

# City of Lathrop

## PERSONNEL RULES AND REGULATIONS

July 2023



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## **RULE 1: GENERAL PROVISIONS**

### **1.1 Intent**

The Personnel System of the City of Lathrop has been established under Lathrop Municipal Code Chapter 2.40. These Personnel Rules and Regulations are intended to govern the Personnel System.

### **1.2 Adoption**

These Personnel Rules and Regulations (hereafter “Rules and Regulations”) have been adopted by City Council Resolution No. 23-5323.

The Rules and Regulations supersede any and all Personnel Rules and Regulations previously adopted. Additional rules and regulations regarding personnel may be issued from time to time as approved by City Council or City Manager authority.

### **1.3 Priority of Collective Bargaining Agreements (MOUs)**

If a provision of these Rules and Regulations conflicts with a provision of an applicable collective bargaining agreement (referred to as “MOU”) entered into by the City and a recognized employee organization (Union), the provision in the MOU shall prevail with respect to employees in the Union. However, if the provision in the Personnel Rules was adopted subsequent to the MOU pursuant to a meet and confer process consistent with the provisions of the MOU, the Personnel Rule will then control.

### **1.4 Administration**

The City Manager shall administer these Rules and Regulations.

Department Heads shall administer these Rules and Regulations within their department. Department Heads may establish department rules and regulations to ensure efficient operation of their departments. Department rules and regulations shall not be in conflict with these Rules and Regulations.

### **1.5 Non-Contract**

These Rules and Regulations do not create a contract of employment, express or implied or any rights contractual in nature.

### **1.6 Coverage of Rules and Regulations**

In general, these Rules and Regulations shall apply to all employees of the City except the following and except where the rules specifically provide otherwise, or as required by law.

- A. All Council – appointed City officers except as may be provided in their contract.
- B. Personnel engaged under contract to provide expert, professional, technical or any other services.

- C. Volunteers, including but not limited to, personnel such as reserve officers or volunteers, and volunteers who may be eligible for workers compensation benefits.
- D. Emergency personnel hired to meet immediate requirements of an emergency condition such as an extraordinary fire, flood, or earthquake or a declared state of emergency which threatens life or property.

The employees or positions in the foregoing list hold their positions at the will of the City Council or City Manager and, unless otherwise required by law or as specified in these rules, are not obligated by or entitled to benefits under these Rules and Regulations. However, this list is not inclusive of all at-will employees such as Assistants to the City Manager, Department Heads, other at-will management employees, and temporary and seasonal employees. For this reason, some rules will specifically provide they are not applicable to at-will employees to exclude any additional at-will employees not listed above. Also, as discussed above, some rules will specify that they apply to all employees to include all employees at the City.

## **1.7 Definitions and Interpretation**

### **A. Interpretation**

All words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and interpreted according to such peculiar and appropriate meaning.

### **B. Definitions**

Where appropriate, specific definitions are utilized in these Rules and Regulations and shall prevail. Such definition shall be applicable throughout these Rules and Regulations unless otherwise stated.

### **C. Officials and Designees**

Whenever a duty, responsibility, or authority is vested in a particular position, the duty, responsibility or authority shall also be vested in that person's designee. There is no need to state "or designee" in a provision.

## **1.8 Personnel Records**

### **A. Establishment and Maintenance of Personnel Files**

1. An official personnel file for each City employee shall be maintained by and shall be under the control of the Director of Human Resources, or designee.
2. A personnel file shall contain only material that is necessary and relevant to the City's administration of its Personnel System.

3. Department Heads may establish working files for individual employees. However, the establishment of such files must comply with the security and access provisions contained within the policy. Those files are not considered to be the official personnel files of the City and disclosure of contents can only be made to the employee, the direct supervisory chain of command, the City Manager and the City Attorney.
4. Upon termination, the employee's personnel records that are maintained by the City shall be retained as required by law.
5. A separate confidential file containing medical information shall be established and maintained consistent with the Americans with Disabilities Act (42 U.S.C. section 12112(d)(3)(b)) and the California Confidentiality of Medical Information Act. (California Civil Code sections 56 et seq.)
6. Payroll records shall be maintained by the Finance Department and benefit records shall be maintained by the Human Resources Department.. Access to this information shall be limited to the City Manager, authorized staff, the named employee, the Department Head and other individuals on a "need to know" basis as approved by the City Manager.

B. Access to Personnel Information

1. If a request for information about employees is received by City, the request is to be forwarded to the Human Resources Department. The City will release information required to be released by the California Public Records Act.
2. Reference checks and requests for information concerning current or former employees must be referred to the Director of Human Resources, or designee. The City will release such information only if the employee has signed an Authorization for Release of Employment Information. Absent a signed release, the only information to be released shall be the position held, dates of employment, and salary.
3. Employees may inspect their own files at reasonable times and intervals. Employees desiring to inspect their files should contact the Director of Human Resources, or designee. Employees may not remove any documents, or add to or delete documents from their personnel files, except when following an agreed upon process for submitting written comments concerning any document in the personnel file. They may ask that the Director of Human Resources, or designee, make copies of documents or add a document to the file.
4. Documents not available for inspection include:
  - a. Records relating to the investigation of a possible criminal offense
  - b. Letters of reference
  - c. Ratings, reports, or records that were:
    - i. Obtained prior to the employee's employment
    - ii. Prepared by identifiable examination committee members

- iii. Obtained in connection with a promotional examination
- d. Employees subject to the Public Safety Officers Procedural Bill of Rights
- e. Employees of agencies subject to the Information Practices Act

C. Changes Regarding Employee Information

It is important that the City have accurate personal information regarding employees. Each employee must promptly notify the Human Resources Department and Department Head regarding changes in personal information such as mailing address, telephone number, emergency contact information, and number of dependents.

**1.9 Violation of Rules**

Violation of any of the provisions of these Rules and Regulations by any person employed in the municipal service may be subject to disciplinary action as set forth in Rule 9.

**1.10 Employment Constitutes Acceptance of Rules**

In accepting employment with the City, each employee agrees to be governed by and to comply with these Rules and Regulations, administrative rules and procedures established by the City Manager pursuant thereto, and rules, regulations, and directives of the department in which he or she is employed.

**1.11 Supplemental Provisions in Administrative Manual**

Under Chapter 2.40, of the Lathrop Municipal Code, the City Manager is authorized to administer the Personnel System. Pursuant to that authority the City Manager has issued and will continue to issue personnel-related administrative policies as set forth in the City of Lathrop Administrative Policies Manual. Employees are expected to become familiar with personnel-related provisions in the administrative manual.

**1.12 Amendment and Revision of Rules**

Proposed amendments or revisions to these Rules and Regulations shall be considered and adopted by the City Council by Resolution in accordance with Section 2.40.030 of the Lathrop Municipal Code. A City Council adopted resolution or ordinance relating to any subject matter under these Rules and Regulations shall be deemed to supersede said subject matter unless otherwise provided in the resolution or ordinance.

**RULE 2: EQUAL EMPLOYMENT POLICY AND PRACTICES**

Notwithstanding any language in these Personnel Rules and Regulations, this Rule 2 shall be applicable to all employees.



## **2.1 EEO Policy Statement**

The City affords equal employment opportunity for all qualified employees and applicants to all terms of employment with the City, including, but not limited to, compensation, hiring, training, promotion, transfer, discipline and termination.

The City prohibits discrimination against employees and applicants for employment on the basis of the employee or applicant's 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.

- A. Any employee, volunteer, or applicant who believes they have experienced any form of employment discrimination or abusive conduct are encouraged to report the conduct immediately by using the complaint procedures provided in these Policies, or by contacting the Equal Employment Opportunity Commission ("EEOC"), or the Civil Rights Department ("CRD"). Reasonable Accommodation Policy

The City will comply with applicable laws ensuring equal employment opportunities to qualified individuals with disabilities and medical conditions. The City will make reasonable accommodations for the known physical or mental disability or medical condition of an otherwise qualified individual who is an applicant or an employee unless undue hardship would result. Any such applicant or employee who requires an accommodation in order to perform the essential functions of the job should contact the Director of Human Resources, or designee, to request an accommodation.

## **2.2 Unlawful Harassment Prohibited**

The City prohibits harassment because of sex (which includes sexual harassment, gender harassment, and harassment due to pregnancy, childbirth, or related medical condition) and harassment because of race, color, national origin, ancestry, sex (including gender identity), religion, creed, physical or mental disability, medical condition, marital status (including registered domestic partner status), sexual orientation, age, or any other basis protected by federal, state or local law including harassment of employees, independent contractors, and business representatives. All such harassment is unlawful and will not be tolerated. The City is committed to taking all reasonable steps to prevent harassment from occurring. Any employee, including a supervisor or manager, who engages in unlawful harassment will be subject to discipline, up to and including termination.

### **2.3 Unlawful Harassment Defined**

Unlawful harassment includes conduct that is:

- A. Unwelcome;
- B. Related to a protected category identified in the paragraph above;
- C. Offensive to the recipient and to a reasonable person; and/or
- D. Severe or pervasive so that the conduct unreasonably interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment.

If the conduct is related to a protected category, then the following may constitute unlawful harassment: jokes, graffiti, comments, stories, photographs, gestures, e-mail, written materials, threats of job detriment, or actual changes to an employee's compensation, workload or assignments. Harassment may be in the form of verbal conduct such as vulgar remarks, ethnic jokes, and threats of physical harm. Harassment may be in the form of physical conduct such as inappropriate touching, blocking of movement, vulgar gestures, hitting, shoving, or other physically threatening conduct such as invading an individual's personal space.

### **2.4 Sexual Harassment Defined**

Sexual harassment is defined as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:

- A. Submission to such conduct is made a term or condition of employment; or
- B. Submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or
- C. Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive work environment.

Sexual harassment also may be defined as unwanted sexual advances or visual, verbal or physical conduct of a sexual nature. The following are some examples of forms of offensive behavior under this definition:

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

7. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
8. Physical conduct including touching, assaulting, impeding or blocking movement.
9. Retaliation for having reported or threatened to report harassment.

It is unlawful for males to sexually harass females or other males, and for females to sexually harass males or other females. Sexual harassment on the job is unlawful whether it involves coworker harassment, harassment by or of a supervisor or manager, harassment by or of independent contractors of City, harassment by or of elected officials, or harassment by or of persons doing business with or for the City.

## **2.5 Anti-Bullying Policy**

In addition to prohibiting all forms of discrimination and harassment identified above, the City of Lathrop also prohibits any form of "intimidation or bullying" in the workplace or elsewhere, such as at offsite events.

**Policy Coverage:** Every employee and other individuals, such as temporary agency workers, consultants, independent contractors and visitors, have the right to be treated with respect. Bullying is the use of aggression with the intention of harming another individual. It can include any intentional written, visual, verbal, or physical act, when the act physically harms the individual or damages his or her property; has the effect of interfering with an employee's ability to work; is severe or pervasive; and creates an intimidating or threatening environment.

Bullying comes in many shapes and sizes and can take many forms including, but not limited to, excluding, tormenting, taunting, abusive comments, using threatening gestures; pushing, shoving, punching, unwanted physical contact, or any use of violence; graffiti; name-calling, sarcasm, spreading rumors, teasing. Such conduct can also occur via use of electronic or telephonic communications such as the internet, email and chatroom misuse, mobile threats by text messaging, or calls or misuse of cameras and video equipment.

## **2.6 Obligations of Supervisors/Managers**

A copy of this policy will be provided to all employees of the City, as well as displayed in prominent locations throughout the City.

A copy of the information sheet on sexual harassment prepared by the Department of Fair Employment and Housing is available to all City employees upon request.

The City will periodically notify employees of the procedures for registering a complaint as well as available redress. Such notification shall occur through the normal channels of communication.

The Human Resources Department office will make available upon request information from the Department of Fair Employment and Housing and the Equal Employment Opportunity Commission about filing claims of sexual harassment with these entities.

A copy of "Equal Employment Policy and Practices" as set forth in this Rule 2, shall appear in any publication which sets forth the comprehensive rules, regulations, procedures and standards of conduct for employees. Employees of the City shall receive periodic training on this Policy.

## **2.7 Complaint Procedure**

Employees who believe they have experienced any form of discriminatory harassment or behavior in violation of the Anti-Bullying Policy are encouraged to report this experience immediately, using the complaint procedure provided in Rule 2.8 below of these Rules and Regulations.

## **2.8 Complaint Procedure for Discriminatory Harassment, Bullying Behavior**

A. Obligations of all employees. Comments, gestures or actions that are perceived as harassing or bullying should be immediately communicated with the person who is harassing. That person should be told such actions/words are not welcome.

All employees should immediately report any conduct that they believe violates the City Equal Employment Policies and Practices. This includes conduct they personally experience or directly observe, whether or not reported by the employee who is the object of the conduct. This also includes conduct by non-employees, such as sales representatives or service vendors, or conduct aimed at such contractors.

Employees should immediately report the conduct to their supervisor, manager, any Department Head or the Director of Human Resources, or designee. Under no circumstances shall City employees who believe they have been the victim of discrimination, harassment or bullying behavior be required to first report that harassment to a supervisor or other authority figure if that person or authority figure is the individual alleged to have committed the harassing conduct. These employees should instead report the conduct to any manager or Department Head or the Director of Human Resources, or designee.

All employees must cooperate with any investigation of any alleged act of discriminatory harassment conducted by the City or its agents.

B. Responsibilities of Supervisors or Management. Any supervisor or manager who receives a complaint regarding discriminatory harassment or bullying behavior shall immediately report it to the Director of Human Resources, or designee. If it is not possible to report it to the Director of Human Resources, or designee, then the supervisor or manager must instead report the complaint to the City Manager.

C. Investigative/Corrective Action. The Director of Human Resources, or designee, will authorize an investigation or conduct an investigation of the complaint. The investigation will be conducted in a manner that ensures, to the extent feasible, the privacy of the parties involved.

The person designated to investigate shall immediately report in writing the findings of fact to the Director of Human Resources, or designee. The Director of Human Resources, or designee, will determine whether the Policy has been violated and communicate the conclusion to the complainant. Disciplinary action shall be decided in accordance with City policy and after consultation with the Human Resources Department.

## **2.9 Policy Against Retaliation:**

No employee will be subjected to any form of retaliation for reporting an incident of bullying or harassment, or participating in an investigation by the City of Lathrop or its representatives into allegations of bullying or illegal harassment.

Retaliation is any adverse conduct taken because an applicant, employee, or contractor has reported harassment or discrimination, or has participated in the complaint and investigation process described herein, and is prohibited. "Adverse conduct" includes, but is not limited to: taking sides because an individual has reported harassment or discrimination, spreading rumors about a complaint, shunning and avoiding an individual who reports harassment or discrimination, real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination, or taking negative employment action.

## **RULE 3: EMPLOYMENT**

### **3.1 Position Request**

Any employment position that is to be filled must first be approved by the City Manager. Department Heads are responsible for communicating to the City Manager the need for additional personnel including necessary budget information.

After approval from the City Manager, the recruitment will be conducted through the Human Resources Department. This applies to all recruitment including: full-time, part-time, contractual, temporary, seasonal, etc.

Any position that is to be filled must be authorized in the budget or specifically approved by the City Council.

### **3.2 Recruitment**

It is the responsibility of the Human Resources Department to ensure that all applicants are treated fairly and to ensure that the procedures outlined herein are followed. The Department Head shall be responsible for initiating the recruitment.

## A. Types of Recruitment

### 1. Open and Competitive

Open to all applicants who meet the minimum qualifications and other requirements of the position, as stated in the announcement.

### 2. In-house

The Department Head, with the City Manager's approval, shall have the option to open up any recruitment in-house prior to an open recruitment. If the position is not filled in-house, open and competitive procedures should be followed. In-house recruitment is open to all City employees who meet the minimum qualifications and other requirements of the position. In-house recruitment should stay open for a minimum of seven (7) calendar days, and should be extended one (1) day for any holiday falling within the seven (7) days.

### 3. Promotional

a. Departments may use an in-house recruitment to fill senior, supervisory or management positions when such action is in the best interest of the City. Promotional recruitment may be open to all City employees or only to the requesting department's employees, as determined appropriate by the Department Head with approval of the City Manager; or

b. Departments may use an open and competitive recruitment as described above to fill senior, supervisory or management positions.

### 4. Temporary

a. Temporary recruitment is open to all applicants who meet the minimum qualifications and other requirements of the position, as stated in the announcement; or

b. Departments may use temporary employment services without open competitive recruitment to fill temporary positions, when such action is in the best interest of the City including special projects, abnormal workloads, or seasonal needs.

### 5. Internships

a. Internships are open to all applicants who are attending any college or university with relevant programs and meet the minimum qualifications and other requirements of the position and other employment with the City, as stated in an announcement or position description.

b. Internships may be recruited openly or by direct referral from campus placement services, academic advisors, and/or current interns.

## 6. Emergency Help

- a. When a department has an emergency or urgent need for employment assistance of three (3) months or less, former City employees or other applicants who meet minimum qualifications and possess the needed skills and abilities may be hired or rehired to fill this role without necessitating a formal selection process.
- b. Departments may also use college students presently filling or who recently filled an internship who meet the minimum qualifications to fill an emergency or urgent need for employment assistance.
- c. Departments may also temporarily fill a position as an internship. Interns for emergency help may be selected from student referrals by the appropriate academic advisor, college department directors or students, rather than from the formal selection process.

## B. Minimum Qualifications

Minimum qualifications will be described in job announcements for each position advertised for recruitment. These are to be reasonably applied by the hiring department so that, if there is any reasonable doubt that an applicant may qualify, the applicant shall not be eliminated based upon minimum qualifications. If no applicant meets the minimum qualifications, the Department Head may interview the most qualified candidates for the position, re-advertise the position, or under-fill the position.

## C. Recruiting Methods

The City may use all available, timely and cost effective means of recruiting qualified applicants. This includes but is not limited to contacting an employment agency, minority and other employment referral agencies with job announcements, utilizing professional newsletters and magazines, newspaper classified advertising, maintaining a job interest listing, and other appropriate recruitment methods.

1. The Department Head will develop an employment announcement to be reviewed by the Human Resources Department and approved by the City Manager. Such announcement should include the following information: position title, salary range, summary of the job and duties, minimum qualifications, testing and selection procedures and recruitment closing date.
2. The responsibility for the development of personnel advertisements is a coordinated effort of the hiring department and the Human Resources Department.

### **3.3 Employment of Relatives: No Nepotism Policy**

The hiring and promotion of an immediate family member to any position of direct supervision over another immediate or extended family member is prohibited to ensure against preferential treatment, internal control problems, and other related managerial problems. For purposes of this Rule only, the term immediate family includes spouses, registered domestic partners, parents, children, brothers, sisters, grandchildren, grandparents, uncles, aunts, nieces, and nephews.

It is the responsibility of the Human Resources Department and the Department Head making the final hiring decision to ensure that this rule is adhered to.

### **3.4 Selection of Employees**

The objective of recruitment and selection is to provide the City with the most qualified applicant for a position. Selection should be done in accordance with employment opportunities as described in these Rules and Regulations.

The City will endeavor to use a selection process which involves fairly assessing the qualifications of applicants through written tests, personal interviews performance tests, work samples, successful completion of required training, or any combination of these, or other testing methods. The determination of which testing method will be used, or how the testing will be administered, shall be within the discretion of the Department Director, Director of Human Resources, or designee, and City Manager.

A. Application Form

B. Job applications must be made using the online application system designated by the City. Upon request, a paper application will be provided. Applications submitted must be completed in full and signed by the applicant. The City will not process any incomplete or unsigned application. Special Application Form for Applicants and Volunteers Working with Children

Under California Public Resources Code section 5164, the City shall not hire a person or volunteer to perform services at a park, playground, or recreational center in a position having supervising or disciplinary authority over a minor if that person has been convicted of any of various specified offenses. Applicants and volunteers for the above-referenced types of positions must complete a separate application that inquires whether the individual has been convicted of any specified offense. Additionally, the City shall screen any such prospective employee's or volunteer's criminal background as authorized by Penal Code Section 11105.3. The City shall include the person's fingerprints in its request for Department of Justice records.



### C. Qualifying and Referral

1. The Director of Human Resources, or designee, should only consider applications received by or postmarked no later than the closing date for the recruitment unless unusual circumstances beyond the control of the applicant cause the delay, e.g. delays in testing or handling by an approved employment agency, or other circumstances approved by the Director of Human Resources, or designee.
2. The Director of Human Resources, or designee, and Department Head should develop the selection criteria used for evaluation of the applicants based upon education, experience, skills, and any applicable tests. Based upon these criteria the top applicants should be identified. The most qualified applicants may be interviewed, assessed, background and references checked or otherwise tested to select the best applicant for the position.
3. The Director of Human Resources, or designee, may reject an application at any time during the application or selection process if the applicant:
  - a. Lacks any of the minimum qualifications or licenses established for the position, unless there are no qualified applicants and the department elects to consider under-filling the position.
  - b. Made a false statement of material fact or practiced fraud or deception in the application, examination or interview to secure eligibility or appointment.
  - c. Used or attempted to use political pressure or bribery to secure an advantage in establishing eligibility for an examination or appointment;
  - d. Directly or indirectly obtained information the applicant was not entitled to regarding the test or examination for the position.
  - e. Violated provisions of these Rules and Regulations or state or federal law.
  - f. Is a current user of illegal drugs;
  - g. Is a relative of an employee and is subject to the No Nepotism Policy.

### D. Out of Area Applicants

The general rule is that when out-of-area applicants apply for positions with the City, transportation, lodging and meal costs are the responsibility of that applicant. The City Manager may exercise his or her discretion to pay for or reimburse such reasonable costs on a case by case basis.

#### E. Oral Interview

An oral interview will be conducted by an oral interview board with all referred applicants. The Director of Human Resources, or designee should make a reasonable effort by telephone and/or by e-mail to contact applicants to inform them of their eligibility for an interview. The Director of Human Resources, or designee will work with the interview board to establish an interview questionnaire and ensure that only appropriate inquiries are made.

#### F. Eligible List

Employment lists of eligible applicants will be established using interview ratings, appropriate test scores or other reasonable screening methodologies. These lists shall be referred to as "eligible lists." Applicants shall be placed on the eligible list according to ratings, high to low. If tied applicants have the same application date, they shall be placed alphabetically.

The Eligible List shall expire no later than one (1) year after the date it is established for the position or three (3) months for seasonal positions. The Director of Human Resources, or designee may extend the time for an additional six (6) months. The Director of Human Resources, or designee may abolish the Eligible List if there is a change in the duties or minimum qualifications of the position which would impact the examination and placement of applicants on the list, or if less than five (5) names appear on the list, after the one (1) year period.

#### G. Reference Checks

Reference checks of previous employers, co-workers and other individuals with personal knowledge of the applicant should be made by the Human Resources Department on all applicants who are placed on employment lists and/or all applicants who are selected as finalists for an opening. Adverse or unsatisfactory references may disqualify the applicant from further consideration.

#### H. Background Checks

Background and/or credential checks may be made, when deemed necessary, by the City Manager. Also, where pertinent or legally required, driver's license and criminal background checks will be made. Adverse or unsatisfactory results of background, credential, or criminal background checks may disqualify an applicant from further consideration.

#### I. Post-Employment Offer Physical Exam and Drug Screening Test

After the City makes an offer, but before an employee starts work, the City will require the employee to take a physical exam as permitted by law and to undergo a drug screen test in accordance with Rule 9.5.

J. Final Selection

The final selection shall be based on the City's evaluation of the best applicant for the position from among the available candidates.

K. Selection Documentation

All selection criteria, testing scores or results and oral interview rating and references must be recorded and maintained by the City for a minimum of three years. Documentation must be submitted at the time of final selection.

L. Exceptions

The procedures outlined above may be appropriately modified for the recruitment and selection of appointed positions with the approval of the City Manager.

**3.5 Rehire of Employees**

Individuals who satisfactorily complete an original probationary period and subsequently separate from City employment in good standing, may be eligible for rehire without competing through open public recruitment into any similar City position for which they qualify. The decision to rehire a previous full-time regular or part-time regular employee shall always be at the option of the Department Head subject to the approval of the City Manager. Rehiring of a previous employee shall be subject to all other provisions of employment with the City, including but not limited to serving a probationary period except that at-will employees (including at-will management, temporary, and seasonal employees) shall not be required to serve a probationary period.

**3.6 Probationary Period**

Section 3.6 (Probationary Period) does not apply to at-will employees (including at-will management, temporary, and seasonal employees).

A. New Employees

1. New employees shall serve a probationary period of not less than six (6) months of actual service
2. Unrepresented, sworn staff shall serve a probation period of 15 months.
3. Periods of time on paid or unpaid leave exceeding five (5) days (consecutive or not; excluding compensatory time taken) shall automatically extend the probation period by the number of days the employee is on leave. This probationary period may be extended for a period up to six (6) additional months at the recommendation of the Department Head and approved by the Director of Human Resources, or designee, and City Manager. Any extension of probation shall be in writing and must be given to the employee before the probationary period has ended.

4. The probationary period is considered to be part of the selection process. Employees have no right to employment during this probationary period. Probationary employees may be dismissed at any time without cause by the City.
5. Probationary employees do not have access to the grievance or appeal process and are not entitled to a hearing upon dismissal.

**B. Promoted Employees**

1. On accepting a promotion, an employee serves a new probationary period of six (6) months of actual service.
2. Unrepresented, sworn staff shall serve a promotional probation period of 12 months
3. Periods of time on paid or unpaid leave exceeding five (5) days (consecutive or not) shall automatically extend the probation period by the number of days the employee is on leave. This probationary period may be extended for a period of up to six (6) additional months. at the recommendation of the Department Head and approved by the Director of Human Resources, or designee, and City Manager. Any extension of probation shall be in writing and must be given to the employee before the probationary period has ended.
4. An employee who fails the probationary period has no right to their former position. Also, an employee who fails the probationary period and is dismissed has no right to the grievance or hearing procedures.
5. The end of the probationary period shall be the new Performance Review Date (PRD) for the promoted employee. At this time the employee will be eligible for a step increase as outlined in these Rules and Regulations.

**3.7 Regular Employee Status**

- A. Regular Full-Time Employees. Employees who are employed in a position who successfully complete their probationary period and who regularly work a minimum of forty (40) hours per week shall be deemed regular full-time employees.
- B. Regular Part-Time Employees. Employees who are employed in a position who successfully complete their probationary period and who regularly work less than forty (40) hours per week, but at least thirty (30) shall become regular part-time employees.

**3.8 Lay Off Procedures and Bumping Rights**

- A. Statement of Intent. Whenever the City eliminates a position or has a reduction in force due to reduced work, reduced revenues, or other reasons, or when in the judgment of the City Manager, it becomes necessary to abolish any position of employment, the employee holding such position may be laid off or demoted, without disciplinary action and without the right of appeal.
- B. Notification. Employees to be laid off shall be given, whenever possible, at least fifteen (15) calendar days' prior notice, which shall include an opportunity

to submit in writing or meet with the Director of Human Resources, or designee regarding the reasons for the layoff and his or her seniority and bumping rights. The Director of Human Resources, or designee, will render a reply in writing within seven (7) calendar days after receiving the employee's response.

- C. Vacancy and Demotion. Except as otherwise provided, whenever there is a layoff under this rule, the City shall first demote to a vacancy, if any, in a lower class for which the employee to be laid off is qualified. All persons so demoted shall have their names placed on the City's reemployment list.
- D. Employee Rights. A permanent employee affected by layoff shall have the right to displace an employee who has less seniority in a lower class in the same class series or in a lower classification in which the affected employee once had permanent status. Seniority includes all periods of full-time service at or above the classification level where layoff is to occur.
- E. Seniority.
  - 1. In order to retreat to a former or lower class, an employee must have more seniority than at least one (1) of the incumbents in the retreat class, and shall request displacement action in writing to the Director of Human Resources, or designee, within five (5) working days of receipt of notice of layoff. Notice of layoff shall include a notice of the rights set forth in this rule.
  - 2. Employees retreating to a lower or similar class shall be placed at the salary step representing the least loss of pay. In no case shall the salary be increased above that received in the class from which the employee was laid off.
  - 3. Employees retreating to a lower or similar class shall serve a probationary period in the new class unless they have previously successfully completed a probationary period in the class or the class series.
- F. Employment Status.
  - 1. Only regular full-time employees and regular part-time employees as defined in Rule 3.7 shall be entitled to any rights under this Rule.
  - 2. In cases where there are two (2) or more employees in the class from which the layoff is to be made, employees whose last overall evaluation rating have been "improvement-needed" or worse shall be laid off first, regardless of seniority. If no employees within the class fit such criteria, or after all so-rated employees have been laid off, layoffs shall be in inverse order of the employees' seniority in that or a higher class.

#### G. Reemployment List.

1. The names of persons laid off in accordance with these rules shall be entered upon a reemployment list. Lists from different departments or at different times for the same class of position shall be combined into a single list. Such list shall be used when a vacancy arises in the same or lower class of position before certification is made from an eligible list.
2. Names of persons laid off shall be carried on a re-employment list for one (1) year, except that persons appointed to permanent positions at the same level from which they were laid off shall, upon such appointment, be dropped from the list. Persons who refuse reemployment shall be dropped from the list. Persons reemployed in a lower class, or on a temporary basis, shall be continued on the list for the higher position for two (2) years. The City Manager may extend the duration of a reemployment list.

### **RULE 4: WORKING CONDITIONS AND WORK RULES**

#### **4.1 Working Hours and Breaks**

The City of Lathrop will strive to serve the needs of the public by establishing reasonable business hours. This rule establishes guidelines for working hours for employees as well as lunch periods and breaks.

##### A. City of Lathrop Business Hours

1. The City of Lathrop shall strive to provide reasonable business hours to ensure accessibility for the public and meet the general needs of citizens. Each department within the City will establish business hours to best service the public, as determined by the Department Head and City Manager and shall be posted at the City building and on the City website. . Extended hours may be considered to provide adequate public accessibility. City offices are closed on holidays.
2. Department Heads should make sure there are sufficient personnel available to effectively operate the department during all business hours.
3. Certain departments may provide emergency service twenty-four (24) hours a day as determined by the Department Head and City Manager.

##### B. Lunch Period and Breaks

1. Lunch Period. Each employee who works at least an eight (8) hour day is entitled to a one (1) hour lunch period unless otherwise modified by MOU. A one-half (0.5) hour lunch period may be taken with approval of the employee's Department Head. The supervisor should establish a reasonable lunch schedule for all employees based on the employees regular work schedule. Part-time employees working five (5) hours or more are entitled to at least one (1) half hour lunch period. The Department Head may approve a longer lunch period for part-time employees.

2. Breaks. Full time employees shall be entitled to a fifteen (15) minute rest break around the midpoint of each half of the shift worked.. Unless a supervisor specifically requires an employee to miss a scheduled break, rest breaks shall not be combined with a lunch period or otherwise banked. If a City emergency arises which requires that an employee miss a scheduled break, the two (2) scheduled breaks may be combined provided operation requirements allow and provided the missed break is taken on the same day as it was missed. Part-time employees working less than three (3) hours per day are not normally entitled to a rest break. One (1) rest break may be taken for part-time shifts of three and one-half (3.5) hours to five (5) hours.

#### C. Scheduling Time Off and Time Away From the Office

1. All employees are responsible for keeping appropriate personnel advised as to scheduled time off work, sickness, or other absences, in accordance with City and department rules and practice.
2. All employees should keep appropriate personnel informed of their location during scheduled work time, in accordance with City and department policy or practices.

#### D. Flexible Work Schedules

Employees' work schedules should be set by their Department Head with the approval of the City Manager. Normal work schedules will involve an eight to twelve hour block of time based on the work schedule established by the department in order to meet the appropriate business needs of the City. This shall not include the lunch break period. Approval for other schedules shall be obtained from the City Manager. Scheduled days off in a work week shall be consecutive.

## **4.2 Overtime and Compensatory Time**

The City of Lathrop intends to compensate City employees for all hours worked, including overtime hours worked in compliance with the Fair Labor Standards Act (FLSA), or as set forth in the applicable Memorandum of Understanding. The FLSA categorizes employees as exempt and nonexempt. Exempt employees are not eligible for overtime or compensatory time. Exempt employees includes all employees who meet one or more of the duties test exemptions from overtime under the FLSA (e.g. executive, administrative, professional, etc.) and who are paid on a salary basis. Salary basis means compensation in a predetermined amount that is generally not reduced regardless of the quality or quantity of work actually performed.

The City Manager shall classify all positions for purposes of FLSA. Department Heads shall see that records are kept and overtime and compensatory time are approved in accordance with this section and departmental procedures. The Director of Finance shall calculate pay periods. For purposes of the 9/80 alternate work schedule, the Friday worked ends/begins mid-day Friday; the designation of mid-day Friday is the start of the pay period.

A. Overtime Compensation

1. An employee who works beyond the specified numbers of hours in the pay period shall receive compensation at the rate of one and one-half times the regular base pay. All time in paid status, with the exception of vacation, sick and compensatory time taken, shall be deemed time worked for the purposes of this section, or as set forth in the applicable Memorandum of Understanding.
2. Compensatory time may be given in lieu of paid overtime at the discretion of the Department Head. Employees earning compensatory time may only accumulate eighty (80) hours. Employees who accumulate more than the maximum eighty (80) hours shall be paid for overtime hours in excess of the maximum.

B. Approval of Overtime

1. Overtime worked must be approved by the Department Head prior to being worked. The Department Head should make sure that appropriate and accurate records of all overtime hours worked and any compensatory time earned are kept.
2. Failure to have overtime approved in advance, except for call-back time, will not prevent the City from compensating the employee for the time worked; however, disciplinary action may be taken for working unauthorized hours.

C. Payment of Accrued Overtime

1. Use of compensatory time should not create a situation where overtime for other personnel within the department or City is necessary to maintain operations.
2. Upon termination of employment, any compensatory time up to the maximum accrual earned and unused by the employee shall be paid at a rate of pay equal to the employee's current rate of pay at termination.

D. Record Keeping

Each Department Head shall see that accurate records are kept of all hours worked by each employee within the department. Such records shall differentiate between scheduled hours and overtime hours worked and all leave hours taken per work period for each employee. Copies of all time worked records shall be submitted to the Finance Department at the end of each pay period or each work period. These records shall be maintained for at least three (3) years.



Hours worked shall be documented and compensated in fifteen (15) minute intervals. For example, an employee working more than five (5) minutes in a fifteen (15) minute interval shall be compensated for fifteen (15) minutes.

#### **4.3 Light Duty Assignment (Workers Compensation)**

##### **A. Policy and Description.**

A modified duty/return to work program is an essential part of a cost containment effort. Modified duty/return to work assignments are temporary assignments to assist employees on the job to progressively escalate to full duty status. It shall be the policy of the City that all supervisors implement, maintain, and adhere to the modified duty/return to work program guidelines. This Rule applies to light duty under Workers Compensation. See Rule 2.1 for reasonable accommodations under state and federal laws.

The City has established this modified duty/return to work program with the following objectives:

1. To return all injured employees to work as soon as possible without danger of re-injury.
2. To reduce the number of employee days lost from work and the cost of workers' compensation temporary disability benefits.
3. To increase communication with injured employees and eliminate any perception of indifference on the part of the employer.
4. To reduce the number and expense of litigated cases.
5. To diminish the feelings of unproductiveness and depression which may accompany an employee's injury and reinstate self-confidence and dignity in their place.
6. To perform tasks for the City which can be supplemental, enhance services, or that currently go undone or which would otherwise require extra help, while at the same time providing productive work for a temporarily injured employee.

Modified duty/return to work assignments are only temporary assignments designated for employees who were injured and who can return to work within the physical restrictions set forth by their health care provider. These assignments are established for a period not anticipated to exceed two (2) or three (3) months. Assignments created for modified duty/return to work participants are not permanent assignments and are not funded in the most recently approved budget. It is in no way the intent of the City to make modified duty/return to work assignments permanent assignments.

##### **B. Procedures**

1. Injured employees will be medically treated as deemed appropriate. The City's designated medical provider will be aware of the City's modified duty/return to work program so they can assist the City in placing the injured employee in an appropriate assignment.

- a. Upon return from the health care provider's office, the employee, supervisor and a representative from the Human Resources Department will meet to discuss the work restrictions as reported by the doctor on the Work Status Report. If the work restrictions require modified/light duty work, then such assignment will be evaluated and made available in the work unit if possible.
  - b. If any question should arise concerning the injured employee's ability to perform a specific modified/light duty assignment, the health care provider who authorized the modified/light duty work must be contacted for clarification.
  - c. If no modified duty/return to work assignment is available within the injured employee's regular department, the supervisor will contact the Human Resources Department within one working day following the meeting with the employee. If modified/light duty work is not available within the employee's normal work area, oral notification shall be given by the Human Resources Department as to the availability and location of modified duty/return to work assignments.
  - d. If no assignments can be found, the injured employee will be placed on temporary disability until such time as appropriate work, within the work restrictions, is available, or the restrictions are lifted pursuant to direction from the doctor. A letter or memorandum notifying the injured employee of the modified duty/return to work assignment must always follow the oral notification.
2. If it appears that the injured employee will not return to their regular job within a reasonable period of time, the Human Resources Department will contact the workers' compensation third party administrator to request that an appointment be made with a specialist for consultation and/or treatment and to make a determination on the issue of returning to regular work duties. Under this provision, sixty (60) to ninety (90) days shall be deemed to be a reasonable period of time.

#### **4.4 Use of Personal Equipment**

Use of personal equipment for performing work for the City shall not be permitted without authorization from the Department Head. Personal vehicles may be used with the approval of the Department Head. Employees using their personal vehicles for City business will be compensated for mileage at the approved IRS rate for mileage reimbursement. Employees authorized to use their personal vehicle for City business shall also provide proof of vehicle insurance acceptable to the City as outlined in the City Vehicle policy.

#### **4.5 Use of City Facilities, Funds, Property, Vehicles, Equipment, and Supplies**

##### **A. Public Resources**

City facilities, funds, property, vehicles, equipment and supplies are public resources. Employees may not use these public resources for personal purposes or private gain.

**B. Use of City Facilities, Funds, Property, Vehicles and Equipment**

Employees are expected to exercise due care, safety and economy in the use of City facilities, funds, property, vehicles, and equipment. For example, turning off electrical lights when not needed and reporting needed repairs are essential to the City's economy. City facilities, property, vehicles, equipment and supplies may be used only for the purpose for which they were intended.

**C. Inappropriate Use Constitutes Misconduct**

The following is strictly prohibited and constitutes misconduct under Rule 9:

1. The use of any city facilities or property without approval.
2. The use and/or removal of any city funds, vehicles, equipment and supplies without approval.
3. The theft or conversion of City funds, vehicles, equipment and supplies for personal purposes or use.

**D. Restitution and Repayment to City**

In addition to the imposition of discipline for misconduct as provided under this Rule, employees may be required to repay City funds and to provide restitution to City for any City facilities, property, vehicles and equipment which are damaged, destroyed, stolen and/or converted.

**4.6 Policy Regarding Cell Phones and Text Messaging**

**A. Limitations on Use of Wireless Telephones (Cell Phones)**

Employees are prohibited from using cell phones or any type of mobile service device (pagers, texting devices, laptops, etc.) while driving on City business and/or City time (except in emergency situations when it is necessary to contact law enforcement, an emergency health care provider, the fire department, etc.).

**B. Prohibition Regarding Text-Based Communications**

Employees on City time or City business shall not drive a motor vehicle while using a wireless communication device to write, send, or read a text-based communication including, but not limited to, a communication referred to as a text message, instant message, or electronic mail.

**C. Authorized Use**

In the event an employee's job requires that the employee's cell phone be kept on while driving, the employee must use a hands-free device or safely pull off the road before using the cell phone to conduct City business. Except in emergency situations, under no circumstances should an employee make phone calls or use a mobile service device while operating a motor vehicle on City business and/or City time.

#### D. State Law

California law prohibits a driver of a motor vehicle from using a wireless telephone unless a hands-free device is used except in emergency situations (i.e. calling law enforcement, an emergency health care provider, the fire department, etc.). California law also prohibits a driver of a motor vehicle from using an electronic wireless communication device to write, send, or read a text-based communication. Violation of this City policy regarding the use of cell phones and/or text messaging will constitute a violation of California law and a violation of City rules.

### **RULE 5: TRAINING, EDUCATION AND PERFORMANCE EVALUATIONS**

#### **5.1 Training and Education**

It is the City's policy to promote operational efficiency. Department Heads may make specific funds available for job-related education and training within their departments. The expenditure of training funds is discretionary with a Department Head within budget appropriations. Notwithstanding any other provisions of these Rules and Regulations, in the event an MOU negotiated with a Union representing City employees provides for enhanced benefits of the type provided in this Section 1, the enhanced benefits shall supersede the benefits provided in this Rule.

##### A. Education

Permanent full-time employees are eligible to receive tuition reimbursement for educational purposes which tend to improve their ability to accomplish their City job for courses taken on the employee's own time. . Courses taken at any college or university, business or technical school, or courses given by a recognized correspondence school shall be recognized when they are:

- a. Related to the employee's current position within the City
  - b. Related to the employee's potential development within the City
  - c. Part of a program leading to a degree relating to the employee's position or possible development within the City
- 
- a. Reimbursement must be recommended by the Department Head and approved by the City Manager prior to the starting date of the course. Requests are to be submitted on an approved form provided by the Human Resources Department. Requests will be returned to the employee within fourteen (14) calendar days of submittal. Payment of education funds is discretionary within appropriate budget limits. Costs are not to exceed \$3,000 maximum per calendar year, per employee; including books, materials and lab fees.
  - b. Employee's time, and travel are at employee's own expense.

- c. Class time must be on employee's own time unless the Department Head approves an exception.
  - d. A passing grade (C or better), or a certificate of completion is required in each course for reimbursement is required for reimbursement.
  - e. The City shall reimburse the employee within (30) calendar days of submitting the necessary documentation. If an employee voluntarily separates within one year of receiving the educational reimbursement, he/she must reimburse the City of Lathrop within one year from the separation date.
2. An employee must reimburse City if employment is voluntarily terminated within one (1) year.

#### B. Training

1. Employee training which is mandated or sponsored by the City should be funded by the employee's department.
2. Training may, at the discretion of the Department Head, be taken during regularly scheduled work time.
3. All training and travel costs shall be approved by the Department Head, except out of state travel which must be approved by the City Council.
4. The City approved travel policy must be adhered to, as applicable
5. Training requests shall be made using any training request forms established by the employee's department, or Human Resources.

### 5.2 Performance Evaluations

It is the policy of the City to base compensation of employees on performance. A performance planning and review system that recognizes and rewards outstanding performance and corrects poor performance can contribute significantly to improved morale and productivity. In order to promote employee job satisfaction and morale, employees need to know that their supervisor is interested in their progress and development as well as providing regular systematic written feedback.

#### A. Applicability

1. Performance appraisals shall be performed for probationary, full-time, and part-time employees.
2. Departments are encouraged to extend use of performance appraisals to temporary and other employees.
3. Performance appraisals shall take place prior to the end of the probationary period. For probation periods exceeding 6 months, an evaluation may be provided mid-way through the probationary period. Subsequent performance appraisals should be performed at least annually on the employees Performance Review Date (PRD) and may take place more often. Unless a completed, satisfactory performance appraisal form is turned in to the City Manager fourteen (14) calendar days prior to

completion of the probation period, employment may be terminated at the discretion of the City Manager.

**B. Elements of a Performance Appraisal**

A performance appraisal form shall be established which shall be uniform to all departments and shall incorporate the necessary elements for each department. This form shall be used by each department unless otherwise authorized by the City Manager.

**C. Approvals**

1. The employee and supervisor shall discuss and sign the performance appraisal at the end of the appraisal meeting.
2. If the employee disagrees with the appraisal, he or she shall have the opportunity to rebut the appraisal within 10 days of being issued and have the rebuttal placed in his or her personnel file with the appraisal.

**D. The Department Head must review and sign the performance appraisal, before any salary action or corrective action may be taken. Records**

A copy of all signed and completed performance appraisal forms shall be submitted to the Director of Human Resources, or designee, to be included in the employee permanent personnel files.

**RULE 6: COMPENSATION**

**6.1 Time Records and Pay Periods**

**A. Time Records**

All employees shall be required to complete and submit to the Finance Department a record of hours worked at the end of each pay period. The Finance Department shall provide a time sheet to record time and shall be responsible for maintaining time sheets for each employee.

**B. Pay Periods**

Pay periods consist of a two (2) week period. Pay checks are distributed one (1) week following the end of a pay period.

**6.2 Salary Plan**

The City diligently strives to pay competitive market salaries to its employees. In order to achieve this, the City Administration has devised a City-wide salary plan based upon competitive market values.

A. Establishment

A classification and salary plan shall be established according to City ordinance. The salary plan shall be administered by the City Manager.

B. Appointment

New employees generally should be paid at step one of the salary range. An employee may start at a higher step at the discretion of the City Manager upon recommendation from the Department Head if the qualifications of the applicant exceed the minimum qualifications of the position or because of unusual circumstances. For example, additional work experience and/or education beyond the minimum requirements of the job, the possession of special skills and knowledge, or special market conditions which warrant or demand a higher starting salary.

C. Under-filled Positions

A position may be under-filled to provide career development opportunities if the Department Head deems that workloads can be satisfactorily managed and staff is able to provide appropriate training and supervision or if, after the recruitment process, a qualified applicant is not available. An under-filled position will be on a six (6) month trainee period during which time the salary shall be fifteen (15) percent below the starting salary for that position. At the end of a satisfactory six (6) month trainee period, the employee shall be eligible to move to the first step of the range for that position and begin the regular employee probationary period as a promoted employee. At any time during the trainee period, the Department Head may determine to return the employee filling the under-filled position to his or her regular position.

D. Salary Adjustments

1. Market Adjustments

At least once annually all salary ranges shall be reviewed by the City Manager. This review may include a salary survey for some or all positions in the City. After review of salary ranges, the City Manager may make recommendations to the City Council for market and/or cost-of-living adjustments to salary ranges and the incumbents of those ranges. Individual positions may be market adjusted only with the approval of the City Manager and within budget constraints as approved by the City Council.

2. Step Increases

a. Employees are eligible to receive a step increase at least once annually at their PRD with approval of the City Manager upon recommendations from the department head. After an employee reaches Step 5 of their salary range a step increase is no longer available without advancement to a new position.

- b. Any step increase shall be based on a performance appraisal to justify the increase and should be based on recognized and documented overall satisfactory performance during the performance period as defined by the performance appraisal documents. Supervisors should give a recommendation regarding step increases for each employee after the employee's performance appraisal. This recommendation should be made to the Department Head.

#### E. Promotions

Any employee receiving a promotion shall start on the first step of the salary range of the class to which he or she is promoted and be eligible for salary increases as provided in the salary plan, unless the present salary level is equal to or exceeds the first step of the class to which the employee is promoted. In that event, the employee shall be assigned to the step in the salary range to which they are promoted that is the equivalent of at least a five (5) percent increase in salary.

#### F. Demotion

An employee who is moved by management to a position with a different job title and lower salary range for cause or disciplinary reasons may receive a reduction in base salary rate in an amount deemed appropriate by the Department Head. If the salary reduction leaves the base salary rate above the new position salary range the salary shall be Y-Rated until such time as the salary is in line with the salary range.

#### G. Transfers

There should be no salary adjustment for a lateral transfer of an employee without the approval of the City Manager.

### **6.3 Uniforms**

Certain employees within the City may be required to wear uniforms. The City shall prescribe what type of uniform shall be worn and the City will provide such uniform. Generally employees will be responsible for maintenance and cleaning of such uniforms. Employee uniforms shall be evaluated annually by the Department Head to determine the need for replacement of uniforms by the City. At the discretion of the Department Head, with the approval of the City Manager, a uniform service may be used for providing and cleaning of uniforms.

### **6.4 Court Appearance Pay**

Employees who are subpoenaed to appear as witnesses on behalf of the City may be deemed to be on duty and granted leaves of absence with pay from their assigned duties until released. The employee shall remit all fees received for such appearances to the City within thirty (30) days from the termination of their services. Compensation for mileage and subsistence allowance shall not be considered as a fee and shall be retained by the employee unless the employee uses a city vehicle to report for the court appearance.



## **6.5 Call-Back Pay**

An employee may be called out to work during non-scheduled work hours. The City shall strive to compensate these employees fairly and equally.

- A. Members of the City's bargaining unit responding to an off-duty emergency callback shall be compensated for all hours worked at the overtime rate of one and one-half (1.5) times per case or compensatory time provided, however, that the minimum compensation shall be two (2) hours at the time and one-half rate.
- B. Consecutive recalls occurring within thirty minutes of release from the initial call back shall be treated as part of initial call back. Consecutive recalls occurring after thirty minutes from release shall be subject to the same compensation hereinabove mentioned.
- C. Full-time employees shall receive \$3.00 per hour as stand-by compensation.

## **6.6 Severance Procedures**

- A. When an employee separates from the City for any reason, the City should:
  - 1. Collect all equipment and keys from the employee, delete the employee security codes from computer systems if appropriate and any other items or activities identified by the Department Head or City Manager to facilitate the employee leaving City employment and protect the security of the City. All items must be signed off by the Department Head and the employee.
  - 2. Conduct, at the discretion of the City Manager, an exit interview with the employee. Such interviews may be conducted by the City Manager, Director of Human Resources, or designee, or the Department Head.
  - 3. Pay the employee all accrued vacation leave, compensatory time and all hours worked not previously compensated up to the date and time of separation.
  - 4. Pay any agreed upon severance pay as provided by City ordinance, the Compensation Plan or other independent agreement.
  - 5. Obtain written approval from an employee before withholding from the final pay check monies owed the City by the employee to recover monies for such items including but not limited to:
    - a. Travel advances;
    - b. City credit card use;
    - c. Misappropriated City assets;
    - d. Any City property not returning to the City;
    - e. Overpayment of salary or benefits;
    - f. Educational expenses.

Release of a final pay check does not waive the City's right to pursue the recovery of the items listed above, or any other monies owed by the employee to the City.

- B. Employees may elect to have funds withheld from their final pay check to fund the continuation of employee benefits as provided by law or contract, including health insurance.
- C. The City shall not provide the following to employees after their date of separation.
  - 1. Any paid allowances, such as vehicle, uniform, tools, etc.
  - 2. Additional leave and holiday benefits on paid severance.
  - 3. The cash value of contribution to any benefits other than retirement and Medicare.
- D. The City should make final payment to a voluntarily separated employee during the next regularly scheduled pay day unless the Department Head requests a more prompt payment.

## **RULE 7: EMPLOYEE BENEFITS**

### **7.1 Paid Holidays**

The City recognizes that various special occasions occur during the course of a year which warrant special celebrations and/or observances. These occasions are generally designated by Federal and/or State Statute, or by tradition. In order to acknowledge these occasions, the City has determined that it will recognize certain holidays throughout the year and allow City employees to observe these occasions by granting employees time off work, with pay or giving an additional day's or shift's pay.

- A. Any day designated as a paid holiday by the City Council shall be considered a legal holiday for City employees.

B. The City shall observe the following holidays:

<u>HOLIDAY</u>	<u>DATE OBSERVED</u>
New Year's Day	January 1 <sup>st</sup>
Martin Luther King Jr. Day	3 <sup>rd</sup> Monday in January
Washington's Birthday	3 <sup>rd</sup> Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4 <sup>th</sup>
Labor Day	1 <sup>st</sup> Monday in September
Veteran's Day	November 11 <sup>th</sup>
Thanksgiving Day	4 <sup>th</sup> Thursday in November
Day after Thanksgiving	4 <sup>th</sup> Friday in November
December 24 <sup>th</sup>	December 24 <sup>th</sup>
December 25 <sup>th</sup>	December 25 <sup>th</sup>
December 31 <sup>st</sup>	New Years Eve

If a holiday falls on a Sunday, the following Monday will be observed as the holiday, except that if December 24<sup>th</sup> or December 31<sup>st</sup> falls on Sunday, the preceding Friday will be observed as the holiday. If a holiday falls on Saturday, the preceding Friday will be observed as the holiday. If December 24<sup>th</sup> or December 31<sup>st</sup> falls on Friday, the preceding Thursday will be observed as the holiday.

C. Floating Holiday

Employees shall be entitled to one (1) floating holiday equivalent to one regular work day (based on employee work schedule) each Fiscal Year. Floating Holiday time shall be accrued during the pay period that includes July 1<sup>st</sup>. New employees hired after July 1<sup>st</sup> shall not accrue a floating holiday until the following July 1<sup>st</sup>.

Floating holiday accrued shall be available for use the first day following the pay period in which they are accrued, and shall be scheduled at a time mutually agreed upon between the employee and Supervisor/Department Head. Floating holiday hours must be used in the fiscal year they are received and is to be used in a full day increment. Any Floating holiday hours remaining at June 30<sup>th</sup> shall be rolled over into the employee's vacation bank.

D. Part-time Employees

Part-time employees working at least thirty (30) hours per week shall receive the same holidays on a pro-rated basis to their average hours worked per week. For example, if a part-time employee was scheduled to work thirty (30) hours per week, the individual would receive six (6) hours of holiday pay for each holiday observed.

E. Temporary and Seasonal Employees

Temporary and Seasonal employees, do not receive paid holidays but may be given leave without pay to observe the occasion. If required to work a holiday, straight time or overtime pay may be made in accordance with these Rules and Regulations.

F. Employees Occasionally Working Holidays

Regular full-time and regular part-time employees required to occasionally work on a holiday (e.g., Parks and Recreation and Public Works employees) may be permitted to take a different day as the holiday, accrue the time as compensatory time or be compensated for the holiday as approved by the Department Head. Compensation shall include eight (8) hours of Holiday Pay, for full-time employees, plus time and a half for the number of hours actually worked.

**7.2 Vacation Time**

The City of Lathrop seeks to provide City employees with time away from their daily job duties in order to relax, to refresh their energies and dedication to the job, and to maintain their health and personal well-being. For this purpose, the City has devised a vacation program for City employees.

A. Full-time Employees

Full-time employees shall begin to accrue vacation leave on the date of hire on a bi-weekly basis at a rate based upon tenure of employment:

<u>Years of Service</u>	<u>Monthly Accrual</u>	<u>Approx. Annual</u>	<u>Max Accrual</u>
0 – 4 years	6.667 hours	80 hours	240 hours
5 – 9 years	10 hours	120 hours	360 hours
10 + years	13.33 hours	160 hours	480 hours

B. Part-time Employees

Part-time employees working at least thirty (30) hours per week shall accrue vacation leave on the same basis as full-time employees, except that the accrual will be prorated based on the average number of hours worked per week.

C. Seasonal and Temporary Employees

Seasonal and temporary employees do not accrue or receive vacation time but may be allowed leave without pay.

D. Vacation Buy-Back

Exempt employees are eligible to buy back up to forty (40) hours of accrued vacation hours per year. This will be based on the amount of vacation accrued on December 1<sup>st</sup> of each year. Vacation buy-back will not be automatic. Employees wanting to buy-back vacation must submit a written request to the City Manager by December 15<sup>th</sup> of each year. At the time the request is submitted, the exempt employee must have accrued a minimum of forty (40) hours of vacation time. If a request is not received by December 15<sup>th</sup>, the buy-back will not be allowed.

E. Vacation Scheduling

All vacation time must be scheduled in advance with the Department Head and should be taken at a time which does not unnecessarily burden the department. As much as possible and as work scheduling permits employees may take multiple weeks of vacation when properly scheduled with their Department Head. All leave shall be approved by submitting a completed leave form to the Department Head for approval. Leave equaling one (1) week or more should be scheduled at least two (2) months in advance. Earlier scheduling of leave is encouraged in order to allow supervisors to reassign work load.

F. Use of Vacation Benefits

Employees are eligible to take accrued vacation time after completion of an approved probationary period. An employee may take some accrued vacation time prior to having completed the probationary period if approved by the Department Head. The vacation time will only be allowed if the situation requiring the taking of the vacation time is an emergency, or if the taking of the vacation time was negotiated prior to employment.

G. Vacation Accrual

Employees may accrue vacation time to a maximum of three (3) times their current annual accrual rate. Any employee exceeding this maximum accrual on December 31<sup>st</sup> of each year shall discontinue accruing vacation until such time as the total accrual drops below the maximum accrual limit. An employee's accrual limit may exceed the maximum limit during the year; however, the employee will discontinue accruing vacation on December 31<sup>st</sup> of each year if his/her accrual exceeds the maximum limit.

Employees who have a scheduled vacation canceled during the months of November and December due to an emergency may have their maximum vacation accrual temporarily increased. In this case the employee must meet the following conditions:

1. The employee's vacation accrual must be above the maximum on December 31<sup>st</sup> of that year.

2. The Department Head must determine that there was no other available time during the months of November and December when the vacation could be rescheduled.
3. The maximum accrual extension must be approved by the City Manager.
4. The provisions for discontinuing accrual based on exceeding the maximum limit will be waived for one (1) year. The provisions for discontinuing accrual based on maximum limit shall be enforced the following year.

#### H. Accrued Vacation Upon Separation

Employees are entitled to all accrued vacation leave upon their separation as a City employee.

## **RULE 8: EMPLOYEE LEAVE**

### **8.1 Authorized Absence**

Employees shall be in attendance as required by their position. Any unauthorized absence may be cause for discipline. Authorized absence means permission to be absent from duty for a specified purpose, with the right to return before or upon the expiration of the leave period. Requests for leave are to be completed on a City approved form and submitted to the employee's Department Head.

### **8.2 Sick Leave**

The City understands that there are times when a City employee, because of illness or injury, or illness or injury related circumstances, cannot and should not be at work. Sick leave is not a privilege to be used at an employee's discretion, but may only be used in cases of necessity and actual illness or disability of the employee or a family member needing care as set forth under this Rule. The City shall adhere to appropriate state and federal mandated family care leave laws. (See Rule 8.4.)

#### A. Accumulation and Use of Sick Leave

1. Full-time and exempt employees may begin to accumulate sick leave on the date of hire at a rate of eight (8) hours per month.
2. Regular part-time employees may begin to accumulate sick leave on the date of hire on a prorated basis.
3. An employee eligible for sick leave may accumulate an unlimited amount of unused sick leave. An employee may begin to utilize accumulated sick leave after having completed three (3) full pay periods of employment.

4. Effective July 1, 2015, the City of Lathrop will provide paid sick leave to covered employees in accordance with the Healthy Workplaces, Healthy Families Act of 2014. This paid sick leave is available to employees who work in a part-time, temporary or seasonal capacity and do not qualify for other leave benefits. Sick leave may only be used in cases of necessity and actual illness or disability of the employee or a family member needing care. In those cases, the sick leave may be used as follows:
    - a. An employee who works 90 or more days in a twelve month period is entitled to paid sick leave.
    - b. An employee is only allowed to use up to a maximum of three (3) days or 24 hours, whichever is greater, or paid leave in the calendar year.
    - c. Employees will be credited with 24 hours of sick leave at the beginning of the calendar year. Unused sick leave will not be rolled over to the next calendar year. This is not a vested benefit.
    - d. Employees whose hire date is after January 1st of any year will have their accruals prorated for the remainder of that fiscal year. An employee is not eligible to begin using any accrued paid sick leave until the 90th day of employment with the City.
    - e. Paid sick leave will not be considered as hours worked for the purposes of overtime calculation.
    - f. An employee will not receive compensation for unused accrued paid sick leave upon transfer to full-time status, termination, resignation, retirement or other separation from employment from the City.
    - g. If an employee separates from City employment and is re-hired in a part-time, temporary or seasonal status, the employee must satisfy the 90 days of employment requirement collectively over the periods of employment with the City before paid sick leave can be used.
- B. Definition of “Family Member” pursuant to Labor Code Section 245.5
1. “Family Member” includes the following:
    - a. A child, which for purposes of this Rule means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.
    - b. A biological, adoptive or foster parent, stepparent, or legal guardian of an employee or the employee’s spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.
    - c. A spouse
    - d. A registered domestic partner
    - e. A grandparent
    - f. A grandchild

g. A sibling.

#### C. Notification of Need to Use Sick Leave

1. Employees should provide reasonable notice to their supervisor of medical appointments. Any employee needing to be absent from work because of a sick leave circumstance will arrange for a telephone report to his or her supervisor by the beginning of the scheduled work day or shift (no later than the start of the work shift) to ensure coverage can be arranged.
2. Any use of sick leave, including maternity, paternity, and parenting leave, which results in absence from work exceeding three (3) successive work days, may be required to be supported by a medical certificate or other evidence acceptable to the supervisor. This evidence may be required on the first working day the employee returns to work. The supervisor or Department Head may ask for medical evidence of illness for any use of sick leave if the request for evidence is made to the employee prior to his or her returning to work following the illness, or if the supervisor has a suspicion of sick leave abuse.
3. If a sick leave circumstance requires an employee to be away from work for a period beyond the individual's accumulated sick leave, then the time away from work may be taken as vacation time or compensatory time if either is available. When all paid leave is exhausted, leave without pay may be given.
4. Upon return to duty after use of sick leave, the employee shall complete a leave form to be signed by the Department Head and forwarded to the Payroll office.
5. Any employee who is absent from work for a period of three (3) consecutive work days without notifying his or her supervisor shall be separated from employment with the City. This separation shall be defined as a voluntary resignation and as such shall not be subject to the appeal grievance process.

#### D. Sick Leave Conversion

1. Employees eligible to accumulate sick leave may at the end of each calendar year convert some of the unused sick leave accumulated during each calendar year to vacation leave provided:



- a. A full-time employee has an accumulated balance of unused sick leave of more than ninety-six (96) hours; conversion does not reduce unused sick leave hours below ninety-six (96) hours; and the employee has not used more than forty (40) hours of sick leave during the prior calendar year. A maximum of forty (40) hours of sick leave may be converted, but will be reduced hour for hour by sick leave used by the employee during the calendar year. If an employee uses forty (40) or more hours of sick leave during the year, no sick leave may be converted.
  - b. A part-time employee has an accumulated balance of unused sick leave of more than seventy two (72) hours; conversion does not reduce unused sick leave hours below seventy two (72) hours; and the employee has not used more than thirty (30) hours of sick leave during the calendar year. A maximum of thirty (30) hours of sick leave may be converted, but will be reduced hour for hour by sick leave used by the employee during the calendar year. If a part-time employee uses thirty (30) or more hours of sick leave during the year, no sick leave may be converted.
2. Once an employee has met the criteria for his or her particular category of employment, the sick leave conversion will automatically take place and the employee will be able to notice the additional vacation hours on his/her check stub or other record. Any sick leave converted shall be added to accrued vacation and be governed by the vacation accrual limits and usage rules. Conversion of sick leave shall be done after the last pay period of each calendar year.

#### E. Abuse of Sick Leave

Use of sick leave without legitimate medical need is sick leave abuse which will be cause for discipline in accordance with disciplinary procedures.

#### F. Dealing with Sick Leave upon Termination of Employment

An employee leaving City employment for any reason will not receive or be compensated for unused sick leave.

#### G. Sick Leave Use and Other Income Benefits

##### 1. Workers Compensation

Sick Leave should not be used for work shifts or days missed during periods of work related injury or illness except to compensate for time not covered by workers compensation insurance. When the injury is reported, the employee shall also declare to the Human Resources Department his/her intent to:

- a. Take the workers compensation benefits received in which event the City shall reduce the bi-weekly pay check by the amount of workers compensation benefits accrued (generally two-thirds of regular wages). The employee may use sick leave for the time not reimbursed by workers compensation; or

- b. Immediately release all workers compensation benefits received to the City. By doing so the employee may use sick leave to cover the entire period of work missed due to a work related injury or illness. At the time the workers compensation benefits are returned to the City, the appropriate amount of sick leave taken will be reinstated to the employee's accrual. If the employee fails to return the workers compensation benefits to the City, the City may reduce the employee's pay check by deduction to compensate the City for the value of the workers compensation benefits. In addition the employee may forfeit the sick leave used.
- c. Leave related to workers compensation injuries such as worker's compensation hearings and post injury health care provider's visits, may be compensated to the employee through administrative leave if approved by the Director of Human Resources, or designee.

2. Disability Insurance

Sick leave may be used in conjunction with disability benefits in order to receive 100% of an employee's salary during disability. It is the responsibility of the employee to make sure sick leave use is recorded and documented with the Finance Department when used in conjunction with disability leave.

3. Other

Sick leave use must be coordinated with other benefits as outlined in this Rule.

**8.3 Family and Medical Leave Under Federal and State Law (FMLA and CFRA)**

Section 8.3 (Family and Medical Leave under Federal and State Law (FMLA and CFRA)) applies to all employees of the City who meet the eligibility requirements as set forth in the policy.

A. The Leave Policy.

The City provides family and medical leave for eligible employees as required by state and federal law. For those reasons, these Rules may change from time to time if required by state or federal law.

Under the federal Family and Medical Leave Act ("FMLA") and the California Family Rights Act ("CFRA"), eligible employees may take up to twelve (12) weeks of unpaid Family and Medical Leave within any rolling twelve (12) month period and be restored to the same or a comparable position upon the employee's return from leave provided the employee has worked for the City for at least twelve (12) months, and for at least 1,250 hours in the preceding twelve (12) months. The 1,250 hours worked during the previous twelve (12) months of employment need not be consecutive.

The City of Lathrop measures its twelve (12) month period as follows: a rolling twelve (12) month period measured backward from the date leave is taken and continuous with each additional leave day taken. Unless otherwise provided in this Rule 8.3, "leave" under this Rule shall mean leave under the FMLA and CFRA.

NOTE: See special provisions for Military Family Leave below in Rule 8.3 C.

B. Reasons for Leave.

An employee may take Family and Medical Leave for any of the following reasons:

1. The birth of a child and to care for such child;
2. The placement of a child with the employee for adoption or foster care and to care for the newly-placed child;
3. To care for a spouse, domestic partner, child, or parent ("covered relation") with a serious health condition;
4. Because of the employee's own serious health condition that renders the employee unable to perform an essential function of his or her position;
5. Leave under the FMLA to care for an injured military service member who is a spouse, son, daughter, or parent, "next of kin" and has a serious health condition or illness suffered in the line of duty in the Armed Forces; or

Leave because of reasons "1" or "2" must be completed within the twelve (12) month period beginning on the date of birth, adoption, or placement.

C. Military Family Leave.

Section 585(a) of the National Defenses Authorization Act amends the FMLA to provide military family leave entitlements.

1. Military Caregiver Leave (also known as Covered Servicemember Leave): Eligible employees who are family members of covered servicemembers may take up to 26 work weeks of leave in a "single 12-month period" to care for a covered servicemember with a serious illness or injury incurred in the line of duty on active duty. This is a special provision that extends the FMLA job-protected leave beyond the normal 12 weeks of FMLA leave. This provision also extends FMLA protection to additional family members (defined as "next of kin") beyond those who may take FMLA leave for other qualifying reasons.
2. Qualifying Exigency Leave: The normal 12 work weeks of FMLA job-protected leave is available for eligible employees with a covered military member servicing in the National Guard or Reserves to use for "any qualifying exigency" arising out of the fact that a covered military member is on active duty or called to active duty status in support of contingency operation. "Qualifying exigency" under this provision includes a number of broad categories for which employees can use FMLA Leave:
  - a. Short notice deployment;

- b. Military events and related activities;
- c. Childcare and school activities;
- d. Financial and legal arrangements;
- e. Counseling;
- f. Rest and Recuperation;
- g. Post-deployment activities; and
- h. Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

Department of Labor certification forms will be used by the City to facilitate certification requirements for the use of Military Family Leave.

#### D. Notice of Leave.

If an eligible employee's need for Family and Medical Leave is foreseeable, the employee must give the Director of Human Resources, or designee, at least thirty (30) days prior notice of the need for leave, preferably in writing.

If this is not possible, the employee must at least give notice as soon as practicable (generally within one (1) to two (2) business days of learning of the need for leave). Failure to provide such notice may be grounds for delay of leave. Additionally, if an employee is planning a medical treatment, the employee should consult with the Director of Human Resources, or designee, first regarding the dates of such treatment. Where the need for leave is not foreseeable, the employee should notify the City as soon as possible and practical.

#### E. Medical Certification.

If an employee is requesting leave because of his or her own or a covered relation's serious health condition, the employee must provide appropriate medical certification from the relevant health care provider within fifteen (15) calendar days after the request for leave, if practical. The employee may obtain medical certification forms from the Human Resources Office. If the employee provides at least thirty (30) days notice, the employee should provide the medical certification before leave begins. Failure to provide requested medical certification in a timely manner may be grounds for delay of leave.

The City, at its expense, may require an examination by a second health care provider designated by the City, if it reasonably doubts the medical certification the employee initially provides for his or her own serious health condition. If the second health care provider's opinion conflicts with the original medical certification, the City, at its expense, may retain a third, mutually agreeable, health care provider to conduct an examination and provide a final and binding opinion.

The City may require subsequent medical recertification at the expiration of an employee's previous certification or if the employee requests an extension.

Failure to provide requested recertification within fifteen (15) days, if such is practical, may result in delay of further leave until it is provided.

F. Reporting While on Leave.

If an employee takes leave because of his or her own serious health condition or to care for a covered family relation, the employee must contact the Director of Human Resources, or designee, as directed regarding the status of the condition and of the intention to return to work. In addition, the employee must give notice as soon as practicable (within two business days if feasible) if the dates of leave change or are extended or initially were unknown.

G. Leave is Unpaid.

Family and Medical Leave is unpaid leave [although an employee may be eligible for short or long-term disability payments and/or workers compensation benefits under those insurance plans]. An employee may elect to substitute any accrued paid time off such as vacation or sick leave for unpaid Family and Medical Leave.

The City will require that the employee substitute any accrued vacation time for unpaid Family and Medical Leave for his or her own serious health condition other than pregnancy, childbirth, or a related medical condition, for the serious health condition of a covered family member, or for "bonding" leave. The City also will require that an employee substitute accrued sick leave for unpaid Family and Medical Leave for an employee's own serious health condition caused by pregnancy, childbirth, or related medical conditions.

The substitution of paid leave time for unpaid leave time does not extend the maximum 12-week leave period. Further, in no case may the substitution of paid leave time for unpaid leave time result in an employee receiving more than 100% of his or her salary.

H. Medical and Other Benefits.

For the first twelve (12) weeks of an approved Family and Medical Leave, the City will maintain the employee's health benefits as if the employee continued to be actively employed. If an employee takes a leave for disability caused by pregnancy, childbirth, or a related medical condition and follows that leave with "bonding" leave to care for the newborn child, the leave may exceed twelve (12) weeks, but the City will only pay for medical benefits for the first twelve (12) weeks of leave. If paid leave is substituted for unpaid Family and Medical Leave, the City will deduct the employee's portion of the health plan premium as a regular payroll deduction. If the leave is unpaid, the employee must pay his or her portion of the premium as directed by the City. Health care coverage will cease if his/her premium payment is more than thirty (30) days late. If payment is more than thirty (30) days late, the City will send the employee a letter to this effect. If the City does not receive the co-payment within fifteen (15) days of that letter, coverage may cease. If the employee elects not to return to work for at least thirty (30) calendar days at the end of the leave period, the employee may be required to reimburse the City for the cost of the health benefit premiums paid by the City for maintaining coverage during the unpaid

leave, unless the employee cannot return to work because of a serious health condition or other circumstances beyond his/her control.

I. Employment Status During Unpaid FMLA/CFRA.

An employee who is on an approved FMLA/CFRA absence will retain his or her employment status with the City during the period of FMLA/CFRA leave. An unpaid FMLA/CFRA leave period will not be credited as service hours for seniority (i.e., employees are not entitled to accrue any additional benefits or seniority during an unpaid FMLA/CFRA leave, but will not lose any benefits or seniority accrued prior to the leave.

Eligible employees who commence a FMLA/CFRA leave while on probation shall have their probationary period extended. In addition, performance reviews or evaluations may be delayed if the time period for the review was extended by a FMLA/CFRA leave.

Salary step increases which are based on length of service and performance will be delayed for any employee on an unpaid FMLA/CFRA leave. Shift preferences may also be delayed when related to an FMLA leave.

Salary increases resulting from the collective bargaining process will not be affected by FMLA/CFRA leave.

J. Exemption for Highly-Compensated Employees.

Highly-compensated employees (i.e., highest paid 10% of salaried employees) may not be returned to their former or equivalent position following a leave if restoration of employment will cause substantial and grievous economic injury to the City. This fact-specific determination will be made by the City on a case-by-case basis. The City will notify such employee if he or she qualifies as a "highly-compensated" employee, if the City intends to deny reinstatement, and of the employee's rights in such instances.

K. Intermittent and Reduced Schedule Leave.

Leave because of a serious health condition, including pregnancy-related disabilities, may be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced-leave schedule (reducing the usual number of hours the employee works per workweek or workday) if medically necessary. Employees are required to give the City reasonable notice of the need to take intermittent or reduced schedule leave. Employees also may be eligible for intermittent leave for birth or placement of a child.

If leave is unpaid, the City will reduce the salary based on the amount of time actually worked. In addition, while on an intermittent or reduced leave schedule, the City may temporarily transfer an employee to an available alternative position that better accommodates the recurring leave and has equivalent pay and benefits.

L. Returning from Leave.

If an employee takes leave because of his or her own serious health condition (except if taking intermittent leave), the employee is required to provide medical

certification that he or she is fit to resume work. Employees may obtain return-to-work medical certification forms from the Human Resources Office. An employee failing to provide the return-to work medical certification form will not be permitted to resume work until it is provided.

Under most circumstances, an employee who returns from a Family and Medical Leave will be reinstated to his or her original job or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions. However, an employee has no greater right to reinstatement than if she or he had been continuously employed rather than on leave. In addition, employees who do not return to work are not entitled to an accrual of seniority or employment benefits that may have occurred during a leave period.

M. No Work While on Leave.

The taking of another job while on Family and Medical Leave or any other authorized leave of absence may be considered as voluntary resignation.

N. Definitions.

For the purposes of this rule, the following definitions apply:

"Child" includes biological, adopted, foster children, step-children, legal wards, and other persons for whom the employee acts in the capacity of a parent and who is either under 18 years of age or over 18 year of age but incapable of caring for himself or herself because of a physical or mental disability.

"Continuing treatment" means: (1) two or more treatments by a health care provider; (2) two or more treatments by a provider of health care services (e.g., physical therapist) on referral by or under orders of a health care provider; (3) at least one treatment by a health care provider that results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a program of medication or therapy); or (4) under the supervision of, although not actively treated by, a health care provider for a serious long-term or chronic condition or disability which cannot be cured (e.g., Alzheimer's or severe stroke).

"Domestic Partner" means: two adults who have established a domestic partnership in accordance with the requirements of California law, Family Code Sections 297 and 299.2 and shall have the same meaning as "spouse" for purposes of CFRA leave.

"Health care provider" means: (1) an MD or OD licensed by the state (or country) in which he or she practices; (2) podiatrists, dentists, clinical psychologists, optometrists, or chiropractors (limited treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice under the state law; (3) nurse practitioners and nurse-midwives authorized under state law; (4) Christian Science practitioners; (5) certified social workers; (6) a health care provider who practices in a foreign country in accordance with the laws of that country and; (7) any other health care provider from whom the employer or the employee's group health plan benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

"Needed to care for" a covered relation encompasses: (1) physical and psychological care of a child, spouse, domestic partner, or parent with a serious health condition; and (2) where the employee is needed to fill in for others providing care or to arrange for third party care of a child, spouse, domestic partner, or parent who is receiving inpatient or home care.

"Parent" includes biological, foster, adoptive, step-parents, or a legal guardian or other person who stood in loco parentis to the employee when the employee was a child, but does not include parents-in-law.

"Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves:

1. "Inpatient care," meaning an overnight stay in a hospital, hospice, or residential care facility, including any period of "incapacity" or any subsequent "treatment" in connection with such inpatient care; or
2. "Continuing treatment" by a "health care provider," meaning an incapacity of more than three consecutive calendar days; and (a) two or more treatments by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders or referral of a health care provider; or one treatment by a health care provider which results in a "regimen of continuing treatment" under the supervision of the health care provider (e.g., prescription medication); or (b) Only under the FMLA, serious health condition means any period of incapacity because of pregnancy or prenatal care (even without treatment by a health care provider during the absence and even if the absence is less than three days (e.g., morning sickness); or (c) any period of incapacity because of a "chronic serious condition" (even without treatment by a health care provider during the absence and even if the absence is less than three days (e.g., asthma attack, migraine headaches, etc.); or (d) any period of absence to receive multiple treatments by health care providers or provider of health care services (under order or referral of a health care provider) for reconstructive surgery after an accident, injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days if untreated (e.g., cancer (chemotherapy), severe arthritis (physical therapy), or kidney disease (dialysis)).



"Spouse" means a partner in marriage as defined in California Family Code section 300.

"Unable to perform the functions of his or her job" means an employee is: (1) unable to work at all; or (2) unable to perform any one of the essential functions of his or her position at the time notice is given or leave commenced, whichever is earlier. The term "essential functions" is borrowed from the Americans with Disabilities Act ("ADA") and state disability discrimination laws to mean "the fundamental job duties of the employment position," but does not include the marginal functions of the position.

#### **8.4 Pregnancy Disability Leave and the FMLA/CFRA Entitlement**

Section 8.4 (Pregnancy Disability Leave and the FMLA/CFRA Entitlement) applies to all employees of the City who meet the eligibility requirements as set forth in the policy.

The Federal FMLA statute considers pregnancy to be a disability. The California CFRA statute does not consider pregnancy to be a disability since there is already another California law, Pregnancy Disability Leave (PDL), which addresses this issue. Reading each of these laws individually, it must be remembered that the employee will always enjoy the greatest benefit that each law provides.

Under California law, Pregnancy Disability Leave (PDL) provides special protection for women with pregnancy related disabilities. This law allows an employee who is disabled by virtue of a pregnancy related disability to take up to four (4) months off work due to her disability. This benefit is only permitted during the period that the employee is actually disabled as documented by the treating physician. Following the period of disability, the employee would be eligible to take an additional twelve (12) weeks off work under the CFRA statute. CFRA basically provides an opportunity to "bond" with the newborn. Under these conditions, an employee could potentially remain off work for a maximum of up to four (4) months (Pregnancy Disability Leave) and an additional 12 weeks (CFRA bonding leave). Again, remember that there cannot be any overlap between PDL and CFRA leave for pregnancy related disabilities. PDL is based on the existence of a medical disability associated with the pregnancy while CFRA is a bonding leave.

Eligibility for PDL leave commences with the date of employment. Unlike the FMLA/CFRA, there is no eligibility requirements pertaining to the one year period of service or minimum number of hours worked.

Due to the fact that the Federal FMLA does consider pregnancy to be a disability, there will be an overlap with the PDL and FMLA leaves. The following example is an illustration of the interaction between these leaves: An eligible employee is disabled due to pregnancy for eight weeks. During this eight week period, she will be covered by both the provisions of the PDL and FMLA. She now decides to take an additional six weeks to "bond" with her newborn. Since the FMLA is both a disability and a bonding leave, the employee will exhaust the remaining for weeks of her FMLA entitlement. Concurrent with the remaining four weeks of FMLA, the employee will also use four weeks of her CFRA leave entitlement.

The law requires the City to pay its share of the employee's health insurance premium for a maximum of twelve (12) weeks. This will apply regardless of whether the leave is designated as FMLA, CFRA, or PDL. If an employee wishes to continue with her health insurance coverage beyond the twelve (12) week period, the employee must pay the City's normal portion of the premium.

FMLA/CFRA "bonding" time must be taken within one year of the birth of the child or placement of an adopted/foster child. Both male and female employees are entitled to FMLA/CFRA time off work to bond with a newborn or newly placed adopted/foster child as long as FMLA/CFRA time has not been previously exhausted.

### **8.5 Leave to Visit Child's School or Day Care Facility**

Section 8.5 (Leave to Visit Child's School or Day Care Facility) applies to all employees of the City who meet the eligibility requirements as set forth in the policy.

The City shall permit a City employee who is a parent, guardian, or grandparent having custody of one or more children in kindergarten or grades 1 to 12, inclusive, or attending a licensed child care facility to take up to 40 hours each year, not exceeding eight hours in a calendar month to participate in activities of the school or child care facility. The employee is required to give reasonable notice of the planned absence. In the event both parents work for the City at the same worksite, only the parent who gives first notice to the City shall be entitled to take leave. The other parent may take leave only if approved by the City.

An employee shall utilize existing vacation or compensatory time off for this leave. If vacation and compensatory time leave are not available, the employee shall take leave without pay. Under California law, the right for leave under this section may not be diminished by an MOU between the City and the employee union.

### **8.6 Military Leave**

An employee on official military duty under orders may take military leave, as required by California State Law or an applicable federal law. The City will pay any differential in salary for working/holiday hours missed while on military duty, provided the military rate of pay is less than the employee's City rate of pay.

### **8.7 Bereavement Leave**

Regular full-time employees who suffer a death in their immediate family, as defined in this section, may be allowed up to 5 days of bereavement leave. Employees are provided three (3) work days of scheduled leave with pay, at his/her request for bereavement, or to attend the funeral of a member of the immediate family. In the event that out-of-state travel is necessary, employees may be allowed five (5) scheduled work days for each occurrence. This leave shall not be charged against sick or accrued vacation leave, but shall be counted as additional paid time away from work. In addition, employees may use an additional two days of accrued sick leave, vacation leave, or compensatory time for bereavement or the funeral of an immediate family member. Employees will be paid only for days and hours they were scheduled to work. Leave shall be used within three (3) months of the death of an immediate family member.

For purposes of this Rule only, the term immediate family includes: spouse/domestic partner, child, parent, sibling, grandparent, great grandparent, grandchild, or step or foster derivative of the above, or of the employee's spouse/domestic partner's, mother, father, brother-in-law or sister-in-law, , or any permanent resident in the employee's personal household.

Part-time employees are excluded from receiving paid Bereavement Leave, but may use accrued sick leave for a bereavement occurrence pursuant to the City's Bereavement Policy.

## **8.8 Jury Duty**

Any employee summoned for jury duty shall receive compensation at their regular rate for those days missed. Any amount received for jury duty pay must be returned to the City. An employee may elect to take compensatory time to perform jury duty and keep the court fees received. If any employee is subpoenaed to court on a personal matter, any time away from work during regularly scheduled working hours shall be compensatory time, vacation time, or leave without pay. Court pay for mileage shall be retained by the employee.

## **8.9 Leave for Crime Victims**

Section 8.9 (Leave for crime victims) applies to all employees of the City who meet the eligibility requirements as set forth in the policy.

- A. Employees who have been victims of serious or violent felonies, as specified under California law, or felonies related to theft or embezzlement, may take time off work to attend judicial proceedings related to the crime. Employees also may take time off if an immediate family member has been a victim of such crimes and the employee needs to attend judicial proceedings related to the crime. "Immediate family member" under this Rule is defined as spouse, registered domestic partner, child, child of registered domestic partner, stepchild, brother, stepbrother, sister, stepsister, mother, stepmother, father, or stepfather.
- B. Employees must give the Human Resources Department a copy of the court notice given to the victim of each scheduled proceeding before taking time off, unless advance notice to the City of the need for time off is not feasible. When advance notice is not feasible, the employee must provide the city with documentation evidencing the judicial proceeding, within a reasonable time after the absence. The documentation may be from the court or government agency setting the hearing, the district attorney or prosecuting attorney's office, or the victim/witness office that is advocating on behalf of the victim.
- C. Employees may elect to use accrued paid vacation time, paid sick leave time, or other paid time off for the absence. If the employee does not elect to use paid time off, the absence will be unpaid. However, exempt employees will be paid their full salary for any workweek interrupted by the need for time off under this policy.

- D. Victims of domestic violence or sexual assault may take time off work to obtain help from a court, seek medical attention, obtain services from an appropriate shelter, program, or crisis center, obtain psychological counseling, or participate in safety planning, such as permanent or temporary relocation. The City may require proof of an employee's participation in these activities.
1. Whenever possible the employee must provide his or her supervisor reasonable notice before taking any time off under this Rule. The employee may use any accrued vacation or compensatory time off for the leave under this Rule.
  2. Leave under this policy does not extend the time allowable under the "Family and Medical Leave Act" as set forth in Rule 8.3.
  3. When an unscheduled absence under this Rule 8.9 D occurs, the City may not take action against the employee if the employee, within a reasonable time after the absence, provides certification in the form of a police report; court order of other evidence that the employee appeared in court; or documentation from a professional, domestic violence advocate or advocate for victims of sexual assault, health care provided, or counselor that the employee was undergoing treatment for physical or mental injuries from an act of violence or sexual assault.
  4. To the extent allowed by law, the City shall maintain the confidentiality of any employee requesting leave under Rule 8.9 D.

#### **8.10 Administrative Leave**

- A. The City shall have the right to place an employee on leave at any time with full pay.
- B. When a circumstance arises which may warrant granting administrative leave, the Department Head will consult with the Director of Human Resources, or designee, and obtain approval from the City Manager.
- C. Administrative Leave shall be documented and approved by use of the standard Personnel Leave Form.

#### **8.11 Leave Without Pay**

- A. In addition to any statutory leaves without pay provided for by law (e.g., FMLA and CFRA leave), any employee may be granted leave without pay for up to one month with the approval of the Department Head. Any leave without pay in excess of one month must be approved in advance by the City Manager. The employee must make a written request to the Department Head stating the reasons why he/she needs to be granted the leave without pay. The Department Head shall either approve or disapprove of the employee's request upon the grounds of whether or not the request will benefit both the City and the employee.
- B. During any leave without pay exceeding one full pay period, except for suspensions because of discipline, the employee will be responsible for the payment of premiums for health, life, and disability insurance benefits and sick leave and vacation time will not be earned.

- C. All leave shall be approved by submitting a completed leave form to the Department Head for approval.
- D. Leave without pay shall only be granted when all other eligible leave has been exhausted.

### **8.12 Management Leave**

- A. Exempt employees who are ineligible for overtime pay, are given one hundred (100) hours of management leave each calendar year with the exception of the Assistant City Manager, City Engineer, and Department Directors, all of whom are given one hundred twenty (120) hours of management leave each calendar year. This leave shall be prorated at the time of hire for new employees.
- B. Exempt employees, shall accrue management leave (25-30 hours based on classification) per quarter in January, April, July and October. This leave shall be prorated at the time of hire for new employees. This provision does not apply to contracted employees.
- C. Management leave not used by December 31st of each year will be converted to vacation time.
- D. Scheduling of management leave shall be done in the same manner as vacation scheduling, as outlined in Rule 7.2.

## **RULE 9: RULES OF CONDUCT; DISCIPLINE**

The procedures set forth in this Rule 9 are not applicable to Assistants to the City Manager, Department Heads, other At-Will employees (including seasonal and temporary employees), and probationary employees.

### **9.1 Employee Conduct Guidelines**

#### **A. Introduction**

City employees are expected to observe certain standards of job performance and conduct. When job performance or conduct do not meet City's standards, City will endeavor, when in its sole discretion it deems appropriate, to provide employees with a reasonable opportunity to correct the deficiency. If, however, the employee fails to make the correction, or if the misconduct is severe or serious in nature, he or she will be subject to discipline, including termination.

The rules set forth in this Rule supplement are intended to provide employees with fair notice of what is expected of them. It is not possible, however, to provide an exhaustive list of all types of impermissible conduct and performance. Therefore, employees should be aware that conduct not specifically listed below, but which adversely affect or is otherwise detrimental to the interests of the City or other employees may also result in disciplinary action, including termination.

## B. Job Performance

Employees may be subjected to discipline, including termination, for poor job performance, including but not limited to the following:

1. Unsatisfactory work quality or quantity;
2. Excessive absenteeism, tardiness, or abuse of break and lunch privileges;
3. Failure to follow instructions or City procedures; or
4. Failure to follow established safety regulations.

## C. Misconduct

Employees may be subject to discipline, including termination, for violating the following:

1. Violation of any City ordinance, resolution, or the provisions of these Rules and Regulations, Administrative Manual provisions, or departmental rules and regulations.
2. Falsifying or making a material omission on an employment application or any other City record.
3. Inexcusable neglect of duty.
4. Insubordination, including improper conduct toward a supervisor or refusal to perform tasks assigned by a supervisor in an appropriate manner.
5. Dishonesty.
6. Purchasing, possessing, using, selling, or being under the influence of alcohol or illegal drugs while on duty.
7. Working under the influence of an over the counter drug or prescribed medication that impairs the employee's ability to safely and efficiently perform the duties of his or her position.
8. Unlawful harassment as defined in Rule 2 of these Rules and Regulations.
9. Unlawful use, distribution, sale, or possession of illegal drugs while on duty or while operating a City vehicle.
10. Discourteous or harassing treatment of the public or other employees.
11. Improper political activity as defined by State Law.
12. Violation of safety procedures.
13. Failure to immediately report work-related accidents to supervisor.
14. Misuse, abuse, and damage of City facilities, property, vehicles and equipment.
15. Theft of City facilities, property, vehicles and equipment
16. Refusal to take or subscribe to any oath of affirmation which is required by law in connection

17. Conviction of a felony, or conviction of a misdemeanor, involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be conviction within the meaning of this section.
18. Any other act which a Department Head or the City Manager deems a violation of City conduct standards.

D. Attendance

In addition to the general rules stated above, employees may be subject to discipline, including termination, for failing to observe attendance rules such as the following:

1. Reporting to work on time, observing the time limits for rest and lunch periods, and a failure to obtain approval to leave work early.
2. Notifying the supervisor in advance of anticipated tardiness or absence.
3. Unauthorized leave.

**9.2 Employee Discipline**

A. Types of Discipline

The type and degree of discipline imposed shall be determined based on the nature and severity of the employee conduct. While the City's goal is to provide progressive discipline, the nature and severity of the employee conduct may not warrant progressive discipline.

The type of discipline to be used includes, but is not limited to:

1. Counseling
2. Verbal Warning
3. Counseling or Warning Letter
4. Imposition of Review Period
5. Performance Salary Reduction
6. Suspension
7. Demotion
8. Termination

B. Procedures for Disciplinary Action.

The following procedure shall be applicable to regular full-time and part-time employees; provided the part-time employees work thirty (30) or more hours per week. The following procedure shall be used for disciplinary actions regarding performance salary reduction, suspension, demotion, and termination of an employee.

1. Employee shall be served with a Notice of Intended Disciplinary Action (Notice).
2. The Notice of proposed discipline shall include:

- a. A statement of the nature of the proposed action.
  - b. A statement of the reasons for the proposed action, including the specific acts or omissions giving rise to the proposed action.
  - c. A copy of any documents or other written materials upon which the disciplinary action was fully or in part based.
  - d. A statement advising the employee of his/her right to appeal such action and the right to union representation.
  - e. The date, time and location of the Skelly Response meeting, and the name of the Skelly Officer.
3. In those extraordinary circumstances wherein the City Manager determines immediate disciplinary action is necessary as a result of accusations involving misappropriation of public funds or property, or action which would constitute a felony or misdemeanor involving moral turpitude, or where the employee's presence on the job is deemed to be a threat to the safety of other employees or members of the public, the City Manager may place the employee on paid administrative leave while proceeding with the procedures for disciplinary action.
  4. Skelly Meeting – the employee shall have the right to respond informally to the charges verbally, in writing, or both, before the discipline is imposed. The employee shall have ten (10) calendar days from receipt of the notice within which to respond to the charges. The employee may request a reasonable extension of time to respond for justifiable reasons. The City Representative hearing the response, the Skelly Officer, shall render a final written decision within ten (10) calendar days of receiving the employee's response. The Skelly Officer may sustain, modify or overturn the recommended disciplinary action. The Skelly response will be delivered to the employee in person, via registered mail or overnight delivery. If the Skelly Officer sustains or modifies the disciplinary action, the action may be imposed after the post-Skelly decision is delivered to the employee.
  5. Appeal – the employee shall have the right to appeal the disciplinary action within ten (10) days of receiving the post-Skelly disciplinary decision as follows:
    - a. Step 1 – meet with Department Head or if Department Head served as Skelly Officer, then employee may send appeal to the City Manager. The appeal shall be in writing and describe why the employee believes the disciplinary action taken was not appropriate. The response to the appeal will be provided to the employee within ten (10) calendar days.
    - b. Step 2 – If not satisfied with the result of Step 1 above, the employee may provide the written appeal to the City Manager for review. The City Manager's written response will be provided to the employee within ten (10) calendar days.



- c. Step 3 – If the employee is not satisfied with the results of Step 2, the employee may request binding arbitration/an appeal hearing. The written request shall be submitted to the City Manager within ten (10) calendar days of receiving the City Manager’s response to the appeal.
6. An appeal of the Order of Disciplinary Action shall be heard by an independent hearing officer. The City Manager or designee shall request a list of neutrals from the State Mediation and Conciliation Service. Such list shall be requested within five working days of receipt of an employee’s appeal demanding a hearing. The City Manager or designee, and the employee, or the employee’s authorized representative shall meet not later than three working days after receipt of the list and select the hearing officer utilizing the alternate strike method. The party striking first shall be determined by the toss of a coin. Should the person selected as the hearing officer be unavailable to commence the hearing process within ninety (90) days of this selection, the parties shall request another name from the State Mediation and Conciliation Service and shall proceed again through the list as provided above unless the parties agree to a later date for the hearing using the selected arbitrator/hearing officer.
7. The Arbitrator/Hearing Officer shall regulate the conduct of the hearing process. The Arbitrator/Hearing Officer shall set the date, time and place of the hearing, which place shall be on City premises, and shall, by certified United States mail, postage prepaid, give not less than ten (10) days’ notice of such date, time and place to the appellant, or his or her other designated representative, the City Manager and the Director of Human Resources, or designee. The hearing shall be recorded by a court reporter or electronic process. Oral evidence may be heard only on oath or affirmation. The Arbitrator/Hearing Officer shall, within thirty (30) calendar days of the close of the hearing, file with the Director of Human Resources, or designee, the decision affirming, modifying, or revoking the Order, and his or her findings and decision to the appellant and to the City Manager.
8. The decision of the Arbitrator/Hearing Officer shall be final for all purposes unless an action or proceeding is commenced in a court of competent jurisdiction to determine the validity of the decision within thirty (30) calendar days of the date of mailing of the notice of decision to the appellant and the City Manager.
9. Employee’s failure to respond or file an appeal within any specified time period in section 9.2 shall terminate the right to a hearing and the Order shall be deemed final.

### **9.3 Grievance Procedures**

#### **A. Purpose**

Grievance procedures for employees are provided herein:

1. To promote improved employer-employee relations.
2. To afford employees individually a systematic means of obtaining further consideration of problems after every other reasonable effort has failed to resolve them through discussions.
3. To provide that grievances shall be settled as near as possible to the point of origin.
4. To provide that grievances shall be resolved as informally as possible.

#### **B. Matters Subject To Grievance Procedures**

An employee shall have the right to submit a written grievance regarding a claimed violation of these Rules and Regulations. The grievance process shall not be applicable to employee discipline, to employee evaluations, or any disputes resolved through another City process.

#### **C. Employee Rights**

1. The employee may request the assistance of another person in preparing and presenting a grievance at any level of review.
2. A reasonable amount of time during work hours to prepare the grievance.
3. Freedom from reprisal for using the grievance procedures.
4. The right to call other employees as witnesses.

#### **D. Informal Grievance Procedure**

1. An employee should first attempt to resolve a grievance or complaint through discussion with his/her immediate supervisor without undue delay but within ten (10) calendar days of the issue or the employee's first awareness of the issue. If, after such discussion, the employee does not believe the problem has been satisfactorily resolved, he/she shall have the right to discuss it with the supervisor's immediate superior, if any without undue delay, but within ten (10) calendar days after initial supervisory discussion. Every effort should be made to find an acceptable solution by informal means at the most immediate level of supervision. If the employee is not in agreement with the decision reached through such discussion, he/she shall have the right to file a formal grievance in writing within ten (10) calendar days after receiving the informal decision of his/her supervisor. An informal grievance shall not be taken above the Department Head.
2. All informal grievances should be documented by the supervisor and any other supervisors involved.

#### **E. Formal Grievance Procedure**

The following formal grievance procedure may be used after exhaustion of the informal grievance procedure:

1. Department Review.
  - a. The grievance shall be presented in writing to the employee's Department Head who may discuss the grievance with the employee, employee representative, if any, and with other appropriate persons. Said grievance must be submitted within thirty (30) calendar days after the employee receives the decision on the informal grievance. The grievance shall include the following information:
    - i. The specific section of the Rules and Regulations at issue;
    - ii. Facts supporting the grievance including dates, times, documents, and witnesses; and
    - iii. The remedy sought.
  - b. The Department Head shall provide a written decision to the employee within fifteen (15) calendar days after receiving the grievance.
  - c. If the employee does not agree with the decision reached, or if no answer has been received within fifteen (15) calendar days, the employee may present the grievance in writing to the City Manager. Any such grievance shall be presented within ten (10) calendar days after receipt of the Department Head decision.
  - d. Failure of the employee to take further action within ten (10) calendar days after receipt of the Department Head's decision, or within a total of twenty five (25) calendar days if no decision is rendered, will constitute withdrawal of the grievance.
2. City Manager Review.
  - a. Upon receiving the grievance, the City Manager shall provide a written response to the employee within fifteen (15) calendar days. The City Manager may respond based on 1) a review of the grievance file, 2) a meeting with the employee, employee representative, if any, and with other appropriated persons; or both.
  - b. The City Manager shall render a decision in writing to the employee within twenty (20) calendar days after receiving the grievance. The decision of the City Manager is final.
3. The time limits specified above may be extended to a definite date by mutual agreement of the employee and the reviewer concerned.

#### **9.4 Drug and Alcohol Use**

- A. The City recognizes the importance of maintaining a work place free from the use of drugs and alcohol. This section is intended as a guideline to recognize and prevent the use of drugs and alcohol in the work place. Use of these substances can detract from an employee's work performance, efficiency, safety, and health. In addition to such impairment, the use or possession of these substances on the job constitutes a potential danger to the welfare and safety of other employees and exposes the City to the risks of injury to other person or property loss or damage.

The use of prescription drugs and/or over the counter drugs may also impair an employee's job performance and may pose the type of danger or risks of injury referenced above.

#### B. Job Applicants

Applicants for City employment will be required to undergo a drug and alcohol test upon an offer of employment and prior to their final appointment. An applicant who refuses to consent to such testing will be denied employment and removed from any eligible list. An applicant with a positive test may be denied employment after review and consideration of all facts regarding the test.

#### C. Employee Actions and Conduct

1. An employee shall inform his or her supervisor any time he or she is taking any prescription or over the counter drug which can, or will, according to label warnings or physician instructions, impair the employee's ability to safely perform assigned duties, such as drugs causing drowsiness, restricted vision or restricted motor control if the employee is required to operate a vehicle or motor equipment on City business.
2. No employee shall report to work under the influence of alcohol or any drug that may cause impaired performance of duties or if the ability to perform assigned duties is significantly impaired. If there is a question, the Director of Human Resources, or designee, should be contacted for assistance to determine the risk or impairment.
3. No employee who is on-call or on duty shall consume alcohol or any drug which may impair ability to perform assigned duties.
4. A supervisor may have reasonable suspicion that an employee is unable to safely perform his or her assigned duties. If the supervisor determines the employee may be impaired, the supervisor shall take action to reassign the duties the employee can perform safely; send the employee home on sick leave or, if it is deemed necessary, Administrative Leave pending administrative review; or send the employee for a drug or alcohol screening test in accordance with Rule 9.5 below.
5. Any employee who is called back to work during nonscheduled work hours and has recently consumed alcohol or drugs which impair the ability to safely perform shall inform the supervisor that he/she is unable to safely respond and perform. The supervisor shall determine whether or not the employee should perform the duties.
6. No employee shall operate any City vehicle, either on or off duty, or any other vehicle while on City business, while under the influence of alcohol or any drug.

#### D. Reasonable Cause

Reasonable cause shall exist when a supervisor observes specific behavioral, performance or contemporaneous physical indicators of being under the influence of drugs or alcohol on the job. Any of the following objective factors may constitute reasonable cause:

- a. Incoherent or slurred speech, disorientation or inattention.
- b. Odor of alcohol on breath.
- c. Staggering gait, disorientation or balance problem.
- d. Red, watery eyes with dilated or constricted pupils.
- e. Dry mouth with frequent swallowing or lip wetting.
- f. Hand tremors.
- g. High energy, agitated, talkative, paranoid or bizarre behavior.
- h. Drowsiness or detachment from physical and/or emotional pain.

Cause is not reasonable and not a basis if it is based solely on the reports and observations of third parties. An incident report form must be completed by the supervisor documenting the grounds for reasonable cause.

#### E. Evaluation and Rehabilitation

1. Upon discovery of an employee who may be under the influence of drugs or alcohol or whose job performance is being impacted by drugs or alcohol, the following procedures should be followed:
  - a. The City may refer the employee to the City's Employee Assistance Program (EAP) for assessment or if reasonable suspicion is present under Rule 9.4 B above may test the employee for drugs or alcohol in accordance with Rule 9.5. The employee may designate a therapist acceptable to the City in lieu of the City's EAP referral to evaluate the employee and recommend an appropriate treatment.
  - b. No disciplinary action may be taken against employees who voluntarily identify themselves as drug users, prior to the time it is apparent their use has been detected and who obtain counseling and rehabilitation through the City's Employee Assistance Program, and thereafter refrain from violating the City's policy on drug and alcohol abuse. However, this provision shall not restrict the City from taking disciplinary action arising from other violations of City rules and standards or making job reassignments to reduce the risks of accident or injury that may result from the use of alcohol or drugs.
  - c. If the employee agrees to medical treatment or rehabilitation, counseling, training, and/or education, the employee may select an appropriate provider of treatment, subject to approval by the City.

- d. All medical records obtained by the City under this process and test results shall be maintained by the Human Resources Department and are deemed as confidential. The medical records shall only be used in any hearing or administrative review as legally permissible and to the extent necessary to fairly conduct the hearing or review.
- e. Failure to establish or comply with a program of therapy or corrective action may be considered insubordination and/or grounds for disciplinary action, including termination.

## **9.5 Drug/Alcohol Screening**

### **A. Testing Procedures**

1. The City may require a City employee to undergo drug and alcohol testing if there is reasonable cause by the supervisor or other management personnel that the employee is under the influence of drugs or alcohol during work hours. Reasonable cause is defined above in Section 9.4 D.
2. A supervisor may upon reasonable cause and after consulting with the Department Head, Director of Human Resources, or designee, or City Manager ask any on-duty employee to submit to an alcohol and drug screening test for the presence of alcohol or drugs. The employee shall be immediately informed of the supervisor's suspicions and advised that he or she may have a representative present. The delay in securing representation shall not exceed one hour from the time the employee is ordered to submit to the drug or alcohol test. The employee shall be permitted up to 15 minutes to confer with his or her representative upon arrival. The employee will be given an opportunity to provide an explanation for his or her condition such as fatigue, reaction to a prescribed drug, etc.
3. Before a drug and alcohol test is administered, employees and job applicants will be asked to sign a consent form authorizing the test and release of test results to those City officials with a need to know. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the City's drug testing policy and to indicate current or recent use of prescription and over-the-counter medication(s).
4. An employee who refuses to consent to a drug and alcohol screen test when reasonable suspicion of drug or alcohol use has been identified is subject to disciplinary action up to and including termination. The reasons for the refusal shall be considered in determining the appropriate disciplinary action. No disciplinary action shall be taken without first discussing the matter with the employee.

### **B. Confirmation of Test Results**

1. An employee or job applicant whose drug test yields a positive result shall be given a second test using a gas chromatography/mass spectrometry (GC/MS) test. The second test shall use a portion of the same test sample withdrawn from the employee or applicant for use in the first test.

2. If the second test confirms the positive test result, the employee or applicant shall be notified of the results in writing by the appropriate department head. The letter of notification shall identify the particular substance found and its concentration level.
3. An employee or applicant whose second test confirms the original positive test result, may, at the employee's or applicant's own expense, have a third test conducted on the same sample at a laboratory selected by the City.

#### C. Confidentiality of Test Results

All information from an employee's or applicant's drug and alcohol test is confidential and only those with a need to know are to be informed of test results. Disclosure of test results to any other person, agency or organization is prohibited unless written authorization is obtained from the employee or applicant or upon subpoena. The results of a positive drug test shall not be released until confirmed.

#### D. Laboratory Testing Requirements

All drug and alcohol testing of employees and applicants shall be conducted at medical facilities or laboratories selected by the City. To be considered as a testing site, a medical facility or lab must submit in writing a description of the procedures that will be used to maintain test samples. Factors to be considered by the City in selecting a testing facility include but are not limited to:

1. Collection and testing procedures which ensure privacy and accuracy;
2. Chain of custody procedures which ensure accuracy;
3. Procedure that ensure confidentiality of test results.
4. Methods of analysis which ensure reliable test results.

#### E. Second Confirmation Test

1. The applicant or employee may request a second confirmation test of the same sample and a review by the City within 24 hours of notification of the positive test results.
2. The cost of the second confirmation test must be paid in advance by the applicant or employee. If the test is negative, the City shall reimburse the applicant or employee for the cost of the test.
3. The second confirmation test will be performed by a medical facility or laboratory selected by the City and interpreted by a qualified physician of the City's choice.
4. Consequences for Positive Test Results.
  - a. Applicants: Job applicants will be denied employment with the City if their initial positive test results have been confirmed. Applicants shall be informed in writing if they are rejected on the basis of a confirmed positive drug test result.

- b. Employees: If an employee's positive test result has been confirmed, the employee is subject to disciplinary action up to and including termination. If an employee's positive test result has been confirmed, the employee is subject to disciplinary action up to and including termination. Factors to be considered in determining the appropriate disciplinary response include the employee's work history, length of employment, current job performance, and the existence of past disciplinary actions. If termination is not selected as the appropriate course of action, a documented course of corrective action may be established. In addition, if the alcohol and drug screen test is positive, the employee may be referred to an EAP counselor to establish a course of therapy or arrange action to address the drug or alcohol abuse. A "Return to Work/Rehabilitation Agreement," to be approved by the City Manager and the City Attorney may be established between the employee and the City.

#### **9.6 Acceptance of Gifts, Entertainment and Services**

- A. Acceptance of gifts, entertainment and services by City employees may give the appearance of impropriety to the public. For this reason, the City has adopted a policy of not allowing employees to accept gifts from the public. All City employees are expected to be aware of and follow this policy.
- B. City of Lathrop employees may not accept gifts, entertainment and other services or benefits from any individual or company doing business with or seeking to do business with the City.
- C. Exceptions are permitted only if all of the following conditions are met:
  - 1. The gift; entertainment, or service is of nominal value. Nominal value shall be defined as any gift, entertainment, or service valued at \$30 or less.
  - 2. Giving or receiving the item or service is customary and gives no appearance of impropriety.
  - 3. Giving or receiving the item or service imposes no sense of obligation either on the giver or the receiver.
  - 4. Giving or receiving the item or service results in no special favored treatment.
  - 5. The item or service is given and received with no effort to conceal the full facts.