

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Discussion of Proposed Resolution No. 359 Revising Personnel Policies of the Employee Handbook
DEPARTMENT:	Human Resources City Attorney's Office
PRESENTED BY:	Richard Moore, Senior Human Resources Analyst Ian Sievers, City Attorney
ACTION:	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

On June 12, 2014, Washington State Substitute Senate Bill (SSB) 5173 will go into effect. This new law requires local governments to provide their employees with two unpaid holidays per calendar year to use for a "reason of faith or conscience." As well, a recent decision on the Family Medical Leave Act (FMLA) by the 9th Circuit Court of Appeals provides employees with the ability to waive their rights to FMLA protections. Given that these two mandatory issues require that updates be made to the City's personnel policies contained in the Employee Handbook, staff is recommending three additional changes to the Handbook – a vacation cash out policy amendment, sick leave cash out amendment for retirement-eligible staff, and a tobacco free work place amendment. All of these proposed changes are identified in proposed Resolution No. 359, which is attached to this staff report as Attachment A.

RESOURCE/FINANCIAL IMPACT:

There is no anticipated financial impact in making the required changes to the personnel policy to provide employees with two unpaid days off to attend a religious activity. Employees currently receive two paid personnel days per year and staff considers it likely these already provided days would be used in most situations. Changes to the personnel policy related to use of FMLA may have a financial impact, as employees may now use paid leave prior to or concurrently with FMLA, whereas the prior interpretation required concurrent use only. This may mean that when leave is used, the time off may be extended in some cases. While it is difficult to quantify the extent of the impact, as each leave situation is different based on individual and family circumstances, staff believes that the extent of the impact will likely be minimal.

With regard to the vacation cash out policy amendment, by allowing retirement-eligible employees in PERS II or PERS III to cash out any unused vacation, the City would take on some additional cost exposure as some retirement eligible employees leaving City employment may have over the 240 hours currently allowed at the time of separation. This exposure would be minimal however, as it would only apply to a fraction of the City's current workforce - those who are eligible for retirement and have a vacation

leave balance over 240 hours. Additionally, the increase to the cash out cost would only apply to the hours above the already allowed 240.

While the estimated cost of this change is very difficult to determine based on the salaries, leave balances, potential retirement schedules, and personal decisions of individual employees, in the most extreme example, an employee that has been with the City for 15 years - with the maximum two years of vacation roll over - and takes no vacation for an additional year, could carry over 368 vacation hours (two years of accrual) and accrue an additional 184 hours in the current year before cashing out at retirement or otherwise separating from service when eligible for retirement. Thus, the total accumulated hours in this case would be 552. This is 312 hours above the current 240 hour retirement threshold. From a cost perspective, if this were a Department Director at step 6 of their current salary range (wage rate of \$70.32 per hour), this would cost the City an additional \$21,939.84 ($\70.32×312 hours) for this employee. Based on past organizational experience this extreme scenario is very unlikely to occur. This example is meant to illustrate that the exact cost to implement this change is difficult to determine based on all the factors mentioned above.

Similar to the vacation cash out policy amendment, the City would take on some additional cost exposure if the sick leave cash out policy is amended. However, the extent of this exposure would also be difficult to determine based on the salaries, leave balances, potential retirement schedules, and personal decisions of individual employees. With this stated, sick leave accrual is capped at 1040 hours, and therefore, an individual with a maximum balance would receive 104 hours (10%) of cash out if they were to qualify for retirement with PERS. Again using the most extreme example, if a Department Director with maximum leave accrual was to retire (wage rate of \$70.32 x 104 hours), this would amount to an additional cost of \$7,313.28 for this employee.

Finally, the recommended change making all City facilities tobacco free would have no financial impact.

RECOMMENDATION

No action is required as this item is for discussion purposes only. However, when this item is brought back for Council action, staff recommends that Council adopt Resolution No. 359 updating the personnel policies in the Employee Handbook.

Approved By: City Manager ***DT*** City Attorney ***IS***

BACKGROUND

The City's Employee Handbook was adopted in 1999 and has been updated periodically to reflect current law or policies as approved by Council. The definition and utility of religious holidays, FMLA, sick leave cash out and a smoke free workplace have remained functionally unchanged since adoption in 1999. In some cases minor changes have been made to comply with legal updates.

However, on June 12, 2014, SSB 5173 will go into effect, requiring that local governments provide their employees with two unpaid holidays per calendar year to use for a "reason of faith or conscience." As well, a recent decision on FMLA by the 9th Circuit Court of Appeals provides employees with the ability to waive their rights to FMLA protections. Given that these two mandatory issues require that updates be made to the City's personnel policies contained in the Employee Handbook, staff is recommending three additional changes to the Handbook – a vacation cash out policy amendment, sick leave cash out amendment for retirement-eligible staff, and a tobacco free work place amendment. Thus, these proposed changes are being recommended to not only meet legal requirements but to provide consistent language and equitable treatment of employees in the personnel policies and promote a healthy work place.

DISCUSSION

The following section provides information on the five amendments being proposed for the personnel policies. The proposed amendment language is shown in tracked changes to Employee Handbook Sections 6.00 and 8.00, which is attached to this staff report as Exhibit A of Attachment A, proposed Resolution No. 359.

Religious Holiday Amendment – Section 6.03(F)

As noted above, the recent signing into law of SSB 5173 provides employees of local government entities with two unpaid holidays per calendar year for a "reason of faith or conscience." As this new law will become effective on June 12, 2014, the personnel policies require immediate updating to comply with this regulation. By adopting the updated language proposed in section 6.03(F), the City will be in compliance with this new requirement. In addition, a change is proposed in section 6.13 to include language regarding religious leave.

FMLA Amendment – Section 6.06(F)

Similar to the religious holiday amendment, the recent decision on FMLA made by the United States 9th Circuit Court of Appeals revises the way FMLA must be administered. These changes are shown in sections 6.06(F) and 6.06(M) of the personnel policies. Employees may now use paid leave prior to or concurrently with FMLA, whereas the prior interpretation of the FMLA statute required concurrent use only.

Vacation Cash Out Amendment – Section 6.01(D)

As part of the recent retirement process for the Human Resources Director, it was identified that the current vacation cash out policy imposed inequitable limitations on vacation cash out amounts. In this case, the former Human Resources Director was limited to 240 hours of vacation cash out and forfeited 40 hours of accrued vacation leave upon retirement.

The current policy for vacation cash out for an employee retiring from employment (6.01(D)) is based on payout requirements for the Washington State Public Employee Retirement System (PERS) I participants. As the highest two years of compensation are used for setting benefits of PERS I employees, the City's current policy mitigates large lump sum payments, such as leave accruals or severance payments upon separation, which could distort the average compensation that is used by the state to set retirement payments for this retirement class. State law allows lump sum payouts of accrued leave up to 240 hours for these PERS I employees, with the City billed for excess compensation if leave payouts exceed this number of hours. Thus, current City policy is that in the case of separation for any reason when any employee *is eligible for retirement*, as defined by the rules and regulation of PERS, the maximum vacation accrual cash out shall be 240 hours.

This same liability does not apply to PERS II or PERS III participants, but the Employee Handbook makes no distinction between employees participating in PERS I, PERS II or PERS III retirement plans as a matter of internal equity to all City employees. As well, the City had eight (8) PERS I participants at that time the current policy was adopted, and now there are only three (3) employees remaining that participate in the PERS I retirement plan. New employees are not able to enroll in PERS I, as that retirement plan ceased being offered in 1982.

Staff is proposing to change this policy in the employee handbook for two reasons:

- 1) As just noted, there are only three PERS I eligible employees still working at the City. Thus, the issue of internal equity between PERS I and PERS II and III employees is much less of an issue.
- 2) More importantly however, employees separating from employment that are not eligible for retirement (i.e., leave the City's employ and go work elsewhere) receive a cash out of *all* accrued vacation hours, not limited to 240 hours capped for retirement-eligible staff. Even employees eligible for retirement, including early retirement, who leave for a new job and do not retire, are subject to the reduced payout rule. The Employee Handbook currently limits the amount of vacation accrual that can be "rolled over" to the next year to no more than two years worth of vacation. This policy therefore creates the guardrail against incredibly large accrued vacation time payouts upon service separation for non-retirement eligible staff. Regardless of this guardrail however, there is still a significant level of inequity regarding vacation cash out depending on the circumstances of why and when an employee separates from service (retirement eligible vs. non-retirement eligible).

Thus, staff recommends revising the current policy to provide vacation cash out for retiring PERS II and PERS III employees equal to that of employees that are separating from service for reasons other than retirement. The proposed change would leave intact the 240 hour threshold that applies to the three current employees eligible for PERS I retirement as is required by state law. All other retiring or separating employees would be paid for any accrued vacation earned and not taken, constrained by the rollover cap.

Sick Leave Cash Out Amendment – Section 6.04(I)

This amendment updates the sick leave cash out policy (6.04(I)) to allow employees qualifying for retirement under the rules and regulations of PERS to cash out 10% of sick leave at retirement. This would remove the requirement that an employee actually be retiring within PERS, as an employee may *qualify* for retirement but choose not to apply for retirement upon separation from service to the City.

To retire, an employee must either have at least five service credit years in PERS and be 65 years of age or have 20 service credit years and be 55 years of age. Any retirement before age 65 is an early retirement and a reduction of benefit will apply. Therefore it is possible that an employee may qualify for retirement but in order to avoid being penalized, do not submit the formal retirement paperwork to PERS because they are not 65 years old. By delaying the filing of the retirement paperwork, the employee has avoided the PERS early retirement reduction but loses the 10% cash out of their City accrued sick leave. This scenario also applied to the recently retired Human Resource Director. This change will make the sick leave cash out language consistent with the cash out language found in the vacation leave policy, and will provide a consistent incentive in use of sick leave that may be used to supplement retirement resources regardless of when the employee actually files for retirement.

Tobacco Free Work Place Amendment – Section 8.09

The final change being recommended is to amend the City's smoke free work place policy, which is in section 8.09 of the Handbook. This change would expand this policy to make the City a tobacco free work place, not just a "smoke free" work place. This includes expanding a restriction on the use of smokeless tobacco, such as snuff or chewing tobacco, and delineating that the restriction covers all City work sites and facilities, not just City Hall. This policy change would be in line with the Council's adoption of the ordinance designating City parks as tobacco free, and has been recommended by the Association of Washington Cities (AWC) as a way to promote a healthy work environment. The City's tobacco policy is part of the review criteria for the AWC Well City award, and this expansion of the policy will be helpful in continuing to meet the award's qualifications in the future.

ALTERNATIVES

Five different amendments are contemplated in proposed Resolution No. 359. The first two amendments, the Religious Holiday amendment and the FMLA amendment, are required of the City to meet a new statutory and case law requirement, respectively. Thus, the City does not have an alternative with regard to adoption of these Employee Handbook Amendments.

The Council does have alternatives regarding the three remaining proposed amendments - Vacation Cash Out, Sick Leave Cash Out and Tobacco Free Work Place. Council can choose to adopt these amendments as part of proposed Resolution No. 359 or not make these changes. If Council is not interested in moving these changes forward, staff would appreciate this direction at tonight's Council meeting so that the resolution that is brought back for Council adoption includes the amendments that Council is comfortable with.

RESOURCE/FINANCIAL IMPACT

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ATTACHMENTS

Attachment A – Proposed Resolution No. 359

Exhibit A – Amended Sections 6 and 8 of the Employee Handbook

RESOLUTION NO. 359

**A RESOLUTION OF THE CITY OF SHORELINE,
WASHINGTON, ADOPTING REVISIONS TO PERSONNEL
POLICIES TO REFLECT RECENT LEGISLATIVE
AMENDMENTS, COURT DECISIONS, AND TO PROVIDE
CONSISTENT AND EQUITABLE BENEFITS**

WHEREAS, the City Council has provided for benefits and working conditions in the Employee Handbook first adopted in 1999; and

WHEREAS, on March 31, 2014, Washington State Substitute Senate Bill 5173 (SSB 5173) was signed into law by the Governor, amending RCW 1.16.050, and becomes effective on June 12, 2014; and

WHEREAS, SSB 5173 entitles city employees to two unpaid holidays per calendar year for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization and SSB 5173 states that guidelines to address this entitlement are to be promulgated by ordinance or resolution; and

WHEREAS, the current holiday policy needs to be updated in order to comply with SSB 5173; and

WHEREAS, on February 25, 2014 the United States Court of Appeals for the 9th Circuit decided *Escriba v. Foster Poultry Farms Inc.*, 743 F.3d 1236 interpreting the Family Medical Leave Act (FMLA), 29 U.S.C. § 2601 *et seq.*, to allow an employee to choose to use FMLA leave for qualifying events or use other available leave; and

WHEREAS, the current FMLA policy needs to be modified so as to reflect that employees may not be compelled to use paid leave concurrently with FMLA leave; and

WHEREAS, the City's current Vacation Cash Out policy for an employee qualifying for retirement from employment under the Washington State Public Employee Retirement System (PERS), PERS II and PERS III, does not provide for a vacation cash out equal to that of employees separating from employment for reasons other than retirement; and

WHEREAS, the current Vacation Cash Out policy needs to be modified so as to leave intact cash out eligibility for PERS I employees while allowing other retiring or separating employees to be paid for any accrued vacation earned but not taken; and

WHEREAS, the City's current Sick Leave Cash Out policy requires an employee to file for retirement with Washington State Department of Retirement System (DRS) prior to being able to cash out any accrued sick leave; and

WHEREAS, the current Sick Leave Cash Out policy needs to be modified so as to allow employees qualifying for retirement to receive a cash out without filing with DRS; and

WHEREAS, the City's current Smoke Free Work Place policy needs to be modified to include a restriction on the use of smokeless tobacco, to include all City work sites and facilities within the policy, and to rename the policy to reflect the fact that the City will now be a Tobacco Free Work Place; and

WHEREAS, staff recommends revising provisions contained within Sections 6 and 8 of the Employee Handbook to cover the legislative amendment, recent court decision, and Vacation and Sick Leave Cash Out modifications; now therefore

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON AS FOLLOWS:

Section 1. Revision. Sections 6 and 8 of the Employee Handbook are revised as provided in Exhibit A attached hereto and incorporated herein.

ADOPTED BY THE CITY COUNCIL ON JUNE 23, 2014.

Shari Winstead, Mayor

ATTEST:

Jessica Simulcik Smith, City Clerk

SECTION 6.00 - EMPLOYEE BENEFITS AND TIME OFF

6.01 Annual Vacation

Regular employees shall be given annual vacation. Regular part-time employees shall accrue vacation based on the ratio of their normally scheduled work week to a forty hour week. Extra help employees are not eligible for these benefits. Vacation shall be accrued monthly as follows:

<u>Time</u>	<u>Days</u>	<u>Hours/month</u>
Zero to 12 months	12 days of vacation	8.0 hours
After 1 year employment	13 days of vacation	8.6 hours
After 2 years employment	14 days of vacation	9.3 hours
After 3 years employment	15 days of vacation	10.0 hours
After 4 years employment	16 days of vacation	10.6 hours
After 5 years employment	17 days of vacation	11.3 hours
After 8 years employment	18 days of vacation	12.0 hours
After 10 years employment	19 days of vacation	12.6 hours
After 12 years employment	20 days of vacation	13.3 hours
After 15 years employment	23 days of vacation	15.3 hours

- A. The maximum number of vacation hours that may be carried over from December 31 of one year to January 1 of the next year is equal to two years' accumulation. In cases where City operations have prevented an employee from using vacation time, the Department Director with the approval of the City Manager may allow unused accrual in excess of the amount specified above to be carried over. Vacation leave not used shall be forfeited unless in conformance with the above.
- B. In requesting vacation, employees should consider the City's needs to conduct the public business and to have time to plan for vacation coverage. Managers should respect employees' needs to take vacation. An employee's reasonable request for vacation should be approved unless the granting of the vacation would negatively compromise the business needs of the City. In case of conflict in scheduling vacation leave, normally the earliest request shall be given the preferred vacation choice.
- C. An exempt employee shall not have deductions taken for vacation absences of less than a full day.
- D. In the event of separation from service for any reason other than at retirement, the employee shall be paid for any accrued vacation earned and not taken. In the case of separation for any reason when ~~the~~ a PERS I participating employee is eligible for retirement as defined by the rules and regulations of the Washington State Public Employees Retirement System, the maximum cash out shall be 240 hours.
- E. Vacation for a new employee shall accrue at the above rates but shall not be used until after six months unless special authorization has been granted by the City Manager. The City Manager is authorized to negotiate higher

accrual levels and/or starting balances of vacation with individual staff members.

- F. An employee may cash out accrued vacation one time each calendar year. To be eligible for the cash out, an employee must have used at least 80 hours of vacation since the first of the year and the maximum cash out shall be 40 hours. The amount of the cash out shall be based upon the employee's hourly rate/salary at the time of the written request. If approved by the department director, the 80 hour minimum threshold may include vacation approved for the current calendar year, but not yet taken. In this case, the employee may receive the cash out just prior to leaving on the approved vacation. Cash out requirements for part time regular employees shall be prorated based upon the employee's authorized FTE.

[Section 6.02 unchanged]

6.03 Holidays

The following holidays are granted to regular employees as the normal workday off with full pay:

New Years Day	January 1st
Martin Luther King's Birthday	3rd Monday in January
President's Day	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4th
Labor Day	1st Monday in September
Veteran's Day	November 11th
Thanksgiving	4th Thursday in November
Day after Thanksgiving	Day after Thanksgiving
Christmas	December 25th
Personal Day	Two (2) days

Extra help employees are not eligible for these benefits.

- A. A personal day needs to be scheduled by mutual agreement of the employee and the supervisor and may be used for any reason, or as an extension of vacation or sick leave. Non-exempt staff may use these days as a full normal workday or as 16 hours in increments of one or more hours. Exempt staff must utilize a full day at a time.
- B. Personal Days will be awarded effective January 1 of each year. An employee hired July 1 or later will receive only one personal day in that calendar year. Any personal days not used by the end of the calendar year will be forfeited.
- C. If a designated holiday falls on a Saturday, the preceding Friday shall be observed and if the holiday falls on a Sunday, the following Monday shall be observed. If a designated holiday falls on any other regularly scheduled day off, the holiday shall be observed on either the immediately preceding or immediately following work day, as determined by the City Manager.
- D. Employees must be in a pay status on the workday prior to and the workday following a holiday to be eligible for holiday pay.

- E. Regular part-time employees shall observe the established holidays and be compensated for same on a pro rata basis.
- F. If an employee's religious beliefs include observance of a holiday or leave is needed to attend a religious activity of faith or conscience that is not a City holiday, the employee may, with approval of the Department Director, take the day off using a personal day, vacation, compensatory time, or leave without pay unless the leave would create an undue hardship for the City or a risk to public safety.
- G. Nonexempt regular employees working on a holiday (either the actual holiday or the City recognized holiday) shall be paid at time and a half for all hours worked. In the case that an employee works both the actual holiday and the corresponding City recognized holiday, the employee shall only receive the holiday pay for one of the days. The pay shall be for the hours worked on actual holiday, unless the employee makes a written request for pay for the City recognized holiday instead of the actual day. **Example:** Independence Day falls on Sunday, July 4th; the City recognized holiday is Monday, July 5th. Employee A works Sunday and receives time and a half for all hours worked. Employee B works Monday and receives time and a half for all hours worked. Employee C works **both** Sunday and Monday and will be paid time and a half **only** for the hours worked on Sunday, unless he or she makes a written request to be paid time and a half for the hours worked Monday, instead of Sunday.

6.04 Sick Leave

Policy: The purpose of sick leave is to provide an “insurance policy” of a bank of paid leave to be used in the event that an employee or immediate family member experiences an illness or disability that requires an employee to be absent from work. Employees who are ill or disabled are expected to use sick leave to recover and to not report to work when they could expose co-workers to illness. All regular employees shall use leave to account for any sick leave related absence whether full or partial day. Sick leave is earned and to be used under the following conditions:

- A. Full-time regular employees shall accrue sick leave at the rate of eight hours for each month worked. Regular part-time employees shall accrue sick leave based on a pro-rata amount to reflect their normally scheduled workweek as compared to a full-time workweek of 40 hours. Extra help employees are not eligible for these benefits.
- B. Sick leave may be taken when an employee is ill, injured, disabled (including a disability due to pregnancy or childbirth) or has been exposed to a contagious disease where there is a risk to the health of others, or for medical or dental examinations or treatment when such appointments cannot be scheduled outside of working hours. Sick leave may also be used to care for a member of the immediate family under these conditions.
- C. A regular employee may use sick leave for family leave as provided in **Section 6.06, Family Leave.**
- D. A regular employee may use sick leave when the use of a prescription drug impairs job performance or safety.
- E. After three days of sick leave an employee may be asked to provide a doctor's note or other evidence of inability to work at the discretion of your supervisor or Department Director.

- F. Each employee, or someone on his/her behalf, should inform his/her supervisor if unable to come to work. This notification should be done each day prior to the scheduled starting time unless on long-term leave, so arrangements can be made to cover the absence.
- G. If an employee on approved vacation is hospitalized or experiences a similar extraordinary sick leave event, the employee may make a written request to the City Manager to convert the sick leave connected time from vacation leave to sick leave. The City Manager shall consider the facts involved and shall approve or deny the request.
- H. Sick leave accrual is capped at 1040 hours or a pro-rata share for part-time employees.
- I. Upon separation, if an employee is eligible for retirement as defined by the rules and regulations of the Washington State Public Employees Retirement System, an employee shall be paid for 10% of their accrued but unused sick leave.
- J. An employee who has an on-the-job injury and receives time loss payments from the Washington Department of Labor and Industries (L & I) may not use sick leave for the same hours for which the employee receives the time loss payment. An employee may use sick leave to supplement the time loss payment for the purpose of continuing to receive his or her normal salary. If sick leave is exhausted, the City will use other available leave to supplement the time loss, unless the employee otherwise notifies Payroll in writing. If an employee is awarded time loss payments for a period that the employee has already used sick leave or other available leave, the employee shall submit the L & I check to Finance and “buy back” the equivalent amount of leave used. While on time loss, the employee’s salary may not exceed the employee’s normal salary.

[Section 6.05 unchanged]

6.06 Family Leave

- A. The City complies with the Federal Family and Medical Leave Act of 1993 (the FMLA - 29 U.S.C.A., 2611) and all applicable state laws (RCW 49.78, RCW 49.12.265, WAC 296-130) related to family and medical leave. This policy provides detailed information concerning the terms of FMLA. State laws may have additional requirements and provide additional protections; please check with Human Resources for details.
- B. **Length of Family Leave and Eligibility:** Eligible employees may take up to 12 weeks of unpaid, family leave every 12 months for certain family and medical reasons, or up to 26 weeks of unpaid, family leave every 12 months for military family leave. To be eligible, an employee must have worked for the City for at least 12 months and for at least 1,250 hours over the previous 12 months.
- C. **Reasons for Taking Leave:** Family leave is provided for any of the following reasons:
 - 1. To care for an employee’s child after birth or placement for adoption or foster care. Leave to care for a child after birth or placement for adoption or foster care must be concluded within 12 months of the birth or placement.

2. To care for an employee's spouse child or parent who has a serious health condition
 3. To care for a spouse, son, daughter, parent or next of kin who has a serious health condition as a result of military service ("military family care").
 4. If a serious health condition makes an employee unable to perform the functions of his or her job.
- D. **Definitions.** For the purposes of this policy, the following definitions apply:
1. **Child:** a) A biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis (in place of the parent) if the child is younger than 18; or
 b) A biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis if the child is 18 or older and incapable of self care because of a mental or physical disability.
 2. **Military Family Care:** Caring for a spouse, parent, son, daughter or next of kin with a serious injury or illness as a result of military service.
 3. **Parent:** A biological parent of an employee or an individual who stood in loco parentis to that employee when the employee was a child.
 4. **Serious Health Condition:** An injury, illness, impairment or physical or mental condition that involves:
 - a) **hospital care:** any period of incapacity or subsequent treatment connected with or consequent to inpatient care (an overnight stay) in a hospital, hospice or residential medical care facility; or
 - b) **absences plus treatment:** any period of incapacity of more than three consecutive calendar days including any subsequent treatment or period of incapacity relating to the same condition that also involves 1) treatment 2 or more times by a health care provider within 30 days, by a nurse or physician's assistant under direct supervision of a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider; or 2) treatment by a health care provider on at least 1 occasion which results in a regimen of continuing treatment under the supervision of a health care provider;
 - c) **pregnancy:** any period of incapacity due to pregnancy or for prenatal care; or
 - d) **chronic conditions requiring treatments:** a chronic condition which 1) requires periodic visits for treatment by a health care provider or by a nurse or physician's assistant under the direct supervision of a health care provider; 2) continues over an extended period of time; and 3) may cause episodic rather than a continuing period of incapacity;
 - e) **permanent/long term conditions requiring supervision:** a period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must

be under the continuing supervision of, but need not be receiving active treatment by, a health care provider;

- f) **multiple treatment (non-chronic conditions):** any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of or on referral by, a health care provider, whether for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

5. Incapacity: inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore or recovery there from.

- E. **Intermittent Leave:** Under some circumstances, family leave may be taken in separate blocks of time or by reducing a normal weekly or daily work schedule. Family leave may be taken intermittently if medically necessary because of a serious health condition (the employee's, or that of a spouse, child or parent). If family leave is for birth or placement for adoption or foster care, use of intermittent leave is subject to Department Director approval.
- F. **Substitution of Paid Leave:** ~~Certain kinds of paid leave must be substituted for unpaid family leave. Accrued vacation, personal days and comp time must be substituted for any type of family leave. When paid leave or comp time is available that paid leave must be exhausted before unpaid leave is allowed as family leave.~~ Accrued sick leave must be substituted in the circumstances where City policies allow employees to use sick leave. ~~When paid leave is available and allowed that paid leave must be exhausted before unpaid leave is allowed as family leave.~~
- G. ~~Both paid and unpaid leave count against the 12-week allowance. The employee is required to notify the City if any leave is used for a reason covered by the family leave.~~
- G. **Advance Notice:** An employee shall provide advance notice of the need for family leave along with the requested dates for the leave. Taking leave, or reinstatement after leave, may be denied if these requirements are not met.

Notice must be provided at least 30 days in advance of the leave if the reason for the leave is birth, placement for adoption or foster care. If 30 days notice is not possible due to the employee taking physical custody of the child at an unanticipated time, notice must be given as soon as possible and at least within 5 working days of the placement. The employee shall adhere to the dates of leave requested unless the birth is premature, the mother is incapacitated by the birth and is unable to care for the child, the employee takes physical custody at an unanticipated time or the employee and Department Director agree to alter the dates. If there is a premature birth, incapacity or unanticipated placement, the employee must give notice of revised dates as soon as possible and at least within 5 working days.

Notice must be provided at least 14 days in advance of the leave if the reason for the leave is a serious health condition and the leave is foreseeable. The employee should make reasonable efforts to schedule the leave to not unduly disrupt the City's operations. If the leave is not

foreseeable, the employee or the employee's representative shall provide notice within 1 or 2 working days, except in extraordinary circumstances.

- H. **Medical Certification:** The City requires the provision of a medical certification to support a request for leave because of a qualifying event whenever the leave is expected to extend beyond three consecutive working days or will involve intermittent or part-time leave. The City may require second or third opinions, at its option, at City expense.

The City may require all employees on family leave due to the employee's serious health condition or due to the birth of a child to provide a medical certification of fitness for duty prior to return to work after a medical leave, dependant on the circumstance as it relates to the employees duties.

- I. **Periodic Reporting:** If an employee takes leave for more than two weeks, the City may require the employee to periodically report on his or her status and intent to return to work.
- J. **Health Insurance:** Employees covered by the City's group health plan (medical, dental or vision) will continue to receive paid health insurance during family leave on the same basis as during regular employment. Employees that do not return to work after the leave will be required to pay back the portion of the insurance premiums paid by the City unless failure to return to work was beyond the employee's control.
- K. **Other Insurance:** For employees covered by other insurance plans through the City, those coverages will continue during paid leave on the same basis as during regular employment. For any period of unpaid leave, the employee wishing the insurance to continue must pay for the coverage on a monthly basis prior to the month of coverage. Check with Human Resources for current information and costs for coverages.
- L. **Couples Employed by The City:** If employees married to each other request leave for the birth, adoption or foster care placement of a child, the total family leave available to the couple is 12 weeks. The City may grant leave to only one parent at time. If the leave requested is due to a serious health condition (the employee's or that of the child, spouse or parent), each employee is independently entitled to 12 weeks.
- M. **Determining Leave Availability:** Family leave is available for up to 12 weeks during a 12-month period. For purposes of calculating leave availability, the 12-month period is a rolling 12-months measured from the first date any family leave is used. The employee is required to notify the City if any leave qualifies as family leave. All leave qualifying for family leave shall be designated and tracked as family leave upon the request of the employee.
- N. **Special Rule for Leave Related to Pregnancy:** Leave taken for the disability phase of pregnancy or childbirth when physically unable to work, is counted against the 12-week FMLA family leave allowance. In some cases, state law may entitle the disabled employee to leave beyond the standard 12-week period. Human Resources can provide information concerning the state law and its applicability.
- O. **Return Rights After Family Leave:** When an employee returns to work after family leave:

1. the City shall place the employee in the same position employee held when the leave began or in another City position with equivalent benefits and pay;
2. the return is subject to bona fide changes in compensation or work duties;
3. the employee does not have return rights if:
 - a) the City eliminates the employee's position by a bona fide restructuring or reduction-in-force; or
 - b) the employee takes another job; or
 - c) the employee fails to provide the required timely notice of family leave or fails to return on the established ending date of the leave.

P. **Military Family Care:** Caring for a spouse, parent, son, daughter or next of kin with a serious injury or illness as a result of military service.

[Sections 6.07 – 6.12 unchanged]

6.13 Leave of Absence Without Pay

The City Manager may grant regular employees a leave of absence without pay for an absence not covered by religious leave (6.03(F)), family leave (6.06(F)) or medical leave of absence (6.07) and if all leave balances are exhausted. Examples of situations for which leave without pay may be granted include personal reasons not covered by family leave, such as parenting or caring for an ill relative; other reasons in the best interest of the City and not solely for the employee's personal gain or profit; or fulfilling a lengthy military obligation.

To request a leave of absence without pay under this section, the employee shall submit a written request to the City Manager. The request shall state the reason for and the proposed length of the leave. If the leave is approved, the employee and City Manager will enter into an agreement detailing the terms and conditions of the leave.

[Sections 6.14 - 6.16 unchanged]

SECTION 8.00 - STANDARDS OF EMPLOYEE CONDUCT

[Sections 8.01 - 8.08 unchanged]

8.09 Smoking Tobacco Free Policy

In order to maintain a safe and comfortable working environment and to ensure compliance with applicable laws, use of all tobacco products, including smoking and smokeless tobacco, is prohibited ~~on at all the City Hall Campus work sites and property, in City offices and work spaces, and in all City owned vehicles;~~ Smoking is prohibited and within 25 feet of all building entrances, windows that open and ventilation intakes. Violation of this policy may be grounds for disciplinary action, up to and including termination.

[Sections 8.10 - 8.15 unchanged]