of this Policy will result in disciplinary action, up to and including termination.

Section 3. Individuals Covered

This Policy applies to all City job applicants and Employees. (For purposes of this Policy, “Employee” shall include Provisional Employees and Employees of independent contractors who perform work for the City and are required to be covered by this Policy under State or Federal law.) A copy of this Policy will be given to all Employees. Notices of this Policy will be posted on all Department bulletin boards and copies are available in the Human Resources Department.

Section 4. Confidentiality

Any information about an Employee’s use of prescription or non-prescription medication, the results of any pre-employment or for-cause drug and/or alcohol testing, and/or an Employee’s past or present participation in rehabilitation or treatment for substance abuse shall be considered confidential medical information and shall not be disclosed except as expressly provided in this Policy. Information obtained pursuant to this Policy will only be disclosed to the City Manager, Human Resources Director, the Department Director and the Supervisor designated by the Department Director to implement any action necessary or appropriate pursuant to this Policy. Except for the Department Director and Human Resources Director, the information described in this Section shall be disclosed only as necessary to initiate disciplinary action resolve legal issues or if necessary related to a medical emergency of an employee. The Employees

authorized to receive the information described in this Section shall consider all such information, including test results, to be confidential and not to be disclosed to any person or position other than as expressly provided in this Policy. Any reports or test results generated pursuant to this Policy shall be kept in a medical confidential file, accessible only by those authorized to receive the information, and separate and distinct from the Employee's personnel file.

Section 5. Sensitivity

All Employees and Supervisors shall be thoughtful and respectful when dealing with Employees suspected of inappropriate use of drugs and/or alcohol. Allegations or suspicions of drug and/or alcohol use in violation of this Policy are to be handled with the utmost objectivity, confidentiality and within the guidelines of this Policy.

Section 6. Definitions

- A. "Alcohol" shall mean the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.
- B. "Chain of Custody" shall mean procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen at the certified laboratory.
- C. "City Equipment" shall mean all property and equipment, machinery and vehicles owned, leased, rented or used by the City.
- D. "Collection Site" shall mean a designated clinic/facility where applicants or Employees may present themselves for the purpose of providing a specimen of their blood or urine to be analyzed all as specified and defined in 49 CFR Part 40.

Collection Sites shall include the following or as otherwise designated by the Drug Program Manager:

- 1. National Safety Compliance, Inc.
61 Argonaut
Aliso Viejo, CA, 92656
(949) 472-0645
- 2. Newport Urgent Care
1000 Bristol Street North, Suite 1-B
Newport Beach, CA 92660-2906
(949) 752-6300

3. After Hours/Weekend Testing:
Hoag Hospital Emergency Department
301 Newport Boulevard
Newport Beach, CA, 92663
(949) 760-2372

The Collection Site will comply with all methods of collection and Chain of Custody and provide documentation of compliance to the City.

- E. “Drug or Drugs” shall mean any controlled substance that is not legally obtainable under State or Federal law, or a prescription drug obtained or used without benefit of a prescription by a licensed physician.
- F. “Drug Program Manager (DPM)” shall mean Human Resources Director or designee.
- G. “Medical Review Officer (MRO)” shall mean a licensed physician with knowledge of drug abuse disorders as well as appropriate training to interpret and evaluate an employee’s positive test results together with an employee’s medical history and any other biomedical information. MRO reviews all negative and positive test results and interviews individuals who tested positive to verify the laboratory report before the employer is notified. MRO recommends whether and when an Employee who refused to take or did not pass a drug and/or alcohol test may return to work and schedules follow-up unannounced testing for a period of up to thirty-six (36) months from the date Employee tested positive.
- H. “Prescription Drug” shall mean any substance that can lawfully be obtained or possessed pursuant to a prescription by a licensed physician. “Prescription Drug” does not include medicinal or prescribed marijuana obtained at a dispensary, even if recommended by a licensed physician.
- I. “Positive Test” shall mean to have the presence of a drug or a drug metabolite and/or alcohol in a person’s system that is equal to or greater than the levels allowed by this Policy in the confirmation test as determined by appropriate testing of a blood or urine specimen and which is determined by the MRO to be the result of the use of drugs and/or alcohol.
- J. “Testing Laboratory” shall mean a Substance Abuse and Mental Health Services Administration (SAMHSA) certified testing laboratory.
- K. “Substance Abuse Professional (SAP)” shall mean a licensed physician, social worker, psychologist, Employee Assistance Program (EAP) or certified National Association of Alcohol and Drug Abuse Counselors (NAADAC) with knowledge of and clinical experience in diagnosis and treatment of alcohol and controlled substance disorders.

Section 7. Restrictions on the use of Alcohol

Employees may not use or possess alcohol while on City property, while performing their duties (whether or not on City property) or at any time when use of alcohol would impair, to any extent, the Employee's ability to perform his/her duties or operate any City Equipment.

Section 8. Prohibition Against the use of Drugs

No Employee shall possess, use, sell, transfer, manufacture, purchase or transport drugs or attempt to do so or report to work with drugs in his or her system. No Employee shall possess, use, sell, transfer, manufacture, purchase or transport prescription drugs, or attempt to do so, or report to work with prescription drugs in his or her system, unless the prescription drug has been lawfully prescribed to the Employee.

Section 9. Criminal Drug Statute Convictions

To fulfill its obligations under the Federal Drug-Free Workplace Act of 1988, the City requires any Employee who is convicted of any criminal drug statute, for a violation occurring in the workplace, to provide written notice of the conviction to the Department Director no later than five (5) days after the conviction. The City is also required, and will fulfill its obligations to, educate Employees on the harmful effects of using and abusing drugs and/or alcohol.

As required by law, the City will notify federal contracting agencies within ten (10) days after receiving notice that an Employee, directly engaged in performance of work on a federal contract, has been convicted of a criminal drug statute violation resulting from conduct occurring in the workplace.

Whenever the City has reason to believe that Federal, State or local drug laws are being violated, the City may refer the matter to the appropriate law enforcement agencies for investigation and possible criminal prosecution.

Independent contractors, or employees of independent contractors, working on City projects are required by law or contract to notify the City, Human Resources Director or Department Director of a drug and/or alcohol related conviction or positive test for drugs and/or alcohol will not be permitted to work on City projects.

Section 10. Medication Reporting Requirements

Employees shall, in the case of prescription drugs, ask the prescribing physician and/or, in the case of medication available over-the-counter, review product packaging, to determine whether the use of a prescription drug or over-the-counter medication may impair his/her ability to perform his/her normal job duties or to safely operate City Equipment. Any Employee taking any over-the-counter medication or prescription drug marked "do not drive," "do not operate heavy equipment" or similarly labeled, shall inform the appropriate

Supervisor of the use of the medication or drug prior to reporting for duty. In the case of prescription drugs, the Supervisor shall determine whether the employee may work full duty or light duty based on the written opinion of the employee's medical provider that the use of the medication may impair the employee's ability to perform specific duties. The Supervisor may, upon a determination that the employee is unable to safely perform his or her normal duties, or a modified work assignment is not available, direct the employee not to work and to return home on paid leave or industrial leave if appropriate. In the event the employee's personal medical provider provides a written opinion that the use of the drug or medication will not impair the employee's ability to perform his/her normal duties, the Supervisor shall allow the employee to perform those duties. Notices or communications required by this Section shall be confidential and disclosed only to the Supervisor and the other Employees specifically authorized to receive information pursuant to this Policy. Nothing in this section shall constitute, or be construed as, a waiver of the employee's rights under State or Federal law.

Section 11. Indications for Alcohol and Drug Testing

- A. Job Applicants – Job applicants for job classifications that meet the “special need” requirement for drug and alcohol testing, must take and pass a mandatory drug and alcohol test as soon as practical following their acceptance of a conditional offer of employment and prior to the first day of employment with the City. Job applicants who test positive for drugs and/or alcohol or unauthorized prescription drug use shall not be hired and may not re-apply for a position with the City for one (1) year from the applicant's last positive test. A job applicant's refusal to submit to testing, or attempt to tamper with or adulterate a test sample, will be considered a refusal to participate in the testing process, and any conditional offer of employment will be rescinded. In such event the applicant may not apply for a position with the City for one (1) year from the applicant's refusal to participate in the testing process.
- B. Employees – The City may require an Employee to submit to a drug and/or alcohol screen test under the following circumstances:
1. Following a work-related accident, incident or mishap that resulted in death, or injury requiring medical treatment or property damage, where drug and/or alcohol use by Employee cannot be ruled out as a contributing factor. Exhibit C.
 2. When a trained Supervisor (for purposes of this Section the term trained Supervisor means a Supervisor who has received the training in this policy has reasonable suspicion to believe, based upon specific and articulable facts and observations that the Employee may be under the influence of drugs and/or alcohol. Exhibit C.
 3. When a trained Supervisor has reasonable suspicion to believe, based upon specific and articulable facts and observations, that the Employee

either possesses, uses, sells, transfers, manufactures, purchases or illegally transports alcohol, drugs and/or drug related paraphernalia or attempts to do so. Exhibit C.

4. Follow-up testing for Employees who have returned to work following a positive test and their participation in a drug and/or alcohol rehabilitation program.
5. When an on duty Employee is contacted by a Police Officer who has reasonable suspicion to believe the Employee is under the influence of alcohol or drugs has been involved in an on-duty vehicle-related incident and the officer suspects the Employee is under the influence of drugs and/or alcohol.

Section 12. Drug and Alcohol Testing

A. Administration

1. The Human Resources Director or his/her designee is the DPM and shall be responsible for overseeing implementation of this Policy and the testing procedures in Exhibit C. The Human Resources Director will be responsible for reviewing all disciplinary actions resulting from violations of this Policy to ensure that the action proposed or taken is consistent with this Policy and the Manual.
2. The DPM shall be responsible for the following:
 - i. Communications directly with the MRO and/or SAP and SAMHSA regarding any drug and/or alcohol tests;
 - ii. Overseeing testing programs;
 - iii. Providing training to Supervisors and Employees;

B. Procedures

1. Mandatory Reporting – Any Employee who has reason to believe that another Employee may be in violation of this Policy shall immediately notify his or her immediate Supervisor. The Supervisor should take whatever immediate action is deemed prudent to ensure the safety of the public and Employees. Should the Supervisor have reasonable suspicion to believe, based upon specific and articulable facts and observations, that the Employee may be under the influence of drugs and/or alcohol, the Employee should immediately be removed from the workplace and placed on leave with pay until such time as testing results confirm or refute the presence of drugs and/or alcohol. The Supervisor shall use the Reasonable Suspicion Evaluation Form (Exhibit A) to assist in making this determination. Should an Employee be found in violation of this Policy

and after appropriate notice and a final decision after any hearing on appeal, leave with pay may be discontinued.

2. Acknowledgement - No drug and/or alcohol test may be administered, sample obtained, or drug and/or alcohol test be conducted on any sample without the written acknowledgment of the person being tested. (Exhibit B.) Refusal to submit to testing, or attempt to adulterate or evade the testing process, will be viewed as insubordination and will subject the person to disciplinary action up to and including discharge. The City will pay the cost of all drug and/or alcohol tests required by this Policy used to determine test results. Should an Employee test positive, the costs of any tests needed to return to work or tests required as part of follow-up testing will be paid by the Employee.
3. Collection, Integrity and Identification
 - A. After the employee has been advised about the reason for the test by the Supervisor, the employee will be properly identified and Collection Site personnel will explain the mechanics of the collection process.
 - B. Procedures for urine collection will allow for individual privacy unless there is reason to believe the individual may alter or substitute the specimen to be provided. Samples will be tested for temperature and subject to other validation procedures as appropriate.
4. Chain of Custody
 - A. Procedures for the storage and transportation of test specimens shall conform to the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by the Department of Health and Human Services as amended from time to time. These guidelines currently require that:
 - i. Specimen bottles shall be under the direct control of collection site personnel.
 - ii. Specimen bottles shall be identified only by the Specimen Identification Number.
 - iii. The City shall prepare no writings about the contents of the specimen bottles or the employee identities.
 - B. The test laboratory shall maintain custody of the specimens.
5. Testing Methods – All tests will be screened using an immunoassay technique and all presumptive positive tests will be confirmed at an independent laboratory using gas chromatography/mass spectrometry (GC/MS). The City will test for cannabinoids (marijuana), cocaine,

amphetamines, opiates, barbiturates, benzodiazepines, and phencyclidine (PCP) as well as alcohol. Tests will seek only information about the presence of drugs and/or alcohol in an individual's system and will not test for any medical condition.

6. Notification – Any Employee who tests positive will be notified by the MRO and will be given an opportunity to provide the MRO any reasons he or she may have that would explain the positive drug and/or alcohol test, other than the presence of alcohol or the illegal use of drugs. If the Employee provides an explanation acceptable to the MRO that the positive drug or alcohol test result is due to factors other than the presence of drugs and/or alcohol in the test specimen, the positive test result will be disregarded and reported to the City as negative. Otherwise, the MRO will report the positive test result to the DPM or Human Resources Director. The explanation of the use of prescription medical marijuana is not an acceptable explanation and the MRO will report the test as a positive test result. Test results will be disclosed only to the extent expressly authorized by this Policy.

7. Split Sample Testing – An Employee who has been subjected to drug and/or alcohol screening may request a split sample test be conducted at a certified laboratory chosen by the Employee. All costs associated with an Employee's decision to pursue split sample testing will be the full responsibility of the Employee. The Employee must adhere to the following procedures to maintain strict Chain of Custody of the sample and validity of the split sample test results:
 - i. The Employee must submit a written request, in person, to the testing laboratory that conducted the drug and/or alcohol screening on behalf of the City. The request must be made on a form provided by the City's testing laboratory.
 - ii. The request will be forwarded to the testing laboratory used by the City facility. They will release the split sample to the certified lab chosen by the Employee provided they have received the properly executed Chain of Custody release form.
 - iii. The laboratory selected by the Employee must be a certified laboratory per State regulations and authority and be able to conduct GC/MS method of testing for validation of testing results. Any method of testing performed on the split sample that is not the GC/MS method will be considered invalid.
 - iv. The split sample test results will not be released to the City without the Employee's written consent.

Section 13. Rehabilitation

- A. Voluntary Disclosure – The City encourages any Employee with a drug and/or alcohol problem to voluntarily disclose the problem to the DPM who shall refer the employee to the Employee Assistance Program (EAP). An Employee requesting this assistance will not be disciplined solely due to the request but may, with the Employee's consent, be transferred, given work restrictions, or placed on leave while receiving treatment and until the Employee is drug and/or alcohol free. An employee's voluntary disclosure of a substance or alcohol abuse problem will not terminate any investigation, criminal or administrative, initiated prior to the disclosure. An employee subject to this Policy and making a voluntary disclosure shall receive immunity one time only during his/her employment with the City.

Each Employee is responsible for seeking assistance before the Employee's drug and/or alcohol problem leads to a violation of this Policy, or before the Employee is asked to submit to a drug and/or alcohol screen test.

- B. Leave Time – Employees must use available sick time, vacation accrual, flex leave or request personal leave of absence without pay if time off from work is necessary for any treatment or rehabilitation program. The costs of long-term rehabilitation or treatment services, whether or not covered by the Employee's medical plan, are the ultimate responsibility of the Employee.

Section 14. Exceptions

This Policy shall not prevent a Safety Employee of the Newport Beach Police Department from using or possessing drugs or alcohol as part of his/her official duties and when in furtherance of the mission of the Police Department.

Supervisor's Comments: _____

Supervisors Name: _____

Signature: _____ Date: _____

Supervisors Name: _____

Signature: _____ Date: _____

Witness(es) Name: _____ Date: _____

Signature: _____ Date: _____

**EXHIBIT B
DRUG AND ALCOHOL POLICY
ACKNOWLEDGEMENT OF SUBMISSION TO DRUG AND/OR ALCOHOL TESTING
BY THE CITY OF NEWPORT BEACH (“CITY”)**

I, _____ [PRINT NAME], understand and acknowledge that I have reviewed a copy of the City’s Drug and Alcohol Policy (Policy). I hereby acknowledge that I am required to submit to drug and/or alcohol testing pursuant to the Policy.

I understand and acknowledge that information regarding the test results will be released to the City and that such information may be used as grounds for disciplinary action, up to and including discharge.

I further understand and acknowledge that:

1. The City will pay the cost of all drug and/or alcohol tests required or requested by the City, except those costs associated with return work and follow-up testing associated with a positive test result;
2. I may request in writing a copy of the results of any such test;
3. I may request that a split sample test be sent to a certified Testing Laboratory of my choice, consistent with the procedures outlined in the City’s Drug and Alcohol Policy, and that I will bear all of the costs associated with the split sample testing;
4. By signing this form, I hereby acknowledge that the test results will be released to the City; and
5. I have the right to refuse to submit to such testing; however, refusal by me to submit to or cooperate at any stage of the testing shall be considered equivalent to a confirmed “positive” test for purposes of disciplinary action, up to and including discharge from my employment with the City.
6. I may also be required to execute forms at the Collection Site of Testing Laboratory.

With full understanding and knowledge of the foregoing, I hereby acknowledge my obligation to submit to drug and/or alcohol testing conducted by the clinics and/or Testing Laboratory selected by the City.

I have read the above acknowledgement and certify that I have signed this document with full knowledge and understanding of its contents.

Signature: _____

Date: _____

**EXHIBIT C
DRUG AND ALCOHOL POLICY
REASONABLE SUSPICION TESTING PROCEDURES**

A. Testing Procedures

1. Reasonable suspicion testing will be conducted when a Supervisor has a reasonable suspicion that an Employee is under the influence of drugs and/or alcohol. Reasonable suspicion must be based on specific, contemporaneous, articulate observations concerning the physical symptoms or behaviors of being under the influence of drugs and/or alcohol. A Supervisor must establish reasonable suspicion of drug and/or alcohol use during or just preceding the Workday. If conditions permit, the Supervisor will request the assistance of another Supervisor to observe the actions or behavior of the employee. The Supervisor shall, prior to testing, permit the employee to attempt to contact, and consult with, a representative. The Supervisor is encouraged to make reasonable accommodations (defined as actions that would not, in the opinion of the Supervisor, unreasonably delay the test, affect the reliability of the test, or harm the safety of the employee or the public) that would allow the employee to consult with a representative prior to the test. Examples of performance indicators of probable drug and/or alcohol abuse sufficient to lead a Supervisor to suspect that an Employee is under the influence of drugs and/or alcohol, include, but are not limited to, those on the attached Reasonable Suspicion Evaluation Form, (Exhibit A).
2. The Reasonable Suspicion Evaluation Form and other documentation establishing reasonable suspicion shall be prepared and signed by the witness(es) and the Supervisor prior to testing. The Department Director or Human Resources Department should be notified as soon as possible.
3. Testing shall be comprised of breathalyzer, urine and/or blood samples only. Positive levels for prohibited drugs are as follows:

<u>Drug to be tested</u>	<u>Initial Level</u>	<u>Confirmation Level</u>
Amphetamines and/or Methamphetamines	1000 n/ml	500 n/ml
Barbituates	300 n/ml	200 n/ml
Benzodiazepines	300 n/ml	200 n/ml
Cocaine	300 n/ml	150 n/ml
Marijuana	50 n/ml	15 n/ml
Opiates (morphine and/or codeine)	2000 n/ml	2000 n/ml
Phencyclidine (PCP)	25 n/ml	25 n/ml
Alcohol	.02 percent	.02 percent

4. Employee shall be tested within two (2) hours following the determination made by a Supervisor or otherwise the Employer shall document the reasons the test was not promptly administered. If a test is not administered within eight (8) hours following the determination, the Employer shall cease attempts to administer a test and shall state in the record the reasons for not administering the test.
5. The potentially affected Employee will not be allowed to proceed alone to or from the Collection Site. In addition, to the safety concerns for the Employee, the Supervisor accompanying the Employee also assures that there is no opportunity en route to the Collection Site for the Employee to do or ingest anything that could affect the test result or to acquire "clean" urine from another person.

B. Return to Duty Testing

Before an Employee returns to duty after engaging in prohibited drug and/or alcohol use, the Employee shall undergo an evaluation of fitness for duty by the SAP and under the direction of the MRO submit to a return to duty test and receive a verified negative result for drug and/or alcohol use.

C. Follow-Up Testing

1. Following a determination by a SAP that an Employee is in need of assistance in resolving problems associated with drug and/or alcohol use the Employee shall be subject to unannounced follow-up testing as directed by the SAP of at least six (6) tests in the first twelve (12) months following the Employee's return to duty, and thereafter as determined necessary by the SAP. The SAP can terminate the requirement for the follow-up testing in excess of the minimum at any time, if the SAP determines that the testing is no longer necessary and is supported by the City.
2. Follow-up alcohol testing may also include testing for controlled substance use as directed and determined by the SAP.
3. The time period for "follow-up" testing for drug and/or alcohol use will be determined by the SAP subject to a reasonable minimum of twelve (12) months, and never to exceed thirty-six (36) months.
4. Follow-up testing may be on a daily, weekly, monthly or longer basis at the discretion of the SAP.

D. Refusal to Submit to Testing

The following are definitions of refusal:

1. Not providing the City a written consent to take the test;

2. The Employee does not supply enough quantity of either urine or blood (for alcohol or drug testing) without sufficient or valid medical explanation;
3. Tampering with a specimen or collection process;
4. Tardiness to reporting Collection Site after time allocated for Employee to report without valid explanation;
5. Leaving the accident scene without justifiable cause before tests are conducted (testing for drugs and/or alcohol after an accident is presumed);
6. Any refusal to test will be considered a violation subject to discipline up to and including termination.

February 2010

APPENDIX C
CITY OF NEWPORT BEACH
COMMUNICATIONS EQUIPMENT AND SYSTEMS POLICY

Section 1. Introduction

The City encourages the use of City Equipment and Employee Equipment to increase Employee productivity and improve the City's ability to provide first-class municipal services for the least possible cost to the taxpayer. This Policy governs all City Equipment and Employee Equipment used for City Business. Employees and other users may be provided City Equipment or reimbursed/provided a stipend for Employee Equipment only as authorized by the City Manager, Department Directors, IT Manager and/or their Department IT designee, as in the Fire Department and Police Department. The purpose of this Policy is to regulate Employee's use of City Equipment and Employee Equipment used for City Business to maximize its use for City purposes and minimize or eliminate liability.

Section 2. Definitions

Except where otherwise provided, the terms used in this Policy shall have the same meaning as those provided in the City's Employee Policy Manual.

- A) "City" shall mean the City of Newport Beach.
- B) "City Business" as referenced in the Communications Equipment and Systems Policy shall mean work or services provided by an Employee using Employee Equipment on behalf of the City as part of the Employee's official work duties. An Employee's personal use of Employee Equipment that is unrelated to the City is specifically excluded from this definition and this Policy.
- C) "City Equipment" shall mean those electronic devices owned by, or provided by the City, including but not limited to, the Internet, email, voice-mail, text messages, images, cellular telephones, pagers, personal digital assistants, Smart Phone devices, computer/laptops, telecommunications devices, video and audio equipment, wireless networks, data systems telecommunications equipment, mobile data terminals, transmission devices, data processing or storage systems, computer systems, servers, networks, input/output and connecting devices, software, and documentation that supports electronic communications services.
- D) "Electronic Communications Service" means any service which provides to users thereof the ability to transmit or receive wire or electronic communications.

- E) “Employee Equipment” shall mean those electronic devices owned by an Employee, or a third-party, but reimbursed in whole, or in part, by the City, including but not limited to, the Internet, E-mail, voice-mail, text messages, images, cellular telephones, pagers, personal digital assistants, Smart Phone devices, computer/laptops, telecommunications devices, video and audio equipment, wireless networks, data systems telecommunications equipment, mobile data terminals, transmission devices, data processing or storage systems, computer systems, servers, networks, input/output and connecting devices, software, and documentation that supports electronic communications services.
- F) “Offensive Material” includes, but is not limited to, statements or images that could reasonably offend a person on the basis of his/her age, disability, gender, race, religion, national origin, physical attributes, sexual orientation or any other classification protected by federal, state, or local law.
- G) “Policy” shall mean the City’s Communications Equipment and Systems Policy.

Section 3. Restrictions

The following apply to Employees while using any City Equipment or Employee Equipment used for City Business:

- A. The City’s unlawful harassment, non-discrimination and conflict of interest policies. Employees shall not transmit or receive Offensive Material. For example, Employees are prohibited from displaying sexually suggestive images, downloading or disseminating sexually explicit material, or transmitting images, messages or cartoons that constitute ethnic, racial or religious slurs, unless an Employee is required to review such material in the course and scope of their specific job duties with **PRIOR** written supervisory approval.
- B. Employees shall not seek personal financial gain.
- C. Employees shall not infringe upon the patents, copyrights or licenses of others.
- D. Employees shall not infringe upon the rights of others to proprietary, confidential or trade secret information.
- E. Employees shall not create an actual, potential or apparent conflict of interest.
- F. Employees shall not transmit foul language, profanity or obscenities.
- G. Employees shall not solicit or proselytize others for commercial ventures or transactions, religious or political causes, or participation in any endeavor unrelated to the Employee’s normal duties, unless it is for a City sponsored/authorized event.

- H. Employees shall not intentionally deprive authorized personnel access to any City Equipment.
- I. Employees shall not communicate confidential City information to unauthorized individuals within or outside of the City.
- J. Employees shall not transmit messages or information which is in conflict with applicable law or City policies, rules or procedures.
- K. Employees shall not attempt unauthorized access of or attempt to access unauthorized data on any City or non-City system.
- L. Employees shall not encrypt files, unless necessary or required to transmit files for City purposes.
- M. Employees shall not engage in theft or the unauthorized copying and distribution of electronic files or data.
- N. Employees shall not intentionally misrepresent one's identity for improper or illegal acts, nor engage in unlawful activities.
- O. Employees shall not engage in recreational use of City Equipment that interferes with the ability of the Employee or other users to conduct City work. This includes but is not limited to downloading or uploading software, games, music, or shareware to their City Equipment. Employees are also prohibited from downloading and using instant messenger (IM) on City Equipment, without prior written supervisory approval and in accordance with assigned duties.
- P. Employees shall not perform acts on City Equipment that are wasteful of computing resources or that unfairly monopolize resources to the exclusion of others. These acts include, but are not limited to: sending mass email messages or chain letters and creating unnecessary network traffic.

Section 4. General Disclosure Statement

Employees should be aware that it is possible to recover an E-mail message or identify a website visited even though the message is erased or the visit to a website is closed or the history is erased. Employees should be aware that the City might be required to disclose information or messages sent over and/or stored on City Equipment or Employee Equipment pursuant to requests filed under the California Public Records Act, state law, federal law, or as a result of subpoenas issued in the context of litigation or administrative proceedings. All communications, including text, images, and other data stored on City Equipment may be disclosed to law enforcement or other third-parties without prior consent of, or notice to, the sender or the receiver. Consequently, Employees should not consider voice-mail, E-mail, text messages, images, data, or Internet communications sent or received on City Equipment to be personal, private or

confidential. Similarly, voice-mail, E-mail, text messages, images, data, or Internet communications sent or received on Employee Equipment for City Business are not personal, private or confidential and may be similarly subject to disclosure.

The use of City Equipment and the use of Employee Equipment for City Business is subject to Council Policy F-17, and applicable departmental policies and Standard Operating Procedures (SOPs).

A. Internet Usage

Employees accessing the Internet and/or the City's own Intranet as part of their official duties are representing the City when doing so. Accordingly, except as otherwise provided in this Policy, all Internet communications and contacts using City Equipment should be for professional, business reasons and should not be for personal use. Employees are responsible for ensuring that they use their Internet access privilege in a responsible, ethical and lawful manner, unless an Employee is required to access the Internet in the course and scope of their specific job duties with **PRIOR** written supervisory approval.

Forums and discussion groups may be used only to gain technical or analytical advice for City purposes.

Each Employee is responsible for the content of all text, audio, images, or data that they place or send over the Internet using City Equipment or send as City Business on Employee Equipment. All messages communicated on the Internet using City Equipment should include the Employee's name and attached messages may not be transmitted using someone else's name or under an assumed name. Employees who wish to express personal opinions on the Internet shall do so during non-work hours using non-City Equipment.

In some cases, electronic communications to recipients on systems outside of the City are transmitted through systems and networks not managed by the City. The privacy and confidentiality of these messages or data is, therefore, not assured. In addition, some delivery methods and networks impose legal restrictions regarding the nature of messages or data allowed. Employees are expected to comply with all such regulations and policies. Employees using City Equipment or Employee Equipment for City Business may create criminal and civil liability for themselves and the City by using outside or third party systems in an offensive, defamatory or illegal manner and in such event, Employees may be subject to disciplinary action up to and including termination.

To prevent computer viruses or malware from being transmitted through the use of City Equipment, Employees are not authorized to download any software onto their computer or any drive in or connected to that computer. Employees are prohibited from connecting personal storage devices to City Equipment. Employees interested in obtaining software are required to contact the City's IT

Manager or their department IT personnel. A list of authorized software can be obtained from the City's IT Division or department IT personnel. B. E-mail\Voice Mail\Text Message\Image\Data

E-mail, voice-mail, text messages, images, and data should always be used with the assumption that a message can be read, seen or heard by someone other than its intended recipient. When transmitting messages, Employees and other users should consider that the message might be disclosed to others. Because of these concerns, Employees are required to maintain the highest standards of courtesy and professionalism when sending E-mail, text messages, images, data, or leaving voice mail messages.

The sending of e-mails on a "City-wide" basis to all Employees without the prior written authorization of a Department Director or the IT Manager is prohibited. Transmitting a message or data under another Employee's name or password is prohibited, unless done for a Supervisor with written permission to do so on his or her behalf. Any Employee who obtains a password or user identification must keep that password confidential. Employees shall not share user identification or passwords.

E-mail prepared, used, or retained as correspondence and other documentation containing information relating to the City Business must be retained in accordance with State Law and City Council policies for retention of public records. Unless otherwise required by law, E-mail used solely as a communication device in place of a telephone conversation or for other transitory purposes may be deleted.

Any E-mail, text, image, or data messages retained in City Equipment or relating to City Business retained in Employee Equipment are subject to the same disclosure requirements as other public records. E-mail, text, image, or data message records will be produced in response to request from the public in the same manner as for other public records, except that the burden to search the Employee Equipment and turn over the requested document will be on the Employee. An Employee that fails to assist the City in responding to a Public Records Act request relating to City Business may be subject to discipline, up to and including termination.

Confidential attorney/client communications with City's legal counsel or other authorized legal counsel shall not be copied or distributed to others except as authorized by the City Attorney.

C. Wireless Communications Devices

This Policy applies to all City Employees, departments and organizations. Departments which use City Equipment assigned as a duty phone, or which have City Equipment assigned to vehicles or a position instead of to individuals, may

develop departmental policies and Standard Operating Procedures (SOPs) and/or regulations which provide greater direction to their Employees, as long as that direction is consistent with this Policy.

Each department will determine the need for City Equipment, including cell phones, for City purposes or the need to provide reimbursement/stipend to an Employee for Employee Equipment. When the need is determined, the Department Director will send a written request to the IT Manager, or their department IT personnel.

All Employees are disaster service workers in the event of a disaster but not all Employees have City-issued City Equipment. Therefore, it is the responsibility of every Employee to ensure that their correct contact information is recorded in the City's information system. This can be done through the Employee Access Center, their Department or Human Resources.

Employees are prohibited from forwarding their personal cell phones to City issued City Equipment. The Department Director or designee will meet with the responsible Employee to verify facts and usage, as necessary.

The City and its Employees will comply with California Vehicle Code Section 23123, as the same may be amended from time-to-time, which prohibits all drivers from using a handheld wireless telephone, and "electronic communication devices" while operating a motor vehicle. Unless a hands-free device is used, Employees must pull to the side of the road to use a hand-held device. The City and its Employees will comply with California Vehicle Code Section 23123.5, as the same may be amended from time-to-time, – the California Wireless Communications Device Law. Employees may not transmit or read text or E-mail messages while driving or while idling in traffic. An Employee must pull to the side of the road or no longer be operating a vehicle in order to transmit or read text or E-mail messages. Any Employee who is cited by law enforcement will be responsible for the payment of the associated fine and subject to discipline for violation of this Policy.

Employee safety is a City priority, therefore, Employees who determine it is unsafe to answer their City-issued cell phone or Employee Equipment utilizing hands-free equipment while driving, may decline to answer until it is safe. Employees aged 18 and over are allowed to use Blue Tooth or hands-free earpieces while operating a motor vehicle as long as both ears are not covered. Law enforcement can, at any time, issue a citation to an Employee if, in their opinion, the Employee was distracted and not operating a motor vehicle safely. Any Employee who is cited by law enforcement will be responsible for the payment of the associated fine and subject to discipline for violation of this Policy.

Sworn public safety Employees are permitted limited use of City Equipment, such as cell phones, in the course of their duties, while operating an authorized emergency vehicle. The law provides an exception for those operating a commercial motor truck (excluding pickups) to use a two-way radio operated by a “push-to-talk” feature.

Section 5. No Expectation of Privacy

Employees shall have no right or expectation of privacy in E-mail, text, data, or image messages created, transmitted, received, deleted or stored using City Equipment or City Business conducted on Employee Equipment, including electronic communications routed by a third party communications service provider.

All communications transmitted via City Equipment, whether or not related to personal or confidential matters, are subject to monitoring, at the City’s discretion. The City monitors communications transmitted via City Equipment in the ordinary course of business for purposes that include ensuring their reliability and security. The existence of passwords and “message delete” functions do not restrict or eliminate the City’s ability or right to access electronic communications on City Equipment. The City will not monitor personal E-mail, text, data, or image messages created, transmitted, received, deleted or stored using Employee Equipment that is unrelated to City Business.

The City may randomly or routinely monitor or intercept electronic communications sent or received on City Equipment (voice-mail, e-mail, text messages, images, data and Internet access) and retains the right to do so at any time and without notice to Employees. The City also retains the right, without notice to Employees, to conduct searches of City Equipment and related systems to ensure that they are being used in conformance with this Policy. The City currently monitors, views and/or intercepts information or messages in or accessed through the communications system in the following circumstances and for the following purposes:

- A. Any activity necessary to the provision of service including, without limitation, the maintenance or repair of any City Equipment or software, the retrieval of lost messages, or for the protection of the rights and property of City;
- B. Assistance to persons or entities authorized by law to intercept electronic City communications or to conduct electronic surveillance provided the City is provided with or obtains a court order or other lawful authorization;
- C. The intercepting person is a party to the communication or one of the parties to the communication has given prior consent to such interception;
- D. The electronic communication intercepted is made through a communication system, which is configured so that the electronic communication is readily accessible to the public;

- E. The logging of statistical information concerning the use of or activity upon any communication system including Internet use statistics and access information for individual users that is compiled and forwarded for management review; and
- F. Monitoring of communications with the public to assure the quality of public service.

Section 6. Duplication of Software and Use of Copyrighted Materials

Software and related documentation licensed to the City may be protected by copyright, patent, trade secret or other forms of legal protection. Employees shall not duplicate software programs and any Employee who unlawfully duplicates software may be subject to criminal prosecution or civil damages. No Employee shall install, use, copy, alter or distribute these programs except as permitted by law and only to the extent permitted by the contract or license agreement between the City and the owner.

Employees learning of any misuse of software must immediately notify their Department Director. City Equipment shall not be used to send (upload) or receive (download) copyrighted materials, trade secrets, proprietary financial information, or similar materials without prior authorization.

Section 7. Backup Copies

Employees may not keep any backup copies of work done for the City when they separate from the City. Employees must obtain written permission from their Department Director to download and retain samples of their work. Downloading may occur only in the presence of the Employee's Supervisor. Employees are prohibited from keeping a copy of proprietary information, data or programs upon separation.

Section 8. Installation of Software

The integrity of City Equipment is vital to the City's operations. Employees may not download or install any program onto City Equipment without the express consent of their Department Director and the IT Division Manager. When in doubt, Employees must seek permission prior to taking any action that could jeopardize the integrity of City Equipment.

Section 9. Personal Use

Employees who are required to be available for City work continuously or outside of their regularly scheduled hours, may be authorized to utilize their City Equipment for personal use. Examples of such positions are those at the Department Director level and certain safety positions. The appropriate mix of personal/business cell phone usage will be determined at the Department Director level, with final authority on this issue resting with the City Manager or his/her designee. City Equipment may be operated or accessed for incidental personal use (e.g., web browsing, E-mailing, etc.)

on an Employee's break or meal period and with Supervisor approval provided that the use does not:

- A. Directly or indirectly interfere with the operation of other City Equipment;
- B. Involve any cost or expense to the City;
- C. Interfere with the Employee's performance of his/her duties or other obligations to the City;
- D. Involve creation or operation of a commercial, business, or political activity or website/blog; and
- E. Violate this Policy, or any other applicable law, rule or regulation.

Employees are reminded that personal use of City Equipment does not mean the Employee has any personal right of privacy in that use or related information and any records of City Equipment are subject to review by the City.

Section 10. Overtime Related to Communications Equipment

Non-exempt Employees shall not use City Equipment after their normal working hours without prior approval from an authorized Supervisor. The Fair Labor Standards Act (FLSA) requires that the City pay each Employee who is entitled to receive FLSA overtime for all hours worked. This provision does not apply to Employees who are exempt from FLSA overtime because of the executive, administrative, or professional nature of their job duties.

No time spent in any activity on City Equipment or Employee Equipment used for City Business may be done outside of a non-exempt Employee's scheduled work hours without advance approval from the Employee's Supervisor. Emergencies may arise that call for an exception to this rule. In emergencies, the Employee may perform the work, but must notify a Supervisor as soon as possible, and in no event later than the end of that day. If the Employee's Supervisor denies the request to work overtime, the Employee must comply with the Supervisor's directive and cease working overtime.

All time spent outside of the non-exempt Employee's scheduled hours on City Equipment or Employee Equipment used for City Business must be reported on official City forms so that the City may pay the Employee for that work. Non-exempt Employees may never choose to work and not request compensation. All legitimate overtime will be compensated.

Non-exempt Employees are required to record all work time on official City forms and to work overtime with prior approval. Failure to follow the City's overtime approval procedures will result in being paid for all legitimate work time, and being subject to

disciplinary action, up to and including termination for violating the overtime approval procedures.

Section 11. Violations

An Employee who violates this Policy is subject to disciplinary action, up to and including termination. Communications and data transmitted and/or stored on City Equipment or by a third party communications service provider in violation of this Policy will be disclosed in the context of disciplinary proceedings.

12/11/01

Revised February 2010

Revised August 2011

**AUTHORIZATION AND RELEASE
REGARDING CITY EQUIPMENT**

I, _____ have read, understand, and acknowledge the City's Policy regarding City Equipment, and Employee Equipment used for City Business. I understand and agree that the City may access my voice mail, E-mail, text, image, and data messages, and other electronically stored information on City Equipment under my control. I understand that searches of City Equipment may be conducted without advance notice in order to ensure the City Equipment is being used consistent with this Policy to facilitate transmittal of information related to the City's operations, and that **I have no expectation that any information stored or transmitted via any City Equipment or a third-party communications service provider accessed via City Equipment will be private.**

Accordingly, I hereby authorize any Electronic Communications Service to release to the City any information the City may request relating to electronic communications and/or any other form of instant or delayed messaging transmitted and/or received by myself on City Equipment. I also agree to search and immediately turn over any information the City may request relating to electronic communications and/or any other form of instant or delayed messaging transmitted and/or received by myself pertaining to City Business conducted on Employee Equipment. I understand that my failure to review and turn over information related to City Business stored on Employee Equipment may result in my discipline, up to and including termination.

I hereby release, and discharge the City and the person, firm, company, corporation or other third-party to whom this authorization is directed, including their agents, representatives and employees, from any and all liability of every nature and kind arising out of their providing the information, records and other matters referenced above relating to City Equipment pursuant to this authorization.

I further understand, acknowledge and agree that I will operate and use City Equipment and Employee Equipment when used for City Business according to this Policy. I understand and acknowledge that failure to comply with this Policy will result in discipline, up to and including termination.

A photocopy of this authorization and release shall be accepted with the same validity as the original.

Employee Signature

Date

APPENDIX D

CITY OF NEWPORT BEACH FAMILY CARE AND MEDICAL LEAVE POLICY

Section 1. Statement of Policy

To the extent not already provided for under current leave policies and provisions, the City of Newport Beach will provide family and medical care leave for eligible employees as required by state and federal law. The following provisions set forth certain of the rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (“FMLA”), and the regulations of the California Family Rights Act (“CFRA”). Unless otherwise provided by this article, “Leave” under this article shall mean leave pursuant to the FMLA and CFRA.

Section 2. Definitions

- A. **“12-Month Period”** begins on the date of an employee’s first use of leave under this policy.
- B. **“Child”** means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self care because of a mental or physical disability. An employee’s child is one for whom the employee has actual day-to-day responsibility for care and includes, a biological, adopted, foster or step-child.

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

- C. **“Parent”** means the biological parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.
- D. **“Spouse”** means a husband or wife as defined or recognized under California State law for purposes of marriage.
- E. **“Domestic Partner”** is defined by Family Code §§ 297 and 299.2, shall have the same meaning as “spouse” for purposes of CFRA Leave.

- F. **“Servicemember”** means a member of the Armed Forces, including a member of the National Guard or Reserves.
- G. **“Serious health condition”** means an illness, injury, impairment, or physical or mental condition that involves:
1. Inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or
 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 calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - i) Treatment two or more times 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 (e.g., a physical therapist) under orders of, or on referral by a health care provider, where two of the physician’s visits occur within 30 days beginning with the initial date of incapacity and the first physician visit occurs within the first seven days of incapacity; or
 - ii) Treatment by a health care provider on at least one occasion, the first of which must occur within seven days of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
 - 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:

- i) Requires the employee to make at least two visits per year to a health care provider, or a nurse or physician's assistant under direct supervision of a health care provider, for treatment;
 - ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one 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 receiving 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 consecutive calendar days in the absence of medical intervention or treatment.
- f) "Health Care Provider" means:
- 1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;
 - 2. Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises treatment of a serious health condition;
 - 3. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;
 - 4. Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;

5. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
 6. Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.
- H. **“Serious injury or illness”** as applicable to “Servicemember Family Leave” (see Section 3.5. below) means an injury or illness incurred in the line of duty while the individual is on active duty in the Armed Forces, that renders the individual unfit to perform the duties of his/her office, grade, rank, or rating.

Section 3. Reasons for Leave

Leave is only permitted for 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, spouse, or domestic partner who has a serious health condition; or
4. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position.
5. Leave to care for a child, parent, spouse, or domestic partner who is a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is in outpatient status through the Armed Forces, or is otherwise on the temporary disability retired list, for a “serious injury or illness” (referred to in this Policy as “Servicemember Family Leave”).

Section 4. Employees Eligible for Leave

An employee is eligible for leave for the reasons stated above if the employee:

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

Section 5. Amount of Leave

Eligible employees are entitled up to four (4) months of Family and Medical Leave for either their own serious health condition or to care for a family member as described in Section 2 of this policy and to the extent provided, and consistent with the terms and conditions imposed by law, during any 12-month period. An Employee may receive up to two (2) additional months leave due to the Employee's own serious health condition if the Employee has exhausted the initial four (4) months of Family and Medical Leave under this policy and if the employee provides the required medical certification, the Department Director is able reasonably to accommodate the absence and the City Manager approves the request.

A. Minimum Duration of Leave

If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within 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, domestic partner 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.

B. Bonding Leave

If leave is taken for the birth, adoption or foster care of an employee's child, the leave an employee may be entitled to is limited to 12 workweeks during any 12-month period.

C. Spouses Both Employed by the City of Newport Beach

In any case in which a husband and wife both employed by the City of Newport Beach are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled will be limited to 12 workweeks during any 12-month period if leave is taken for the birth or adoption or foster care of the employees' child (i.e., bonding leave). Additionally, with respect to Servicemember Leave, the aggregate number of workweeks of leave to which both may be entitled will be limited to 26 workweeks in a 12-month period to care for a servicemember. This limitation does not apply to any other type of leave under this policy.

D. Servicemember Family Leave

If leave is taken to care for a servicemember as set forth in Section 3.5 above, an eligible employee may take up to 26 workweeks of leave during a 12-month

period. Leave to care for an injured or ill servicemember, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period. This leave may be taken on an intermittent or reduced work schedule basis consistent with the Section 8.D of this Policy. The City may require the employee to provide certification for the serious injury or illness.

Section 6. Employee Benefits While on Leave

While on leave due to an employee's own serious health condition, employees will continue to be covered by the City of Newport Beach's group health insurance to the same extent that coverage is provided while the employee is on the job, which includes payroll deductions and taxable cash back under the City's cafeteria program.

Also, while on leave due to pregnancy, parental or family medical leave, employees will continue to be covered by the City of Newport Beach's group health insurance to the same extent that coverage is provided while the employee is on the job, which includes payroll deductions and taxable cash back under the City's cafeteria program.

Section 7. Substitution of Paid Accrued Leaves

While on leave under this policy, as set forth herein, an employee may elect to concurrently use paid accrued leaves.

A. Employee's Right to use Paid Accrued Leaves Concurrently With Family Leave

Where an employee has earned or accrued paid vacation, administrative leave, compensatory time, flex leave or sick leave, that paid leave may be substituted for all or part of any (otherwise) unpaid leave under this policy.

As for sick leave, an employee is entitled to use sick leave concurrently with leave under this policy if:

1. The leave is for the employee's own serious health condition; or
2. The leave is needed to care for a parent, spouse, domestic partner or child with a serious health condition, and would be permitted as sick or flex leave under the City of Newport Beach's leave policy.

B. The City of Newport Beach and Employee's Rights if an Employee Requests Accrued Leave Without Mentioning Either the FMLA or CFRA

If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to a FMLA/CFRA-qualifying purpose, the City of Newport Beach may not ask the employee if the leave is for a FMLA/CFRA-qualifying purpose. However, if the City of Newport Beach denies the employee's request and the employee provides information that the requested time off is for

a FMLA/CFRA-qualifying purpose, the City of Newport Beach may inquire further into the reason for the absence.

- C. The City will notify employees out more than three (3) days, who have used sick leave or unplanned flex leave that they have been placed on FMLA.

Section 8. Medical Certification

Employees who request leave for their own serious health condition or to care for a child, parent, spouse, or a domestic partner who has a serious health condition or for a servicemember who has a serious illness or injury must provide written certification from the health care provider of the individual requiring care if requested by the City of Newport Beach.

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

A. Time to Provide a Certification

When an employee's leave is foreseeable and at least 30 days notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the City of Newport Beach within the time frame requested by the City of Newport Beach (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

B. Consequences for Failure to Provide an Adequate or Timely Certification

If an employee provides an incomplete medical certification the employee will be given seven *days* to cure any such deficiency.

However, if an employee fails to provide a medical certification within the time frame established by this policy, the City of Newport Beach may delay the taking of FMLA/CFRA leave until the required certification is provided.

C. Recertification

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

when there is a recertification.

D. Intermittent Leave or Leave on a Reduced Leave Schedule

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for himself/herself or an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary prior to requesting the intermittent leave. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule. The City reserves the right to require employees returning from intermittent leave to undergo a fitness for duty examination prior to returning to work.

Section 9. Employee Notice of Leave

Although the City of Newport Beach 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 30 days' notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. Such notice may be orally given. The employee is required to comply with the City's usual call-in procedures for notifying a supervisor regarding sick leave. If the City of Newport Beach determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the City of Newport Beach may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute.

Section 10. Reinstatement Upon Return From Leave

A. Right to Reinstatement

Upon expiration of 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.

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

B. Employee's Obligation to Periodically Report on His/Her Condition

Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

C. Return-to-Work 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 return-to-work 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.

Section 11. Required Forms

Employees must fill out the following applicable forms in connection with leave under this policy:

1. "Request For Family/Medical Leave" form prepared by the City of Newport Beach to be eligible for leave. NOTE: EMPLOYEES WILL RECEIVE A CITY OF NEWPORT BEACH'S RESPONSE TO THEIR REQUEST WHICH WILL SET FORTH CERTAIN CONDITIONS OF THE LEAVE;
2. Medical certification—either for the employee's own serious health condition; for the serious health condition of a child, parent, spouse, or domestic partner; or for the serious illness or injury of a servicemember; and
3. Return to Work Certification form completed by health care provider must be provided to supervisor upon returning to active status.

10/16/2008 – Amended to add Military Leave

12/30/2008 – Amended to include legislation changes effective January 1, 2009

City of Newport Beach

Request For Family/Medical Leave

Employee Name _____ Date of Request _____
 Department _____ Position Title _____
 Hire Date _____

I request a Family/Medical Leave for the following reason (check one):

- _____ A. The birth of a child and/or in order to care for such child.
- _____ B. The placement of a child for adoption or foster care.
- _____ C. In order to care for an immediate family member because such family member has a serious health condition. Check one:
- CHILD
 SPOUSE
 PARENT
 DOMESTIC PARTNER
- (Must submit "Physician Certification" within 15 days.)**
- _____ D. Employee's own serious health condition that makes the employee unable to perform the functions of his/her position. **(Must submit "Physician Certification" within 15 days.)**
- _____ E. In order to care for an immediate family member who is a member for the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is in outpatient status through the Armed Forces, or is otherwise on the temporary disability retired list, for a "serious injury or illness" Check one:
- CHILD
 SPOUSE
 PARENT
- (Must submit "Physician Certification" within 15 days.)**

Method of Leave Requested

- _____ A. Consecutive Leave
- _____ B. Intermittent or Reduced Leave Schedule (Specify schedule below)

Date leave is to begin: _____ Expected duration of leave: _____

If the duration of my family/medical leave (total of paid and unpaid time) does not exceed 4 months, I will be returned to my same or equivalent position. I understand that if my family/medical leave should exceed 4 months, I will be returned to my same or equivalent position, only if available. If my same or equivalent position is not available, I understand that I may not be entitled to reinstatement rights under FMLA.

Date _____ Employee's Signature _____

Notice to Health Care Provider

Under Department of Labor regulations for the Family and Medical Leave Act and the State of California Family Rights Act, "health care provider" is defined as: a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, nurse-midwife who is authorized to practice by the State and performing within the scope of their practice as defined by State law, or a Christian Science practitioner.

Our employee has requested leave under the provisions of Federal and/or California family and medical leave statutes for:

- His or her own serious health condition; or
- For the purpose of caring for your patient who is a parent (biological, foster or adoptive parent; a stepparent a legal guardian; or other person who stood in loco parentis to the employee when the employee was a child), child (biological, adopted or foster child; a stepchild; a legal ward; a child for whom the employee is standing in loco parentis to; or an adult dependent child), or spouse (a husband or wife as defined or recognized under State law for purposes of marriage, including common law marriage in states where it is recognized) of our employee. Please note the in-laws are not covered by this provision.

In order for the City to determine whether this leave qualifies for family and medical leave under Federal and/or State law, **please complete the brief Health Care provider section on the reverse side of this form and return it to our employee.**

A Serious Health Condition is:

Any illness, injury (including on the job), impairment or physical or mental condition that involves:

- Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- Any period of incapacity requiring absence from work, school, or regular daily activities for more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or
- Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or
- Prenatal care; or
- Pregnancy disability; leave taken for disability due to pregnancy, childbirth or related medical conditions.

Examples: heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, and injuries caused by serious accidents on or off the job.

A Serious Health Condition is Not:

- Allergies.
- The patient is not incapacitated for more than three calendar days, is not under the continuing care of a health care provider, and/or the patient does not have a serious long-term health condition; or
- Voluntary treatment or surgery unless inpatient hospital care is required.

DO NOT DISCLOSE THE UNDERLYING DIAGNOSIS WITHOUT CONSENT OF PATIENT

City of Newport Beach

(CONFIDENTIAL) FOR RECORDKEEPING ONLY

FAMILY AND MEDICAL LEAVE CERTIFICATION

Employee Name:
Patient (if other than employee):
Relationship of employee to patient: If patient is a child, is he/she 18 years of age or older? <input type="checkbox"/> yes <input type="checkbox"/> no If yes, is child incapable of self care*? <input type="checkbox"/> yes <input type="checkbox"/> no <small>Requires certification</small>
Beginning date of leave:
What is the employees anticipated return to work date:

Medical Status and Recommendations from Health Care Provider

Does this employee or patient have a serious health condition? (see definitions) <input type="checkbox"/> yes <input type="checkbox"/> no
On what date did the serious health condition commence? Duration of medical condition:
<i>If leave is for the employee:</i> Is employee able to perform the functions of his/her job? (see job description) <input type="checkbox"/> yes <input type="checkbox"/> no Questions regarding the employee's job duties may be addressed to the employee's supervisor. Employee's Supervisor: _____ Phone: _____ Can the employee work a reduced work schedule or require other medical accommodation(s)? <input type="checkbox"/> yes <input type="checkbox"/> no If yes, please include schedule of visits or treatment if it is medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal schedule of hours per day or days per week: <i>If leave is for employee's family member:</i> Is the employee's presence necessary to provide on-site care for the patient? or <input type="checkbox"/> yes <input type="checkbox"/> no Is the employee's presence deemed beneficial to the welfare of the patient? <input type="checkbox"/> yes <input type="checkbox"/> no Does the patient require full time care? <input type="checkbox"/> yes <input type="checkbox"/> no If no, give an estimate of the time period during which this care will be provided, including a schedule if leave is to be taken intermittently or on a reduced leave schedule:

Health Care Provider Information

Health Care Provider Signature	Date
Type of Health Care Provider (see definition):	
Address	Phone

City of Newport Beach

(CONFIDENTIAL) FOR RECORDKEEPING ONLY

FAMILY AND MEDICAL LEAVE RETURN TO WORK CERTIFICATION

Under Department of Labor regulations for the Family and Medical Leave Act and the State of California Family Rights Act, "health care provider" is defined as: a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, nurse-midwife who is authorized to practice by the State and performing within the scope of their practice as defined by State law, or a Christian Science practitioner.

Employee Name: _____

The following information is to be completed by your health care provider. Return this form to your supervisor prior to your return to work date.

Employee is released to work effective (date): _____

Is employee able to perform the functions of his/her job? (see attached job description)

yes yes, with restrictions/accommodations no

Questions regarding the employee's job duties may be addressed to the employee's supervisor.

Employee's Supervisor: _____ Phone: _____

Please list any functional limitations:

Are the limitations: permanent temporary, until (date): _____

Comments:

Health Care Provider Information

Health Care Provider Signature

Date

Type of Health Care Provider (see definition):

Address

Phone

APPENDIX E

CITY OF NEWPORT BEACH ORGANIZATIONAL VALUES AND BEHAVIORS

ORGANIZATIONAL VALUES

As Employees of the City of Newport Beach, we choose to embrace and practice the following values:

In practicing ***integrity***, we strive to be honest, reliable, respectful, ethical, fair and authentic. We will serve in a manner consistent with community values and follow through on our commitments.

In practicing ***empathy***, we will be sensitive to the needs of others by being compassionate, thoughtful, open-minded, willing to understand, and by being good listeners.

In practicing ***service***, we understand our roles as representatives of the City. We will endeavor to practice humility, to make things better for others, and to treat others, as we want to be treated.

In practicing ***excellence***, we will strive to do our best by demonstrating competence and a commitment to quality. We will be innovative, thorough, efficient and effective in our work.

In ***creating a positive work environment***, we will express our appreciation for, and recognize, others. We will follow a work ethic, take pride of ownership in our work, be courteous, encourage creative thinking, seek and be open to challenges, create esprit de corps, maintain a safe work environment, and act with enthusiasm.

In creating ***unity of purpose***, we will practice cooperation and teamwork. We will practice open communication by keeping others informed, considering the needs of others, and at times deferring to the needs of others.

In practicing ***responsibility***, we will be accountable in our work, take initiative, make appropriate decisions, and act decisively. We will acknowledge our errors and correct them.

In practicing ***loyalty***, we will respect the individual and the position. We will support each other, abide by decisions, and strive to always present a positive image of the City.

ORGANIZATIONAL BEHAVIORS

The following behaviors were identified as ways for the organization's employees to demonstrate and act on their values. The list is not meant to be all-inclusive, but rather descriptive of the types of behaviors that would demonstrate each value.

Integrity—no surprises, speak up with concerns rather than internalize; say in the group what you say in private; always be honest; frank; give credit where it's due; be factual in advising public on processes and regulations; consistency of application of regulations; all customers deserve same treatment; tell people the whole story.

Empathy—expressions of concern; active listening; walking in each others' shoes; slow to judgement; acknowledge others' feelings; show you care; respect one another's professional abilities.

Service—be courteous, professional; problem-solving attitude; ask customers if they need help and then help them; keep public informed about what you're doing; timeliness; quality service; acceptance of role to carry out Council policy; friendliness; be receptive to complaints and requests; help them navigate the system; put yourself in their shoes.

Excellence—encourage innovation; support professional growth; seek to become an expert; encourage self-development; allow people to be innovative without negative consequences; encourage creativity in problem-solving; be up-to-date on technological advances.

Create a positive work environment—clearly define expectations; frequent feedback on work performance; reward work performance; education and development opportunities; employee lounge.

Unity of purpose—reinforce with each other why we're here; act in support of mission statement; identify opportunities to help each other, cross-training and education; informational exchange; aligning work processes and products.

Loyalty—going the extra mile; project positive image through appearance and actions; not talk disparagingly about organization and leadership.

Responsibility—show up regularly and ready to work; master the elements of our jobs; take ownership of work product; take pride in work; meet deadlines or tell supervisor; smooth transitions between departments; tell supervisor if you see a problem or have a problem; be solution-oriented; don't be reluctant to do something extra; offer constructive criticism.

12/11/01