

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b>	Adoption of Proposed Resolution No. 359 Revising Personnel Policies of the Employee Handbook
<b>DEPARTMENT:</b>	Human Resources City Attorney's Office
<b>PRESENTED BY:</b>	Richard Moore, Senior Human Resources Analyst Ian Sievers, City Attorney
<b>ACTION:</b>	<input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Motion <input 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 9<sup>th</sup> 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 two additional changes to the Handbook – a sick leave cash out clarification 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. The change to the sick leave cash out policy is being recommended to update this policy to bring the language into alignment with the historic implementation of this policy and would allow for continued application of that implementation. Finally, the recommended change making all City facilities tobacco free would have no financial impact.

**RECOMMENDATION**

Staff recommends that Council adopt Resolution No. 359 updating the personnel policies in the Employee Handbook.

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

## **DISCUSSION**

The City's Employee Handbook was adopted in 1999 and has been updated periodically to reflect current law or policies as approved by Council. At the June 9, 2014 Council meeting, Council discussed five recommended changes to the personnel policies in the Employee Handbook. The staff report for the June 9<sup>th</sup> meeting can be found at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2014/staffreport060914-9a.pdf>.

Based on the direction provided by Council on June 9<sup>th</sup>, Council was comfortable with four of the five proposed changes to the personnel policies. The June 9<sup>th</sup> staff report provides detailed information on the four amendments being brought forward for adoption. The amendments are as follows:

- Religious Holiday Amendment – Section 6.03(F)
- FMLA Amendment – Section 6.06(F)
- Sick Leave Cash Out Amendment – Section 6.04(I)
- Tobacco Free Work Place Amendment – Section 8.09

The amendment that Council was not comfortable bringing forward regarded vacation leave cash out at retirement. This amendment has been removed from proposed Resolution No. 359 and may be reconsidered by Council as part of the 2015 compensation study that will be conducted.

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 to proposed Resolution No. 359. Staff recommends that these four remaining changes be adopted. The 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.

## **ALTERNATIVES**

Four 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 two remaining proposed amendments - 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 the Sick Leave policy is not amended however, staff would need to change the practice of how sick leave cash out is awarded for retiring employees to align with the language of the current policy. This would be a change from the historic application of this policy and would add administrative complexity.

## **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. The change to the sick leave cash out policy is being recommended to update this policy to bring the language into alignment with the historic implementation of this policy and would allow for continued application of the historic implementation. Finally, the recommended change making all City facilities tobacco free would have no financial impact.

## **RECOMMENDATION**

Staff recommends that Council adopt Resolution No. 359 updating the personnel policies in the Employee Handbook.

## **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 9<sup>th</sup> 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 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

**[Sections 6.01 & 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 as defined in WAC 82-56-010 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 4<sup>th</sup>; the City recognized holiday is Monday, July 5<sup>th</sup>. 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]**