

**PERSONNEL SYSTEM RULES  
CITY OF DUBLIN**

**Table of Contents**

| <u>Section</u>  | <u>Page</u> |
|---|-------------|
| 1. INTRODUCTION .....                                       | 1           |
| 2. EMPLOYER / EMPLOYEE RELATIONS .....                      | 1           |
| 3. DEFINITION OF TERMS .....                                | 1           |
| 4. CLASSIFICATION PLAN .....                                | 4           |
| 5. RECRUITMENT AND SELECTION .....                          | 4           |
| 6. PERFORMANCE EVALUATION PROGRAM .....                     | 8           |
| 7. FITNESS FOR DUTY EVALUATIONS .....                       | 8           |
| 8. PERSONNEL FILES .....                                    | 8           |
| 9. WAGE AND HOUR BENEFITS .....                             | 9           |
| 10. WORKWEEK / CALL BACK PAY / MEAL PERIODS .....           | 12          |
| 11. LEAVES .....  | 13          |
| 12. FAMILY AND MEDICAL LEAVES / MILITARY FAMILY LEAVE ..... | 21          |
| 13. TRANSFERS / ACTING PAY .....                            | 25          |
| 14. LAYOFF AND RECALL POLICY .....                          | 26          |
| 15. EMPLOYEE SAFETY / VIOLENCE IN THE WORKPLACE .....       | 26          |
| 16. APPEAL PROCEDURE .....                                  | 29          |
| 17. DISCIPLINE / GENERAL RULES OF CONDUCT .....             | 29          |
| 18. RESIGNATIONS .....                                      | 33          |
| 19. NON-DISCRIMINATION POLICY AND HARASSMENT POLICY .....   | 34          |
| 20. ACCOMMODATIONS FOR EMPLOYEE DISABILITIES .....          | 38          |

|     |  |    |
|-----|--|----|
| 21. | OUTSIDE EMPLOYMENT .....                       | 38 |
| 22. | VOLUNTEERS .....                               | 38 |
| 23. | DRUG AND ALCOHOL-FREE WORKPLACE .....          | 39 |
| 24. | NEPOTISM .....                                 | 39 |
| 25. | GIFTS AND GRATUITIES .....                     | 39 |
| 26. | USE OF INFORMATION AND ELECTRONIC SYSTEMS..... | 40 |
| 27. | DRESS CODE .....                               | 41 |
| 28. | USE OF CITY EQUIPMENT .....                    | 42 |
| 29. | TRAVEL AND TRAINING POLICY .....               | 42 |
| 30. | MISCELLANEOUS .....                            | 42 |

## **1. INTRODUCTION**

1.1. These Personnel Policies and Procedures (hereafter “rules,” “policies” or “procedures”) generally describe the employment relationship between the City of Dublin and its employees. The rules apply to all employees, except where otherwise indicated in these rules, or where an applicable memorandum of understanding (MOU) specifically conflicts with a rule. Each employee will receive a copy of these rules, and is responsible for reading and following these procedures.

1.2. These rules may be amended from time to time. However, in order to be effective, the amendment must be in writing and approved by the City Council.

1.3. The City Manager is vested with the responsibility to interpret these rules in the event any provision of these rules is deemed to be ambiguous.

## **2. EMPLOYER / EMPLOYEE RELATIONS**

2.1. The City’s labor relations policies are governed by the Meyers-Milias-Brown Act (MMBA), Government Code section 3500, et seq. The City has in place an Employer-Employee Relations Resolution (#65-01), which specifies the City’s local rules, rights and obligations regarding labor relations.

2.2. Under the City’s Employer-Employee Relations Resolution, and the MMBA, the City recognizes certain labor organizations as the exclusive representative for purposes of labor negotiations. For un-represented employees, the City consults in good faith with all employees regarding wages, hours, benefits, working conditions, and other items of mutual interest and provides advance notice of certain matters as specified in the City’s Employer-Employee Relations Resolution. Such consultation shall be in accordance with the law.

2.3. City Employee pay schedules and various health and welfare benefits are set forth in the City’s Salary and Benefit Plans and are adopted by the City Council.

2.4. Employees having questions concerning matters related to their classification, salary, or health and welfare benefits may contact the City’s Personnel Officer directly.

## **3. DEFINITION OF TERMS**

3.1 All words and terms used in this section and in any City Ordinance or Resolution dealing with personnel policies or procedures shall be defined as they are normally and generally defined in the field of personnel administration. For the purpose of convenience, however, the following words and terms most commonly used are hereinafter defined:

3.1. 1. “Advancement”: A salary increase within the limits of a pay range established for a class.

3.1.2. “Allocation”: The assignment of a single position to its proper class in accordance with the duties performed, and the authority and responsibilities exercised.

3.1.3. "Appointing Authority": The appointing authority of employees in the competitive service is the City Manager. The City Manager shall either approve the appointment, removal, promotion or demotion of all City employees or authorize Department Heads to appoint, remove, promote or demote in certain classes of positions subject to all applicable personnel rules and regulations which may be adopted by Ordinance or Resolution by the City Council.

3.1.4. "Class": All positions sufficiently similar in duties, authority, and responsibility, to permit grouping under a common title with common standards of selection, transfer, demotion, and salary.

3.1.5. "Classification Plan": The designation by City Resolution of the City Council of a title for each class, together with the specifications for each class as prepared and maintained by the City Manager.

3.1.6. "Class Specifications": A written description of a job classification, setting forth the essential characteristics, knowledge, skills, abilities and the requirements of positions allocated to the classification. Such documentation may also be referred to as a Classification Description.

3.1.7. "Competitive Service": All positions of employment in the service of the City except those excluded as specifically set forth in Section 2.20.040 (Personnel System) of the Dublin Municipal Code and Council Resolution 142-90 (and any amendments thereto) or its successor.

3.1.8. "Demotion": The movement of an employee from one class to another class having a lower maximum base rate of pay.

3.1.9. "Domestic Partner". "Domestic Partner" as defined by the State of California in an appropriate Code Section.

3.1.10. "Eligible": A person whose name is on an employment list.

3.1.11. "Employment List":

- (a) Open employment list: A list of names of persons who have taken an open-competitive examination for a class in the competitive service and have qualified.
- (b) Promotional employment list: A list of names of persons who have taken a promotional examination for a class in the competitive service and have qualified.

3.1.12. "Examination":

- (a) Open-competitive examination: An examination for a particular class which is open to all persons meeting the qualifications for the class.
- (b) Promotional examination: An examination for a particular class which is open only to employees meeting the qualifications for the class.

3.1.13. "Full-time Position": A position in the competitive service which requires at least 40 hours per week. A full-time position may be either temporary or regular.

3.1.14. "Immediate Family": Means parent, current spouse or domestic partner, child, current stepchild, grandparent, brother, current stepbrother, current brother-in-law, sister, current stepsister, current sister-in-law, current mother-in-law or current father-in-law.

3.1.15. "Part-Time Position": A position having a work week of fewer hours than the work week established for full-time positions. A part-time position may be either temporary or regular.

3.1.16. "Personnel Ordinance": Ordinance which creates a personnel system and rules for the City as codified in Title 2 of the Dublin Municipal Code.

3.1.17. "Position": A group of duties and responsibilities in the competitive service requiring the full-time or part-time employment of one person.

3.1.18. "Probationary Period": A period to be considered an integral part of the examination, recruiting, testing and selection process during which an employee is required to demonstrate fitness for the position to which the employee is appointed by actual performance of the duties of the position. During such period an employee is considered at-will and may be terminated at any time without cause.

3.1.19. "Promotion": The movement of an employee from one class to another class having a higher maximum base rate of pay.

3.1.20. "Provisional Appointment": An appointment of a person who possesses the minimum qualifications established for a particular class and who has been appointed to a position in that class in the absence of available eligibles. In no instance shall a provisional appointment exceed six (6) months.

3.1.21. "Recruitment":

- a. Open: A recruitment for a particular class which is open to all persons meeting the qualifications for the classification.
- b. Promotional: A recruitment for a particular class which is open only to employees meeting the qualifications for the classification.

3.1.22. "Regular Employee": An employee in the competitive service who has successfully completed the probationary period and has been retained as hereafter provided in these rules.

3.1.23. "Reinstatement": The restoration without examination of a former regular employee or probationary employee to a classification in which the employee formerly served as a regular non-probationary employee.

3.1.24. "Temporary Employee": An employee who is appointed to a temporary or a permanent position for a limited period of time.

3.1.25. "Temporary Position": A full-time or part-time position of limited duration.

3.1.26. "Transfer": A change of an employee from one position to another position in the same class or in a comparable class.

3.1.27. "Work Period": A normal work period shall begin at 12:01 a.m., Saturday and shall end at 12:00 midnight on the following Friday.

## **4. CLASSIFICATION PLAN**

4.1. The City maintains a set of job classification descriptions. Each job classification description includes a class title and a general written description of the duties and responsibilities. Classification descriptions are readily available electronically from the City's internet website, City's internal intranet website and are available upon request to the Personnel Office.

4.2. Job classification descriptions may be abolished or amended from time to time. In addition, new job classification descriptions may be added to the City's classification plan.

4.3. When the assigned duties of a position have been materially changed by the City so as to necessitate reclassification, the affected employees(s) shall be allocated by the City Manager to a more appropriate class, whether new or already created. Reclassifications shall not be used for the purpose of avoiding restrictions concerning demotions and promotions, nor to effect a change in salary in the absence of a significant change in assigned duties and responsibilities.

4.4. If employees believe they are performing work outside the scope of the classification description covering their position, they should report the information, in writing, to their immediate supervisor who will work with the Department Head and Personnel Officer to further evaluate the position.

4.5. The City may utilize temporary or emergency employees in such circumstances as the City deems appropriate. Such employees may be assigned to regular or temporary full- or part-time positions during such periods.

## **5. RECRUITMENT AND SELECTION**

### **5.1. Recruitment**

5.1.1. The City may utilize any legitimate recruitment procedure for attracting qualified applicants. Recruitments may be "promotional" or "open," depending on the City's needs.

5.1.2. Insofar as consistent with the best interests of the City, all vacancies in the competitive service shall be filled by promotion from within the competitive service, after a promotional examination has been given and a promotional list established. The City will give reasonable notice to all of its employees concerning the City's employment opportunities.

5.1.3. If, in the opinion of the City Manager, it is in the best interest of the City, a vacancy in a position may be filled by an open-competitive examination instead of promotional examination, in which event the City Manager or designee shall arrange for an open-competitive examination and for the preparation and certification of an open-competitive employment list.

## **5.2. Applications for Employment**

5.2.1. Each candidate shall complete those application forms designated by the City. An applicant's failure to provide complete, truthful and accurate information on all application materials shall be grounds for immediate disqualification in the application process, and may result in dismissal from employment.

5.2.2. As part of the pre-employment procedure, applicants may be required to supply references, and a waiver, to enable a thorough background check by the City. The City shall have the right to conduct a complete and exhaustive background investigation on all applicants seeking employment in the City of Dublin.

## **5.3. Disqualification or Rejection**

5.3.1. The City may reject or disqualify applicants for any legitimate reason. In addition, the City may permanently disqualify applicants from future employment for good cause. In the event of permanent disqualification, the City shall notify the applicant of the action, include a brief description of the reasons therefore, and permit the applicant to appeal pursuant to the procedure specified in these rules. The appeal submission shall be maintained with the application file, if requested by the appellant. The appeal procedure shall not be available to applicants except in cases of permanent disqualification.

5.3.2. Criminal Conduct - Ineligibility for Employment: Conviction, including pleas of guilty and '*nolo contendere*,' of a felony shall be prima facie disqualification of an applicant for employment; provided, however, that the appointing authority may disregard such conviction if it is found and determined by such appointing authority that mitigating circumstances exist. In making such determination, the appointing authority shall consider the following factors:

- (a) the classification to which the person is applying or being certified and whether the classification is unrelated to the conviction;
- (b) the nature and seriousness of the offense;
- (c) the circumstances surrounding the conviction;
- (d) the length of time elapsed since the conviction;
- (e) the age of the person at the time of conviction;
- (f) the presence or absence of rehabilitation or efforts at rehabilitation;
- (g) contributing social or environmental conditions.

5.3.3. An applicant who is disqualified for employment under this section may appeal the determination of disqualification. Such appeal shall be in writing and filed with the City Manager within ten (10) days of the date of the notice of disqualification. The City Manager shall hear and determine the appeal within ninety (90) days after it is filed. The determination of the City Manager on the appeal is final.

#### **5.4. Testing / Assessment Process**

5.4.1. The City may utilize any legitimate method to determine the qualifications of applicants, including, without limitation, written tests, oral examinations, panel interviews, assessment centers and oral interviews. The City may list successful applicants on a "list of eligibles." The list of eligibles shall be maintained for the duration specified by the City.

#### **5.5. Appointment**

5.5.1. The City may appoint any qualified applicant from the list of eligibles to a regular position in the classification for which the applicant is qualified. Positions may be full time, or part time, depending on the needs of the City. In the absence of a list of eligibles, the City may make temporary appointments pending development of a new list. The City endeavors to provide notice to all City employees at least one week in advance of new employment opportunities.

5.5.2. The City in its discretion may permit lateral transfers to a vacant position. The transfer shall be subject to the rules governing transfers. The City endeavors to provide notice of vacant positions for at least one week to ensure opportunities for transfer.

5.5.3. The City may in its discretion cause a new list of eligibles to be generated, in the event the City believes that circumstances warrant a new list. Such circumstances include, but are not limited to: the age of the eligible list; an inadequate number of candidates; and changing job requirements.

5.5.4. In the absence of there being names of individuals willing to accept appointment from appropriate employment lists, a provisional appointment may be made by the appointing authority of a person meeting the minimum training and experience qualifications for the position. Such an appointment may be made during the period of suspension of an employee or pending final action on proceedings to review suspension, demotion or discharge of an employee. A provisional employee may be removed at any time without the right of appeal or hearing.

5.5.5. A provisional appointee shall accrue the same benefits as probationary employees. If a provisional appointee is selected for a full-time position with the City, the time served as a provisional appointee shall be counted as time toward the fulfillment of the required probationary period.

5.5.6. No special credit shall be allowed in meeting any qualifications or in the giving of any test or the establishment of any open competitive/promotional lists, for service rendered under a provisional appointment.

## **5.6. Probationary Period**

5.6.1. Unless a different probationary period is specified in the employment announcement, application, appointment documents or job specification, upon beginning a job in a new classification of employment, all employees must serve a probationary period of twelve (12) months. Periods of time during unpaid absences shall automatically extend the probationary period by the number of days of the absence. Further, periods of time on paid leave exceeding twenty (20) working days shall extend the probationary period by that number of days the probationary employee is on such leave. Only employees in the competitive service who are not at-will employees are subject to probationary periods. If the service of the probationary employee has been satisfactory to the appointing authority, then the appointing authority shall file with the City Manager a statement in writing to such effect and stating that the retention of such employee in the service is desired. If such a statement is not filed, the employee will be deemed to be unsatisfactory and his employment terminated at the expiration of the probationary period. Where a statement of satisfactory service has not been filed, notice of the termination shall be served on the terminated employee by the City Manager after the expiration of the selection period.

5.6.2. The City may establish probationary periods exceeding twelve (12) months in duration for positions involving duties and responsibilities that the City believes warrant an extended probationary period. In such event, the City shall indicate the probationary period in the job announcement or other application-related materials. Further, with respect to existing classifications, the City shall provide advance notice of the probationary period change to the City employees in those classifications.

5.6.3. During the probationary period, probationary employees may be released from City employment at any time, without cause, without right of appeal or hearing. The City is not required to explain the reasons underlying the release from probationary employment. If the City approves, the released probationary employee may be appointed to any vacant position in a classification in which the employee is qualified and performed satisfactorily for at least one year, subject to a new probationary period.

5.6.4. Promotional Probationary Period. When a regular employee is promoted, a promotional probationary period shall begin on the effective date of the promotion. During the probationary period of a promoted employee, the Department Head may recommend that the employee be demoted to the former position, range and salary if the employees' performance and/or conduct do not meet the standards set for the position to which the employee was promoted. Such recommendation shall be subject to approval by the City Manager or designee. An employee on promotional probation shall have no rights to tenure in the promotional position and may be returned to his/her former position without cause, without notice and without right of appeal or hearing. If the former position is not vacant or not available, the employee on promotional probation shall be separated from employment without the right of appeal, and placed on the eligibility list for the former position for a twelve-month period. Placement on an eligibility list does not guarantee that the employee will be re-hired to the former position once that position becomes available.

5.6.5. Probationary periods do not apply to "at-will" employment (defined in section 5.7.1 below), which can be terminated at any time, with or without cause and without right of appeal or hearing.

## **5.7. At Will**

5.7.1 Certain positions in the City of Dublin are designated “at-will.” At-will positions are not subject to the job protections described in these personnel rules, including processes and rules for recruitment, discipline, termination, probationary periods, testing, and appointment from eligible lists. At-will employees are subject to these rules only to the extent that the rules set forth certain benefits and terms and conditions of employment to which all employees are entitled pursuant to applicable law. Other rules applicable to at-will employees are set forth in applicable Council Resolutions. The employment of at-will personnel may be terminated at any time, for any legal reason, and without any requirement of demonstrating “good cause,” and without right of appeal or hearing.

## **6. PERFORMANCE EVALUATION PROGRAM**

6.1. The City requires employees in the competitive service to undergo performance evaluations periodically throughout their employment. The City shall prescribe appropriate forms for completing performance evaluations.

6.2. All employees shall receive a written performance evaluation six (6) months following the date of hire or promotion. Thereafter, within thirty (30) days of each anniversary date, a written employee performance evaluation shall be completed. The employee may also be requested to complete a written self-evaluation of his/her performance, for discussion with the employee's supervisor. In addition, an evaluation report may be prepared at any time, at the discretion of the employee's supervisor.

6.3. Each performance evaluation shall be discussed with the employee to identify areas of successful performance and those which require improvement. The employee may comment regarding his/her work performance, either in a written statement attached to the report or orally. The employee shall sign the report, which will signify that he/she is aware of the contents. The employee's signature does not imply that he/she agrees with the contents of the report. All employee evaluations shall be signed by the employee's direct supervisor, the employee's Department Head and the City Manager or designee.

6.4. Performance evaluations shall be maintained in employee personnel files. Employees may submit comments or rebuttals to their performance evaluations, and these documents shall also be maintained in the personnel files with the performance evaluations.

## **7. FITNESS FOR DUTY EVALUATIONS**

7.1. All employees must be physically and mentally capable of performing the essential functions of their jobs. The City, at its expense and selection, may require an employee to undergo a fitness for duty evaluation based on any reasonable cause.

## **8. PERSONNEL FILES**

8.1. The City shall maintain an official personnel file for each of its employees. Personnel files contain such personnel records as may be deemed necessary for the administration of human resources in the City.

8.2. Personnel files shall be made available for inspection by employees within a reasonable time after an employee's request and without loss of pay, provided that employees must make arrangements with their supervisor if the inspection occurs on duty. Upon written request, employees may obtain copies of the materials subject to inspection. The City may preclude inspection of certain information in accordance with the law, such as background and other pre-employment information, and materials relating to investigations.

8.3. The City maintains injury reports and confidential medical records in separate files.

## **9. WAGE AND HOUR BENEFITS**

### **9.1. General Provisions**

9.1.1. Wages and benefits are subject to approval by the City Council. Wages and benefit schedules are contained in the City's Salary and Benefit Plans covering the City's classifications. Employees having any questions about employment classifications, wages and benefit schedules should contact the City's Personnel Officer.

9.1.2. The City is committed to observing all of its obligations under the Fair Labor Standards Act ("FLSA"). These rules, as well as all applicable provisions in memoranda of understanding, Council Resolutions, and all City pay practices, shall comport with, and shall be interpreted to ensure the minimum requirements of, the FLSA.

9.1.3. The City Manager or designee shall designate a workweek for employees in accordance with the law. The usual working hours for City employees shall be 8:00 a.m. to 5:00 p.m. (including a one-hour unpaid lunch break) and a normal workweek shall consist of forty (40) hours. Some departments may require a different work schedule which shall be developed by the Department Head and approved by the City Manager or designee. Alternative or flexible schedules that result in a regular schedule of more than forty (40) hours in a workweek are not permitted. Any flexible day(s) must be taken within the same workweek, must be scheduled as not to interfere with assigned duties, and are subject to approval by the Department Head and/or City Manager.

9.1.4. Except when necessary to address an emergency or special circumstances, employees who *are* entitled to overtime compensation under the law may not work outside of regularly scheduled working hours or during unpaid meal periods without the prior authorization of a supervisor. In any emergency event, employees shall report overtime work as soon as possible after the work is performed. Violations of this rule may result in discipline, up to and including termination of employment.

9.1.5. Overtime for eligible employees shall be any hours worked in excess of 40 hours during a single workweek.

9.1.6. Non-exempt employees, working in excess of normal 40 hour workweek, shall be paid at an hourly rate of one and one-half times the regular hourly rate. Non-exempt employees may choose to be compensated for overtime work through compensatory time off (comp time) at the rate of one and one-half hours comp time per overtime hour worked instead of receiving cash payment. The decision to receive overtime pay or comp time credit shall be made at the end of the pay period in which the overtime is worked, provided the employee has not accrued the maximum comp time allowed under this section. Employees may not convert comp time to overtime pay except at termination of employment or change in eligibility for comp time accrual. Comp time may be accrued up to a maximum of 80 hours for regular and probationary non-exempt employees and if an employee reaches this maximum limit they shall be compensated for all overtime worked. If an employee has accrued any unused comp time at termination, the employee shall be paid for such unused comp time at his/her regular rate of compensation at termination

9.1.7. For purposes of calculating overtime pay, holidays shall count as hours worked within a workweek. Paid leaves shall not count as hours worked within a workweek. Employees eligible for overtime who take minutes at a City Council, Commission or Committee meeting shall be compensated at one and one-half times their hourly rate for the time they are attending the meeting, regardless of the hours worked in the corresponding workweek.

9.1.8. The City designates as "FLSA Exempt" those employees who work in professional, executive or administrative capacities and who are therefore not entitled to overtime compensation under the FLSA.

## **9.2 Pay Increase**

9.2.1. Market Rate Adjustments: All Market Rate Adjustments shall be based on an annual salary survey as determined by the City Manager and approved by the City Council.

- (a) As provided for in the salary and benefit plan, the City Manager is authorized to assign salaries within a range, which is adopted by the City Council in the Salary Plan.
- (b) The Market Rate Adjustments amount shall be established on an annual basis based on the change in the employee's salary range from one fiscal year to the next as determined by a survey and shall not exceed 4% unless an employee's actual salary falls more than 4% below the bottom of the new salary range.
- (c) Market Rate Adjustments shall be effective July 1<sup>st</sup> annually.
- (d) The Market Rate Adjustment shall be noted on the Personnel Action Form that must be approved by the City Manager or designee.

9.2.2. Merit Adjustments are separate from Market Rate Adjustments and shall be based entirely on employee performance.

- (a) Each fiscal year, the City Manager will determine the maximum Merit Adjustment percentage based on the Council-authorized Salary Plan for all regular employees regularly scheduled to work 20 or more hours per week.

~~The amount available for Merit Adjustments shall be derived by the difference in the Market Rate Adjustments and the amount budgeted for salary increases for all regular employees.~~

- (b) The City Manager will notify all regular employees prior to the start of the fiscal year the amount available for Merit Adjustments.
- (c) Any recommendation for a Merit Adjustment shall include a written performance evaluation.
- (d) Employee's performance shall be reported on a form designated by the City Manager. Where applicable, this evaluation shall also include input and observations from the employee's supervisor.
- (e) Based upon the performance evaluation, the City Manager may authorize a Merit Adjustment, provided that adjustment will not create a salary that is greater than the range authorized in the adopted Salary Plan. The amount of the adjustment shall be based on the evaluation presented and any other factors indicating the employee's work performance.
- (f) The effective date of any Merit Adjustment shall be noted on the Personnel Action Form that must be approved by the City Manager or designee.

9.2.3. Performance Pay Adjustments are separate from Merit Adjustments and are intended to provide limited pay adjustments given an employee's salary position within the adopted pay range.

- (a) An employee shall be eligible for a Performance Pay Adjustment on an annual basis, provided the other criteria in this section have been met. The intent of this is to allow for a Performance Pay Adjustment in conjunction with an employee's annual review related to the employee's anniversary date.
- (b) A Performance Pay Adjustment shall be a one-time wage increase, which will not alter the pay range adopted pursuant to the adopted Salary Plan.
- (c) Said adjustment may be granted to a regular employee regularly scheduled to work 20 or more hours per week, if the evaluation process followed under provisions for Merit Increases (Section 9.2.2) indicates that the employee's performance is at an exceptional/superior level, which would warrant a Performance Pay Adjustment ~~adjustment~~ beyond the adopted salary range.
- (d) A Performance Pay Adjustment shall be at the discretion of the City Manager or designee and will be based on a written performance evaluation and any other factors indicating the employee's work performance.

- (e) Performance Pay Adjustments shall be a one-time lump sum payment which shall not exceed 9% of the employee's annual salary. For purposes of this section, the employee's annual salary shall be 12 times the employee's monthly salary prior to the adjustment. ~~Also, this section shall not preclude the actual payment of the Performance Pay Adjustment in several installments as elected by the employee and authorized by the City Manager or designee~~
- (f) The effective date of any Performance Pay Adjustment shall be noted on the Personnel Action Form that shall ~~must~~ be approved by the City Manager or designee.

## **10. WORKWEEK / CALL-BACK PAY / MEAL PERIODS**

### **10.1. Workweek**

10.1.1. The City's basic workweek for full time employees shall be forty (40) hours per week, in a seven-day period. The workweek commences at 12:01 a.m. every Saturday, and is a regularly recurring seven (7) day period ending at 12 Midnight every Friday.

10.1.2. The City shall establish and may modify regular working hours for its employees. The City may require employees to work overtime and to perform standby responsibilities. Employees shall be responsible for reporting to work on time, and observing the work schedule established for their department.

### **10.2. Call –Back Pay**

10.2.1 When an employee, who is considered non-exempt for the purposes of the Fair Labor Standards Act (FLSA), has completed his/her normal shift for the day, is on a regular day off, or is on paid leave, and is called back to work, the employee shall, upon reporting, receive a minimum of two (2) hours work at the overtime rate (time and one-half), or if two hours of work is not furnished, a minimum of two (2) hours of pay at the overtime rate. Subsequent hours worked under this section, shall be paid in accordance with the overtime provision as set forth in Section 9 of these Rules. This provision does not apply to instances in which the employee is called to report before his/her regular starting time, and is furnished work until the end of his/her normal shift. The first two hours of call back pay, per occurrence, shall not be taken as compensatory time off and shall be paid to the employee as a cash payment.

### **10.3. Meal Periods**

10.3.1. Unless otherwise established for a department or particular employees, employees shall receive a sixty (60) minute meal period that shall not be compensated. During the meal period, the employee shall be completely relieved of duties. If the employee is authorized in advance and performs work during the meal period, the employee shall be compensated for such time. Meal periods may not be used to shorten the workday.

## 11. LEAVES

### 11.1. General Provisions

11.1.1. Employees are expected to be at work at scheduled times. To ensure public accountability and the integrity of public service, all employees are expected to account for their absences from work. Leave time is chargeable in increments of one-quarter of an hour (1/4) or fifteen (15) minutes.

11.1.2. Scheduled Leaves shall be subject to approval by the Department Head and scheduled two weeks in advance whenever possible, with due regard for the City's service needs.

11.1.3. The City may employ any reasonable measure to ensure employees are properly accounting for leaves, including requiring reasonable proof that the basis for the leave is legitimate. Employees may be required to submit a medical certification of sickness supporting a request for sick leave use pursuant to Section 11.2.10 and City policy. The City may require a fitness for duty certification from any employee returning from leave. Abuse of leave privileges, including working for a secondary employer while on sick leave, may subject an employee to disciplinary action, up to and including termination of employment.

11.1.4. Leave benefits are available only to regular, or probationary, employees regularly scheduled to work more than 1,040 hours on an annual basis, but not temporary part-time or "extra help" personnel.

### 11.2. Available Leave Categories

11.2.1. The City provides the following leave categories: (a) General Leave (scheduled and unscheduled); (b) General Leave Plan/Sick Leave; (c) Military Leave (including leave for spouses/domestic partners of qualified military personnel); (d) Jury Duty Leave; (e) Administrative Leave; (f) Leave Without Pay (LWOP); (g) Bereavement Leave; (h) Pregnancy Disability/Parental Leave; (i) Holidays; (j) Compensatory Time Off; (k) Family Medical Leaves (FMLA/CFRA) (including Military Family Leave); (l) Work-Related Injury or Illness Leave; (m) Catastrophic Illness Leave; and (n) Civic Service Leave. Only employees in the competitive service are entitled to General Leave and General Leave Plan/Sick Leave as provided in these rules. All eligible employees are entitled to Paid Sick Leave (pursuant to Healthy Families Act of 2014); Military Leave; Jury Duty Leave; Administrative Leave; Civic Service Leave, Leave Without Pay (LWOP); Bereavement Leave; Disability/Parental Leave; Holidays; Compensatory Time Off; Family Medical Leave (FMLA/CFRA); Work-Related Injury or Illness Leave; Voting; School and Catastrophic Illness Leave as provided in these rules.

11.2.2. General Leave. A General Leave Plan shall be established for all employees in the competitive service regularly scheduled to work more than 1,040 hours on an annual basis, in lieu of traditional vacation and sick accrual programs. ~~etc.~~ General leave may be used for any leave purpose; however, the following sections shall govern its use. For the purposes of Scheduled Leave, as defined in Section 11.2.3, Employees shall give at least two (2) weeks notice of a General Leave request. The City's General Leave Plan conforms with the Healthy Family Act of 2014 (CA Paid Sick Leave).

Employees who terminate employment shall be cashed out of their accrued but unused General Leave at the employee's hourly rate at the time of separation from City service.

11.2.3. There shall be two categories of City's General Leave Plan as outlined below:

- (a) Scheduled Leave: Any leave which one can reasonably forecast or anticipate (i.e. vacation leave), scheduled medical/dental appointments, extended weekends, personal leave, etc.
- (b) Unscheduled Leave/Paid Sick Leave: Any leave that is genuinely of an unanticipated nature (i.e. leave due to illness), etc.

11.2.4. Employees accrue General Leave at the following rates:

- (a) Full-Time employees in the competitive service shall accrue general leave for each bi-weekly period of service, based on the years of service with the City. If an employee begins his/her service on any date other than the first working day of a bi-weekly pay period, the amount of general leave earned in that period shall be proportionate to the number of days worked. The accrual of general leave shall begin on the first day of service. The bi-weekly period shall coincide with the payroll period established by the City.

| Length of Service   | Leave Accrued Each Bi-weekly Pay Period | Leave Accrued Each Year |
|---|---|-------------------------|
| Beginning with the first month through 5 <sup>th</sup> year (60 <sup>th</sup> month)                                | 6.77 Hours                              | 22 days                 |
| Following the 5 <sup>th</sup> year through the 10 <sup>th</sup> year (61 <sup>st</sup> – 120 <sup>th</sup> month)   | 8.31 Hours                              | 27 days                 |
| Following the 10 <sup>th</sup> year through the 15 <sup>th</sup> year (121 <sup>st</sup> – 180 <sup>th</sup> month) | 8.92 Hours                              | 29 days                 |
| Following the 15 <sup>th</sup> year (181 <sup>st</sup> month)   | 9.54 Hours                              | 31 days                 |

- (b) For employees in the competitive service scheduled to work between 20 and 40 hours per week, the pro-rata share to be accrued will be the percentage of a regular 40 hour work week which they are scheduled to work, multiplied by the leave accrued per month, as shown in Sub-section (a) above. For example, an eligible employee scheduled to work 20 hours per week will accrue fifty percent (50%) of the accrual rate in Subsection (a) above and an employee scheduled to work 30 hours per week will accrue seventy-five percent (75%) of the accrual rate shown in Subsection (a) above. The regularly scheduled number of work hours must be designated on the Personnel Action Form.

11.2.5. No employee shall accrue more than ~~360~~ 400 hours of General Leave. When an employee's unused leave balance reaches this limit, such employee shall no longer accrue general leave until the balance falls below the maximum accrual limit.

11.2.6. If, during the first twelve (12) months of employment, an employee exhausts all leave accrued, the City Manager may advance an employee up to forty (40) hours of general leave. An advance shall only be provided when it is in the best interest of the City and the following conditions are met:

- (a) The request is in writing, stating the reason for the advance; and
- (b) The employee states the date of anticipated return.
- (c) The advance of leave is part of a hiring process approved by the City Manager.

Any leave that is advanced will be deducted from future accruals. If an employee terminates employment prior to repayment of the advanced leave, the employee is required to reimburse the City for paid salary and benefits which were not earned by the employee.

11.2.7. Any employee separating from City service who has accrued general leave shall be entitled to pay of such general leave. When separation is caused by death of an employee, payment shall be made to the spouse or the estate of such employee or, in applicable cases, as provided by the Probate Code of the State. General leave will be paid out at the employee's current hourly rate at time of termination, for any unused general leave.

11.2.8. Sick Leave. When an employee has reached the maximum general leave accrual stated above, the employee shall accrue sick leave at the rate provided for general leave. Pursuant to the City's General Leave Plan, sick leave shall only be earned for such time as the employee is ineligible to accrue general leave due to the maximum accrual limit.

11.2.9. No employee shall accrue more than 360 hours of sick leave. When an employee's unused sick leave balance reaches this limit, the employee shall no longer be eligible to earn sick leave.

11.2.10. Use of accrued sick leave hours, pursuant to the City's General Leave Plan, shall not be considered as a right which may be used at an employee's discretion, but shall be allowed only in case of necessity. An employee shall only be eligible to use sick leave hours, as defined in by the General Leave Plan, in the following instances:

- (a) An employee's illness or injury when the illness/injury prevents the employee from working. Leave exceeding five (5) days may require a doctor's certificate indicating that the employee was unable to work. The doctor may also be required to specify whether the employee can return to work with or without restrictions.
- (b) An employee's dental, eye, or other physical or medical examination or treatment by a licensed practitioner.

- (c) For family medical purposes when a member of the employee's immediate family is involved. This shall include the family member's illness, accident, medical appointments, or other related occurrences.

11.2.11. Employees who use sick leave hours, pursuant to the City's General Leave Plan, will be required to file a request form with the City Manager or designee stating the basis for the absence. Said request form shall be on a form developed and implemented by the City Manager or designee. Leave exceeding five (5) days may require a doctor's certificate indicating that the employee was unable to work. The doctor may also be required to specify whether the employee can return to work with or without restrictions. Such release of medical information shall be in compliance with the law.

11.2.12. If a finding of industrial disability is made in connection with California Public Employees Retirement (CalPERS), employees may not be permitted to exhaust paid sick leave balances prior to retirement unless the City Manager approves, in his/her discretion.

11.2.13. Any employee separating from the City service who has unused sick leave hours, pursuant to the City's General Leave Plan, shall not be compensated for any such sick leave hours remaining at the time of termination.

11.2.14. Military Leave. Military Leave shall be granted in accordance with the provisions of state and federal law. In addition, in compliance with California Military & Veterans Code section 395.10, the City shall provide to a spouse or domestic partner of a member of the Armed Forces, National Guard, or Reserves up to 10 days unpaid leave during a qualified leave period when the employee's spouse or domestic partner is home on leave from a period of military conflict. Employees must make specific requests for such leave and provide information to the City necessary for the City to determine that such leave is warranted, pursuant to Military & Veterans Code section 395.10. Employees using leave pursuant to this section are required to use any accrued paid leaves (such as general leave) concurrently with such unpaid leave.

11.2.15. Jury Duty Leave. Employees summoned by state or federal court to jury duty shall be entitled to full pay during the period of jury service. Employees must keep their supervisors informed of their court schedule, and shall provide proof of jury service to the City with their timesheet. Employees shall pay any fees received for jury service to the City, except for mileage reimbursement. Jury Duty Leave does not count towards hours worked for purposes of calculating overtime.

11.2.16. Administrative Leave. An employee, in the competitive service, who is designated as FLSA Exempt under Section 9.1.8 above, shall on July 1<sup>st</sup> of each year be granted 40 hours of Administrative Leave in recognition that said exempt employees are required to work hours beyond their regular hours of work to fulfill their employment responsibilities.

- (a) On December 1<sup>st</sup> of each year, as defined, exempt employees may choose to be paid to a maximum of 20 hours of their unused Administrative Leave. Payment for said administrative leave shall be paid with the first pay period ending date after December 1<sup>st</sup> of each year.

- (b) The use of Administrative Leave requires the approval of the employee's Department Head and City Manager or designee prior to the absence. A request for scheduled Administrative Leave should be submitted on a form designated by the City. The employee who has available Administrative Leave and requests use of Administrative Leave shall be permitted to use such time off within a reasonable period after making a request if such use does not unduly disrupt the operations of the City. Employees should make every effort to submit requests to take Administrative Leave two weeks prior to the requested leave.
- (c) On June 30<sup>th</sup> of each year, or if an employee terminates employment prior to June 30<sup>th</sup>, employees shall forfeit any unused balances of Administrative Leave.

11.2.17. Leave Without Pay. The City in its discretion may permit employees to be on leave without pay (LWOP) not to exceed 90 days. An extension of any leave of absence without pay beyond 90 days may be granted upon approval of the City Council when such extension of leave is in the best interest of the City. Employees in such status do not accrue vacation or other benefits, or receive service credit and may be required to pay for portions or all health and welfare benefits/premiums during the period of their leave without pay status. Employees shall be entitled to take personal leave without pay when required by law.

11.2.18. Bereavement Leave. The City shall grant bereavement leave to include leaves of absence with pay up to three (3) days where a member of the employee's or spouse's or domestic partner's immediate family dies. The City in its discretion may require some proof that a death in the family has occurred. Bereavement leave is available only within thirty (30) days of a death in the family, unless the employee has made arrangements with the City regarding its use at a later date.

11.2.19. Pregnancy Disability/Parental Leave. The City shall provide pregnancy disability leave to eligible employee in accordance with applicable law. An employee who is disabled by pregnancy may take up to sixteen (16) weeks off work (including both paid and unpaid leave) for pregnancy disability, childbirth or related medical conditions. The employee may also be eligible for intermittent leave or a reduced work schedule during her pregnancy if medically necessary. Employee must notify their immediate supervisor of any medical restrictions caused by the pregnancy. The City may require that the employee provide medical certification indicating there is a medical need for the employee to take the time off or receive accommodation while continuing to work. Pregnancy disability leave qualifies for leave under the Family and Medical Leave Act (FMLA) but not under the California Family Rights Act (CFRA). During pregnancy disability leave, the employee is entitled to FMLA benefits in accordance with the FMLA.

After the employee's pregnancy disability ends, the employee is eligible for CFRA leave for an additional twelve (12) weeks, to care for a newborn. The City may require that the employee provide a medical certification indicating when the pregnancy disability ended. In addition to the 12-week FMLA/CFRA leave, upon request by the employee, the City may grant additional leave without pay of up to four (4) weeks for the employee to care for a newborn child or newly placed adopted or foster child. Requests for this additional leave beyond the first twelve weeks of FMLA/CFRA leave for newborn care may be granted within the discretion of the City in consultation with the employee's Department Head with approval by the City Manager or designee.

Employees on pregnancy disability or parental leave retain employee status with the City. The leave shall not constitute a break in service, and the employee shall be eligible to receive all other employment benefits to the same extent and under the same conditions as apply to FMLA/CFRA leave and LWOP in general. If the leave is unpaid and does not qualify for FMLA or CFRA benefits, the employee shall reimburse the City for the cost of any City-provided insurance policies that cover the employee and/or dependents during the course of the leave.

Employees are required to utilize all accrued paid leaves prior to going on leave without pay status. If mutually agreed to by the City and the employee, sick leave may also be used for maternity leave purposes. Coordination of benefits and leave shall be handled by the City's Personnel Officer.

11.2.20. Holidays. The City observes the following legal holidays, which are available to those employed prior to or on the date of the holiday:

- (a) New Year's Day
- (b) Martin Luther King Jr. Birthday
- (c) Presidents Day
- (d) Memorial Day
- (e) Independence Day
- (f) Labor Day
- (g) Veteran's Day
- (h) Thanksgiving Day
- (i) Day After Thanksgiving
- (j) Day Before Christmas
- (k) Christmas
- (l) Day Before New Year's Day
- (m) Floating Holiday (one eight-hour holiday per calendar year)
- (n) Designated Floating Holidays in 2010. On December 1, 2010, full- and part-time regular City employees shall be afforded three (3) designated floating holidays for the sole use on December 28-30, 2010. Eligible employees regularly scheduled to work between 20 and 40 hours per week shall have a pro-rated share based on hours regularly scheduled.

11.2.21. In the event that a holiday falls on a Saturday, the preceding Friday shall be a holiday. In the event a holiday falls on a Sunday, the following Monday shall be a holiday. In cases where one of two consecutive holidays falls on a weekend day (e.g., the Day before Christmas and Christmas Day/the Day before New Year's and New Year's Day) a conflict may occur with the paragraph above. In such cases, the City Manager shall designate the day(s) to be observed as a holiday(s) in lieu of the

holiday(s), which falls on Saturday and/or Sunday. The City Manager's designation shall not result in the observation of more total holidays than are approved in the Employee Benefit Plan.

11.2.22. If a non-exempt employee is required to work on a holiday, the employee shall be compensated straight time rate for the first eight (8) hours of works on said day and in addition, shall receive pay at time and one-half of their hourly rate in lieu of time off for said holiday.

11.2.23. The floating holiday is subject to supervisory approval and may not be carried over to another calendar year, and is lost unless used prior to the end of the calendar year.

11.2.24. Compensatory Time Off. Non-exempt employees may choose to be compensated for overtime work through compensatory time off (comp time) at the rate of one and one-half hours comp time per overtime hour worked instead of receiving cash payment. (See Rule 9.1.6)

11.2.25. Family Medical Leave. Family medical leaves are subject to Section 12 of these Rules.

11.2.26 Military Family Leave. Military Family Leave is subject to Section 12 of the Rules.

11.2.27. Work-Related Injury or Illness Leave. The City may grant up to 50 hours of paid time off (per incident) for an employee to attend ongoing medical care/treatment during work hours in conjunction with a work related injury/illness. Use of work-related injury or illness leave hours shall not be considered as a right that may be used at an employee's discretion, but shall be allowed only in case of necessity. Employees who use disability leave hours may be required to provide a written explanation to the City Manager or designee stating the cause of absence and report the hours as instructed on their timesheets. Said explanation shall be on a form developed and implemented by the City Manager or designee. Disability leave shall be granted only after the City's Workers' Compensation administrator has declared the illness/injury to be compensable under the California Workers' Compensation law. Only regular employees are eligible for disability leave. Employees suffering injuries in the course and scope of their work may be entitled to workers' compensation benefits. Employees having questions regarding this rule should contact the Personnel Officer.

11.2.28. Catastrophic Illness Leave. Upon approval of the City Manager or designee, a catastrophic sick leave bank may be established for the benefit of an employee incapacitated by an extreme or severe illness or injury. Employees may donate general leave and/or sick leave to another employee in accordance with the City of Dublin Catastrophic Leave Administrative Policy (AP 03-2015) 06-1998 as may be amended and subject to the conditions listed below:

- (a) All regular employees of the City of Dublin (part-time and full-time) who have successfully completed one year of paid service shall be eligible to request catastrophic leave due to their own serious illness or injury, or serious illness or injury to an immediate family member as defined in Section III.A.1. of the City's Catastrophic Leave Administrative Policy.

- (b) Eligible employees may request leave donations after all leaves have been (or are expected to be) exhausted.
- (c) An employee requesting catastrophic leave must receive the recommendation of his/her Department Head, and the approval of the City Manager or designee. Catastrophic Leave may be approved up to a maximum of 45 workdays in a calendar year.
- (d) An employee receiving catastrophic leave shall remain on "paid status" for the purposes of normal payroll deductions (i.e., state and federal taxes, retirement, health and benefit contributions, wage attachments and assignments, etc.).
- (e) While using catastrophic leave hours, the employee will continue to accrue general leave hours.
- (f) While using catastrophic leave, the employee will retain paid employee status with the City; the leave shall not constitute a break in service; and the employee shall be eligible to receive all other employment benefits to the same extent and under the same conditions as a paid employee.
- (g) Upon termination of employment, return to work, or death, all unused catastrophic leave hours shall be returned to the City's "Catastrophic Leave Bank." The recipient shall have no claim upon unused catastrophic leave credits.
- (h) Catastrophic Leave shall not be used in conjunction with short or long-term disability benefits; Workers' Compensation leave; or light, limited or restricted duty.

11.2.29. School Leave. Employees who are parents, guardians or grandparents of a child in kindergarten through grade 12 may take up to forty (40) hours per year, not exceeding eight (8) hours in a month, to participate in the child's school activities. The employee must use accrued general leave, floating holiday, administrative leave or compensatory time for this leave. Prior notice of the need for this leave must be given to the immediate supervisor.

11.2.30. Voting Time. Employees will be granted time off with pay to vote in any general, direct primary or presidential primary election in accordance with the provisions of the Elections Code section 14000. Employees must give prior notice to their immediate supervisors of their need to take such time off.

11.2.31. Civic Service Leave. Effective July 1, 2015, four (4) hours of Civic Service Leave shall be available every Fiscal Year to employees for qualified volunteer service during the workweek. On June 30th of each year, or if an employee terminates employment prior to June 30th, employee shall forfeit any unused balance of Civic Service Leave. Prior request of the need for this leave must be given to the immediate supervisor. Said request form shall be on a form developed and implemented by the City Manager or designee.

## 12. FAMILY AND MEDICAL LEAVES/MILITARY FAMILY LEAVE

### 12.1. Statement of Rule

12.1.1. In accordance with the Family and Medical Leave Act of 1993 (FMLA) and the "California Family Rights Act" (CFRA), eligible employees may take up to a total of twelve (12) work weeks of family and medical leave during a twelve (12) month period for a qualifying event. FMLA/CFRA leave may only be taken for the following reasons:

- (a) To care for the employee's child after birth;
- (b) As a result of the placement of a child with the employee in connection with the adoption or foster care of the child;
- (c) To care for the employee's spouse, domestic partner, son or daughter, or a parent who has a serious health condition; or
- (d) For a serious health condition that makes the employee unable to perform his/her job.
- (e) Military Family Leave -- to attend to any "qualifying exigency" arising out of the fact that the spouse, domestic partner, son, daughter or parent of the employee is on active military duty or has been notified of an impending call or order to active military duty in the Armed Forces. This type of leave is provided in compliance with the National Defense Authorization Act for FY 2008 (NDAA) which amends the FMLA. Until the term "qualifying exigency" is defined by published U.S. Department of Labor regulation, the City, in its sole discretion, shall determine the circumstances which constitute a qualifying exigency. Examples of "qualifying exigency" are (a) the need to make arrangements for child care arising from the absence of the service member on military duty; and (b) the need to assist the service member in making necessary financial or legal arrangements prior to leaving for active military duty. Employees must make a specific written request for such leave, stating the reasons for such leave. Such leave may be granted by the City on a case by case basis under the specific circumstances.

In addition, in accordance with NDAA, an eligible employee shall be entitled to up to a maximum of 26 workweeks of leave during a 12-month period to care for a family member who is a member of the Armed Forces who is undergoing medical treatment, recuperation or therapy for a serious injury or illness incurred in line of duty in active duty in the Armed Forces. Leave for this purpose shall only be available during a single 12-month period. During this single 12-month period, the employee shall be entitled to a maximum combined total of 26 workweeks of leave for both this type of leave and Family Care and Medical Leave. However, this shall not limit the availability of Family Care and Medical Leave during any other 12-month period.

12.1.2. If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child. An employee is entitled to leave for one of these purposes for at least one day, but less than two weeks duration on any two occasions, or a minimum duration of two weeks.

12.1.3. The maximum duration of combined leave for both a husband and wife (or domestic partners) working for the City is limited to a total of twelve (12) working weeks if leave is taken for the birth or placement for adoption or foster care of the employees' child.

## **12.2. Eligibility**

12.2.1. Employees are eligible for leave pursuant to this rule if the employee has been employed with the City for at least 12 months and has actually worked for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

12.2.2. In addition to the requirements of 12.2.1, to be eligible for Military Family Leave to care for an injured service member, the employee must be a spouse, domestic partner, son, daughter, parent or next of kin of a covered service member. The service member's medical condition must warrant the participation of the employee to provide supervision or care during the entire period of leave.

## **12.3. Notification**

12.3.1. Employees shall provide the City as much notice as possible of their need for FMLA/CFRA leave. If the leave is foreseeable, thirty (30) days notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s), the employee shall inform his/her supervisor of the estimated time when the leave will be needed. Violation of the provisions of this policy may result in a delay of the granting of the leave.

12.3.2. Employees may be required to periodically report on their status and intent to return to work.

## **12.4. Medical Certification**

12.4.1. Employees who request leave for their own serious health condition or to care for a child, parent, spouse or domestic partner who has a serious health condition may be required to provide written certification from the health care provider of the individual requiring care. If the leave is for the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or unable to perform the essential functions of his/her position. If the leave is to care for a family member who is a member of the Armed Forces who is undergoing medical treatment, recuperation or therapy for a serious injury or illness incurred in line of duty in active duty in the Armed Forces, the employee may be required to provide written certification from the Armed Forces regarding the condition of the individual requiring care, consistent with Department of Labor guidelines.

12.4.2. Employees must provide the certification prior to when the leave begins. If the leave is unforeseeable, certification must be provided within 15 calendar days

after the notification of the need for the leave. Violation of the provisions of this policy may result in a delay of the granting of the leave until the required certification is provided.

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

12.4.4. If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" is defined as a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

## **12.5. Use of Accrued Leaves**

12.5.1. Employees may use their available accrued leaves and the City may require an employee to use available accrued leave, if applicable, (until the leaves are exhausted) concurrently with FMLA and/or CFRA leave. After sick leave is exhausted, the employee shall use all accrued general leaves concurrently with FMLA and/or CRFA leave. If available accrued leave are exhausted, leave under this policy is unpaid.

12.5.2. If the employee takes a leave of absence for any reason which is FMLA/CFRA qualifying, the City may designate that leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement and the City's Maternity Leave provisions (as applicable); provided that the City will notify the employee at the time of the designation.

## **12.6. Continuation of Benefits**

12.6.1. For the duration of the 12-workweek leave pursuant to this rule, the City shall maintain its payment for the employee's health insurance under its group health plan. The City may require the employee to reimburse the City for these costs for the entire leave period if the employee fails to return to work at the conclusion of the leave, provided that the failure to return to work is for a reason other than: (a) the continuation, recurrence or onset of a serious health condition; or (b) the City Manager or designee waives the requirement owing to some circumstances beyond the control of the employee.

12.6.2. An employee who exhausts his or her entitlement to these 12 workweeks of health plan coverage while on Military Family Leave shall not be entitled to any additional 12 workweeks of health plan coverage under the FMLA. Other group insurance coverage and retirement benefits shall be continued in accordance with the provisions of the applicable group insurance.

12.6.3. Accrual of Benefits While on Leave: Employees will not accrue benefits while in an unpaid leave status, including accrual of general leave, sick leave or seniority.

## 12.7. Reinstatement

12.7.1. Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when leave commenced, or to a comparable position with equivalent employment benefits, pay and other terms and conditions of employment if the former one is abolished during the period of leave and the employee would otherwise not have been laid off. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the leave period.

12.7.2. As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, the employee must obtain and present a fitness-for-duty certification from the health care provider that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.

## 12.8. Definitions

12.8.1. For the purposes of this section, the following definitions apply.

- (a) "12-Month Period:" A rolling period measured backward from the date leave is taken and continuous with each additional leave day taken.
- (b) "Child:" A child under the age of 18 years, or 18 years or older who is incapable of self-care in three or more of the activities or instrumental activities of daily living, such as grooming and hygiene, bathing, dressing, eating, cooking, cleaning, taking public transportation, etc.
- (c) "Parent:" The biological parent of an employee or an individual who stands or stood *in loco parentis* (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.
- (d) "Spouse:" a husband or wife as defined or recognized under California State law for purposes of marriage.
- (e) "Domestic Partner:" means domestic partner as defined under California Family Code section 297.
- (f) "Serious Health Condition:" An illness, injury, impairment, or physical or mental condition that involves: (1) any period of incapacity or treatment in connection with a hospital, hospice or residential medical care facility; (2) any period of incapacity requiring absence from work, of more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; (3) continuing treatment of a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or (4) for prenatal care by a health care provider. Continuing treatments include two or more visits to a health care provider; two or more treatments by a health care practitioner on referral from, or under the direction of a health care provider; or a single visit to a health care provider that results in a regimen of continuing treatment under the supervision of the health care provider.

- (g) "Health Care Provider:" A medical practitioner authorized to practice medicine in the State of California and performing within the scope of their practice as defined under state law, or as otherwise defined in the Family and Medical Leave Act.

12.8.2. In addition, the following definitions apply for Military Family Leave:

- (a) "Covered service member" means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.
- (b) "Serious injury or illness" means an injury or illness incurred by the service member in line of duty on active duty in the Armed Forces that may render the service member medically unfit to perform the duties of the service member's office, grade, rank or rating.
- (c) "Outpatient status" means the status of a service member assigned to (a) a military medical treatment facility as an outpatient; or (b) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- (d) "Next of kin" means the nearest blood relative of the service member.

12.8.3. In the event that a conflict arises between this article and federal or state law or regulations, or if some aspect of the Family and Medical Leave/CFRA is not covered by this article, the federal and state law and regulations will prevail.

### **13. TRANSFERS / ACTING PAY**

13.1. A non-probationary City employee with at least satisfactory appraisal ratings may request a transfer to a lateral or other lower level vacant position in the City. The transfer request may be initiated by submitting forms as prescribed by the Personnel Officer. The employee requesting a transfer must meet the minimum qualifications for the vacant position, and may be subject to interviews and other pre-employment processes specified by the City. Following reasonable notice to City employees, vacant positions may be filled through transfers rather than appointments from eligible lists.

13.2. The City may initiate a transfer of a disabled employee who qualifies under applicable disability laws but cannot perform the essential functions of their jobs without reasonable accommodation. Such transfers will have priority over any eligibles on an existing eligible list.

13.3 An employee assigned to perform duties of an assignment, in writing by the City Manager, who pursuant to such assignment, does assume and perform all of the ordinary day-to-day duties of a position of a higher classification for thirty-one (31) consecutive work days shall be paid an additional 5% of the regular pay of his/her own classification, or the first step of the higher classification in the classification plan whichever is greater, for all time worked in the assigned higher classification. Work

assignments shall not be changed for the sole purpose of evading the requirement of providing acting pay to an employee who would otherwise be eligible. The effective date of any change in assignment under this section shall be noted on a Personnel Action Form that must be approved by the City Manager or designee. A Personnel Action Form shall be generated upon the completion of the Acting Pay status identifying regular pay of his/her classification prior to the acting pay authorization.

## **14. LAYOFF AND RECALL POLICY**

14.1. Whenever in the sole judgment of the City Council it becomes necessary to abolish any position that is held by a full time regular employee due to a reorganization, or lack of work or funds, the employee holding said position may be laid off or demoted without disciplinary action and without the right of appeal. Whenever possible, employees will be given at least 30 days notice of any layoff.

14.2. When a layoff involves a position classification held by more than one person, layoffs will be made in a reverse order of seniority. Seniority will be determined by including all periods of full time regular service at or above the classification level where the layoff is to occur.

14.3. Persons laid off or demoted in accordance with this policy will have their names kept on a re-employment list for two full years from the date of layoff or demotion. The re-employment list will be used by the City when a vacancy arises in the same or lower classification of position in the department where the layoff originally occurred before seeking promotional and/or general applications from others.

14.4. This policy does not apply to at-will, part-time or probationary employees.

## **15. EMPLOYEE SAFETY / VIOLENCE IN THE WORKPLACE**

### **15.1. General Safety Rules**

15.1.1. Safety is everyone's responsibility. All employees must use safe work practices and report any unsafe conditions that may occur. The City also recognizes its responsibility to maintain safe workplaces.

15.1.2. All work-related injuries must be reported to the responsible supervisor. If there is any question regarding the appropriate supervisor, the report should be made immediately to the City's Personnel Officer.

15.1.3. If a work-related injury may result in lost work time, the employee should be provided with a workers' compensation claim form within one (1) working day of the injury.

15.1.4. Individual departments may adopt specific safety rules applicable to their operations.

### **15.2. Violence in the Workplace Policy**

15.2.1. Acts of violence, whether threatened, gestured, or carried out will not be tolerated in a City of Dublin workplace. Anyone witnessing or becoming the subject or victim of such behavior shall immediately report it to the proper authorities for

investigation pursuant to the City's Administrative Policy (AP 04-2015) 12-2004 or as amended. Minimizing the threat of violence is a duty of all employees to ensure a safe workplace.

15.2.2. It is the responsibility of all employees to notify a supervisor, the Personnel Officer, or the Police Chief immediately of any violent act or a threat, or if a violent act or threat against themselves or any other City employee occurs in the workplace or is directly associated with their employment with the City of Dublin. Notification may be made to any of these persons as appropriate and shall be made as soon as practicable. Retaliation or the threat of retaliation against a person who reports such an incident is unlawful and shall not be tolerated.

15.2.3. City employees shall not possess the following instruments at a City worksite or on City property, including City parking lots, unless there is a work-related purpose and written approval has been obtained from the employee's Department Head:

- (a) Firearms
- (b) Explosives or ammunition
- (c) Fixed blade knives
- (d) Folding knives with blades over 3.5 inches
- (e) Illegal weapons such as defined in Section ~~12020~~16100 through 17360 of the California Penal Code

15.2.4. The City shall take appropriate disciplinary action, up to and including termination of employment, against employees who violate this policy.

15.2.5. On a case by case basis, or as needed, the City will offer incident-related counseling services through the City's available employee assistance program, or any other resource or program made available by the City, to employees who are the victims of violence or are subjects of threats of violence or intimidation at the workplace. The City will work with public safety, the courts and other authorities necessary to assure employee safety.

### **15.3. Procedures - Imminent or Actual Violent Acts**

15.3.1. Employee Responsibilities: An employee who is in immediate apparent danger of a violent act, or another employee who witnesses a violent act or the threat of a violent act shall, whenever possible:

- (a) Place themselves in a safe location.
- (b) Call Dublin Police Services at (925) 462-1212 (or 911 as appropriate) and request the immediate response of a police officer. Be prepared to inform the police dispatcher of the circumstances and exact location of where an officer is needed.
- (c) Inform a supervisor or manager of the circumstances.
- (d) Refer media inquiries to the City Manager's Office.

- (e) Cooperate fully in any administrative or criminal investigation, which shall be conducted within this policy and the laws.

#### 15.3.2. Supervisor/Manager Responsibilities:

- (a) Place themselves in a safe location, as necessary.
- (b) A supervisor or manager, who is informed of a violent act or the threat of a violent act, shall whenever possible ensure the immediate safety of employees and the worksite by calling the Dublin Police Services at 925-462-1212 (or 911 as appropriate), and notify the Department Head and Personnel Officer.
- (c) If feasible, the supervisor/manager shall have the involved individuals wait in separate rooms or locations until the police take control or remove them from the premises.
- (d) In consultation with the City Manager, determine if it is appropriate to obtain a restraining order or other appropriate injunctive and/or other legal and/or equitable relief.
- (e) Reassign/relocate personnel or job duties, if required.
- (f) Terminate any business relationship.
- (g) Any other action deemed by the City to be necessary or required under the circumstances.
- (h) Supervisors shall obtain basic information from the employee and provide this to responding police personnel.
- (i) Refer media inquiries to the City Manager's Office.

#### 15.3.3. Procedures – Future Violence

- (a) Employees who have reason to believe they, or another City employee, may be victimized by a violent act sometime in the future, at the workplace or as a direct result of their employment with the City of Dublin, shall inform their supervisor immediately so appropriate action may be taken. The supervisor shall inform his/her Department Head and the City's Personnel Officer.
- (b) Employees who have a legal restraining order, temporary or permanent, against an individual due to a potential act of violence, who would be in violation of the order by coming near them at work, shall immediately supply a copy of the signed order to their supervisor and the Personnel Officer. The Personnel Officer shall notify Dublin Police Services as appropriate.

#### 15.3.4. Post-Incident Review

- (a) The City Manager's Office, the City Personnel Officer, the Dublin Police Services, and the affected department may conduct a post-incident review and use the review to evaluate this policy and procedure.

- (b) The City may determine what continuing support systems are needed and oversee post-incident activities.

## **16. APPEAL PROCEDURE**

16.1. This appeal procedure is intended to provide an avenue only for redress of complaints that the City has in some manner violated these rules.

16.2. The appeal must be initiated within fifteen (15) calendar days of the facts giving rise to the appeal, and must be submitted to the City's Personnel Officer. Failure to initiate an appeal within this timeframe will result in denial of the appeal as untimely and void. The Personnel Officer may, in his/her discretion, submit the appeal for response as the first step to a directly involved supervisor or other department representative.

16.3. Appeals must be in writing, signed by the affected employee(s) and allege that the City has violated a specific provision of these rules. Appeals must contain the specific facts upon which they are based. Appeals that fail to include these elements may be rejected on that basis.

16.4. The Personnel Officer, will review the appeal and shall serve notice of a written response within fifteen (15) calendar days of receipt of the appeal.

16.5. If the appellant is dissatisfied with the City's first response, the appellant may submit an appeal to the City Manager. The appeal must be received by the City Manager within fifteen (15) calendar days of the Personnel Officer's decision.

16.6. The City Manager, or the City Manager's designee, will review the appeal and shall serve notice of a written response within fifteen (15) calendar days of receipt of the appellant's appeal. The City Manager's decision shall be final.

16.7. No other grievance or appeal procedure may be used for matters within the scope of this appeal procedure.

16.8. Exhaustion of this appeal procedure is intended to provide an informal avenue for redress of complaints relating to these rules, and to give the City an opportunity to investigate the complaint and correct any problems before they become more serious.

## **17. DISCIPLINE / GENERAL RULES OF CONDUCT**

### **17.1. General Rules of Conduct**

17.1.1. It is expected that all employees shall render the best possible service and reflect credit on the City. Therefore the highest standards of professional conduct are essential and expected of all employees.

## **17.2. Disciplinary Actions**

17.2.1. The City of Dublin may invoke the following types of disciplinary actions:

- (a) Official Reprimand
- (b) Suspension Without Pay
- (c) Reduction in Pay
- (d) Demotion
- (e) Disciplinary Probation
- (f) Discharge/Termination

## **17.3. Grounds for Discipline**

17.3.1. Disciplinary measures may be taken for any good and sufficient cause. City employees who are employed "at-will," or who are temporary or probationary, are not subject to the requirement of good cause, and are not entitled to pre-discipline procedures or appeals under these policies

17.3.2. Good cause exists not only when there has been an improper act or omission by an employee in the employee's official capacity, but when any conduct by an employee brings discredit to the City, affects the employee's ability to perform his or her duties, causes other employees not be to able to perform their duties, or involves any improper use of their position for personal advantage or the advantage of others. Good cause also exists if an employee is unable to perform the duties of his/her position for an extended period of time. The type of disciplinary action shall depend on the seriousness of the offense and the relevant employment history of the employee. Causes for disciplinary action against an employee may include, but shall not be limited to, the following:

- (a) Misstatements or omissions of fact in completion of the employment application or to secure appointment to a position with the City.
- (b) Dishonesty; furnishing knowingly false information in the course of the employee's duties and responsibilities.
- (c) Inefficiency, incompetence, carelessness or negligence in the performance of duties.
- (d) Violation of safety rules.
- (e) Violation of any of the provisions of these personnel rules and regulations, department rules and regulations, City policies, City ordinances or resolutions.
- (f) Inattention to duty.
- (g) Tardiness, overstaying lunch periods, or leaving early.
- (h) Being under the influence of an intoxicating beverage or non-prescription drug, or prescription drugs not authorized by the employee's physician, while on duty or on City property, or any other violations of the City's Drug Free Workplace Administrative Policy (AP 00-2015) 05-1997.

- (i) Disobedience to proper authority, refusal or failure to perform assigned work, to comply with a lawful order, or to accept a reasonable and proper assignment from an authorized supervisor.
- (j) Any violation of the City's Nondiscrimination Policy.
- (k) Unauthorized soliciting on City property.
- (l) Unauthorized absence without leave; failure to report after leave of absence has expired or after a requested leave of absence has been disapproved, revoked or canceled; or any other unauthorized absence from work.
- (m) Conviction of a felony, or a misdemeanor involving moral turpitude, or a violation of a federal, state or local law which negatively impacts the employee's ability to effectively perform his/her job or brings discredit to the City.
- (n) Discourteous and/or offensive treatment of the public or other employees.
- (o) Falsifying any City document or record.
- (p) Misuse of City property; improper or unauthorized use of City equipment or supplies; damage to or negligence in the care and handling of City property.
- (q) Fighting, assault and/or battery.
- (r) Theft or sabotage of City property.
- (s) Sleeping on the job, except as specifically authorized.
- (t) Accepting bribes or kickbacks.
- (u) Engaging in outside employment which conflicts with an employee's responsibilities.
- (v) Intimidation or interference with the rights of any employee.
- (w) Outside work or any other activity or conduct which creates a conflict of interest with City work, which causes discredit to the City, negatively impacts the effective performance of City functions or is not compatible with good public service or interests of the City service.
- (x) Failure to obtain and/or maintain the necessary license or certification specified for the position; failure to maintain minimum qualifications for a position including required licenses or certificates.
- (y) Abusive or intemperate language toward or in the presence of others in the workplace.
- (z) Gambling.
- (aa) Excessive absenteeism; inability to perform the duties of the position.

(bb) Any other conduct of equal gravity to the reasons enumerated above as determined by the City.

#### **17.4. Authority to Discipline**

17.4.1. Any authorized supervisory employee may institute disciplinary action for cause against an employee under his/her control in accordance with the procedures outlined in these rules.

17.4.2. The City in its discretion may place an employee on paid Administrative Leave. Employees on such leave shall be subject to the City's instructions during their normal working hours.

#### **17.5. Procedure for Disciplinary Action**

17.5.1. In the absence of a process in a Memorandum of Understanding (MOU), employees covered by this policy shall be governed by the following provisions:

##### **17.6. Written Notice / Pre-Discipline Meeting / Final Action**

17.6.1. For written reprimands, the employee may submit a written response to the reprimand which shall be placed in the employee's personnel file. There is no further right of appeal to a written reprimand. For other discipline, the City shall issue a written notice of discipline, describing the intended discipline, the basis for the discipline, and attaching any documents upon which the discipline is based.

17.6.2. Minor Discipline. For other discipline that is less severe than a reduction in pay or suspension of six (6) working days, the discipline may be imposed prior to providing the employee a right to respond to the discipline. Within a reasonable time after the discipline is imposed, or before the discipline is imposed, within the City's discretion, the City must provide the employee with notice of the disciplinary action, which includes the reasons for the action, a copy of the charges including materials upon which the action is based, and notice of the employee's right to respond, orally or in writing, to the proposed action. If the employee chooses to respond orally, the City Manager, or designee, shall convene a meeting to review the employee's response and position. The employee shall be entitled to a representative of his/her choice to attend the meeting. If the City Manager (or designee) decides to reduce the discipline, and if the employee has already served a disciplinary suspension for the offense, the employee shall be compensated commensurate with the reduction in discipline. The City Manager's (or designee's) decision is final and there is no further right of appeal.

17.6.3 Major Discipline. For discipline that is greater in severity than a reduction in pay or suspension of five (5) working days, the employee shall receive notice of the right to respond, either orally or in writing, before discipline is imposed. The City shall set the pre-discipline meeting approximately one week from the date of the notice, unless a different time and date is set by mutual agreement.

17.6.4. For discipline that is greater in severity than a suspension of five (5) working days, the City Manager, or designee, shall convene a meeting to review the employee's response and position before imposing discipline. The employee shall be entitled to a representative of his/her choice; provided, however, that the inability of a particular representative to attend the meeting shall not be the cause requiring a continuance of the meeting. At the meeting, the employee shall be provided the opportunity to respond to the charges and to present any new information for consideration by the City.

17.6.5. For discipline that is greater in severity than a suspension of five (5) working days, at some reasonable time after the employee has been provided an opportunity to respond to the charges, the City shall issue a final notice of discipline. The notice shall include the final decision, the effective date of the discipline and the facts upon which the discipline is based and notice of the right of appeal.

## **17.7. Appeal**

17.7.1. For discipline that is greater in severity than a suspension of five (5) working days, employees shall have the right to appeal from the final decision as follows. The employee's request for an appeal must be received within seven (7) calendar days from the date of the final notice of discipline, or the right to appeal is waived and the discipline shall become final.

17.7.2. The appeal shall be heard by an outside impartial independent hearing officer to be selected by the City.

17.7.3. The costs of the hearing officer shall be borne by the City. The hearing shall be transcribed.

17.7.4. The hearing officer shall have the authority to convene the hearing, receive evidence through testimony and documents and to make findings of fact and recommendations about the discipline. The hearing officer may recommend an outcome, but the final authority rests with the City Manager. The hearing officer shall make detailed findings of facts related to the disciplinary charges in writing and shall serve a recommended decision on the City and the employee. After consideration of the hearing officer's recommended decision, the City Manager shall issue a final decision in writing. The City Manager's decision is reviewable by administrative writ of mandamus.

## **18. RESIGNATIONS**

### **18.1. General Provisions**

18.1.1. Employees are free to resign from their employment, but are encouraged to give at least two (2) weeks notice. A resignation becomes effective upon the City's receipt of a written notice of resignation. If no written resignation is tendered, but a resignation is indicated orally, a resignation becomes effective upon the City's notice of acceptance of the resignation. Once a resignation becomes effective, it is irrevocable except that the City Manager may in his/her discretion permit a resignation to be rescinded.

## **18.2. Automatic Resignation**

18.2.1. Employees are deemed to have resigned when absent from work for three (3) consecutive workdays without prior authorization. The City shall give the employee notice of such automatic resignation. Except for at-will or probationary employees, regular employees who are separated from the City's service by automatic resignation may utilize the appeal procedure in Section 16 of these rules.

## **19. NON-DISCRIMINATION POLICY AND HARASSMENT POLICY**

### **19.1. Purpose**

19.1.1. The purpose of this policy is:

- (a) To reaffirm the City's commitment to prohibit and prevent unlawful discrimination (including harassment) in all workplaces of the City of Dublin;
- (b) To define discrimination and harassment prohibited under this policy;
- (c) To set forth a procedure for resolving complaints of prohibited discrimination and harassment.

19.1.2. This policy shall not be construed to create a private or independent right of action. Although this policy is intended to prohibit discrimination consistently with Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the California Fair Employment and Housing Act and California Labor Code Section 1102.1, the City reserves the right to interpret and apply this policy to provide greater protection than what is afforded under those laws.

### **19.2. Policy**

19.2.1. The City of Dublin is committed to providing an environment that is free from harassment and discrimination of any kind, including sexual harassment and harassment based on race, color, religion, creed, national origin, ancestry, age, physical disability, mental disability, medical condition, marital status, sexual orientation, or any other characteristic prohibited by state or federal law. Therefore, it is important that the City maintain an atmosphere characterized by mutual respect in order to assure fair, courteous treatment for employees and the public.

### **19.3. Unlawful Discrimination/Harassment Prohibited**

19.3.1. The City strongly disapproves of and will not tolerate harassment or discrimination against City employees, applicants, or City volunteers by elected or appointed officials, managers, supervisors, coworkers or volunteers. The City also strongly disapproves of unlawful harassment of City employees by persons with whom the City has a business, service or professional relationship.

19.3.2. Sexual harassment and illegal discrimination are considered serious acts of misconduct and will not be tolerated. Employees who violate this policy and engage in acts of sexual harassment or illegal discrimination of any type, for any duration, shall be subject to severe disciplinary action, up to and including termination. Retaliation against individuals who complain of sexual harassment or any type of prohibited discrimination or who participate in an investigation into sexual harassment or discrimination shall not be tolerated. Employees who engage in such acts of retaliation shall be subject to serious disciplinary action, up to and including termination.

#### **19.4. Definitions**

19.4.1. Prohibited discrimination and harassment for purposes of this policy, includes but is not limited to:

- (a) **Speech:** Such as epithets, derogatory comments or slurs, and lewd propositions on the basis of race, sex, religion, creed, national origin, ancestry, disability, medical condition, marital status, age, or sexual orientation. This includes, without limitation, inappropriate sex-oriented comments about appearance, including dress or physical features, and race or ethnicity-oriented stories and jokes.
- (b) **Physical Acts:** Such as assault, impeding or blocking movement, offensive touching, or physical interference with normal work or movement when directed at an individual on the basis of race, sex, religion, national origin, ancestry, disability, medical condition, marital status, age or sexual orientation. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied threats or promises in return for submission to physical acts.
- (c) **Visual:** Such as derogatory posters, cartoons, or drawings related to race, sex, religion, national origin, ancestry, disability, medical condition, marital status, age, or sexual orientation. This includes, without limitation, sending inappropriate emails of a sexual nature to employees, or viewing pornography either in magazines or on the internet in view of other employees, displaying pictures or objects depicting nude or scantily-clad or suggestively posed men or women; circulating derogatory or obscene notes, letters, emails or other literature.
- (d) **Retaliation:** Adverse employment actions carried out in retaliation for good faith submission of discrimination or harassment charges, or good faith participation in an investigation made pursuant to this policy.
- (e) **Adverse employment actions carried out on account of race, sex, religion, national origin, ancestry, disability, medical condition, marital status, age or sexual orientation.**

#### **19.5. Harassment**

19.5.1. Harassment on the basis of race, religion, creed, political affiliation, color, national origin, ancestry, sex, sexual orientation, age, familial/marital status, or mental or physical disability is prohibited. Speech, verbal or physical conduct relating to these categories constitutes harassment when it:

- (a) Has the purpose or effect of creating an intimidating, hostile or offensive working environment; or
- (b) Has the purpose or effect of unreasonably interfering with an individual's work performance; or
- (c) Otherwise adversely affects an individual's employment opportunities.

## **19.6. Sexual Harassment**

19.6.1. Sexual harassment is a form of unlawful sex discrimination and will not be tolerated by the City. Unwelcome sexual advances, requests for sexual favors and other verbal, visual or physical conduct of a sexual nature constitute unlawful harassment when:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
- (b) The submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (c) Sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature that has the purpose or effect of unreasonably interfering with an employee's work performance or of creating an intimidating, hostile, or offensive work environment.

19.6.2. Sexual harassment refers to conduct that is not welcome, that is offensive, that fails to respect the rights and dignity of others, that lowers morale and that, therefore, interferes with work effectiveness.

## **19.7. Reporting Unlawful Harassment or Discrimination**

19.7.1. Any employee who believes he or she has been unlawfully harassed or discriminated against should promptly report it orally or in writing to the employee's supervisor, the City's Personnel Officer or the City Manager. An employee is not required to complain first to a supervisor if that person is the individual who is harassing and/or engaging in discriminatory actions against the employee. Instead, the employee may report the harassment/discrimination to any member of management.

19.7.2. Any supervisor or manager who receives a complaint of unlawful harassment/discrimination, or who observes or otherwise learns about unlawfully harassing conduct shall notify the City's Personnel Officer immediately. Failure to do so may result in disciplinary action up to and including termination.

## **19.8. Remedial Action**

19.8.1. Upon receiving a complaint of discrimination or harassment, the City may undertake an investigation of the complaint(s). Any investigation and investigation report prepared relating to the complaint shall be kept confidential except as required by law. If harassment or discrimination is found to have occurred in violation of this policy, the City shall take action to ensure or confirm that the harassment or discrimination at

issue is stopped. The City may take whatever measures are appropriate to ensure its workplaces remain free from unlawful discrimination or harassment.

19.8.2. Employees found to have engaged in discrimination or harassment covered by this policy may be subject to disciplinary action up to and including termination of employment.

19.8.3. Employees found to have been dishonest or uncooperative during an investigation into allegations of unlawful harassment may be subject to disciplinary action up to and including termination of employment.

## **19.9. No Retaliation**

19.9.1. Employees should feel free to report valid claims of unlawful harassment without fear of retaliation of any kind. The City will not retaliate against or tolerate retaliation against employees for making any complaint of unlawful harassment in good faith, or against any employee for cooperating in an investigation.

19.9.2. Dissemination of Policy. Copies of the City's Nondiscrimination Policy, and of these complaint procedures, shall be provided to all employees of the City, and to all new employees at the time of hiring. From time to time, the City may also conduct training for its employees to assist them in learning how to recognize, avoid and correct discriminatory behavior.

19.9.3. In accordance with state law, the City shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees within six months of their assumption of a supervisory position, and shall provide such training and education to each supervisory employee at least once every two years.

## **19.10. DFEH and EEOC**

19.10.1. In addition to notifying the City about unlawful harassment or retaliation, an affected employee may also direct his or her complaint to the California Department of Fair Employment and Housing ("DFEH"), which has the authority to conduct investigations of the facts. The deadline for filing complaints with the DFEH is one (1) year from the date of the alleged unlawful conduct. Employees may contact the nearest DFEH office or the Fair Employment and Housing Commission (FEHC) at the locations listed in the City's DFEH poster or by checking with the state government listings in the local telephone directory.

19.10.2. An employee also has the right to direct his or her complaint to the federal Equal Employment Opportunity Commission (EEOC).

## **19.11. Obligation of Employees**

19.11.1. Employees are responsible for knowing the City's policy on nondiscrimination; refraining from discriminatory behavior, including harassment; reporting incidents of discrimination in a timely fashion; cooperating in any investigation concerning allegations of discrimination; *and* maintaining confidentiality concerning any investigation that is conducted.

19.11.2. All employees are also encouraged to communicate with one another to assist co-employees to avoid harassing, discriminatory, or otherwise offensive behavior.

## **20. ACCOMMODATIONS FOR EMPLOYEE DISABILITIES**

If an employee believes he or she has a disability, the employee may request a reasonable accommodation for that disability. Such requests should be submitted to the employee's Department Head, Personnel Officer or City Manager. If the employee has a "disability" as defined under the Fair Employment and Housing Act, the City shall engage in an interactive process with the employee to determine an appropriate accommodation for the employee in accordance with applicable law. In effectuating the provisions of this section and the duties of the law, the City's efforts to reasonably accommodate the employee shall take precedence over and preempt any other conflicting provisions or limitations in these personnel rules, provided that the City will not terminate or permanently reassign any regular employee to accommodate another employee. If the City determines that an employee is not able to perform the essential functions of the job, with or without reasonable accommodation, the City may remove the employee from his/her position and apply for disability retirement for the employee, if the employee is eligible. The City shall endeavor to retain the employee in an employed status until CalPERS has made its determination regarding the disability retirement application. However, the employee may be in an unpaid status during this period if applicable paid leaves have been exhausted. If the employee fails to cooperate in the disability retirement process, the City may separate the employee from employment.

## **21. OUTSIDE EMPLOYMENT**

### **21.1. General Prohibition**

21.1.1. City employees may not engage in any outside employment, enterprise or activity that the City determines is in conflict with their duties and responsibilities, or any aspect of City operations.

## **22. VOLUNTEERS**

### **22.1. General Provisions**

22.1.1. The City may utilize volunteers for the delivery of City services. The use of volunteers shall be subject to approval by the City Manager or designee.

22.1.2. Volunteers shall not be eligible for salaries, benefits or other compensation unless specifically provided for by the City. Subject to approval by the Department Head or City Manager, necessary equipment or uniforms and reimbursement for approved actual expenses and mileage may be provided.

### **22.2. Employee Volunteers**

22.2.1. Subject to approval by the City Manager or designee, employees may volunteer to provide services to the City outside of their normal duties, provided they are not performing the same or similar duties for which they are normally compensated and the responsibilities are occasional and sporadic. Employees engaging in such volunteer assignments shall not be entitled to compensation.

## **23. DRUG AND ALCOHOL-FREE WORKPLACE**

23.1. The City's workplace shall be drug and alcohol-free.

23.2. No employee shall unlawfully manufacture, distribute, dispense, possess, use or be under the influence of any alcoholic beverage, drug or controlled substance as defined in the Controlled Substances Act and Code of Federal Regulations during work hours or in any City designated workplace.

23.3. Upon reasonable suspicion of an employee being under the influence while on duty, the City may require the employee to submit to drug and alcohol testing, at the City's expense. Employees who decline to submit to such testing may be subject to discipline, up to and including termination of employment pursuant to the City's Drug Free Workplace Administrative Policy (AP 0-2015). 05-1997

## **24. NEPOTISM**

24.1. No employee, prospective employee, or applicant shall be improperly denied employment or benefits of employment on the basis of a relationship as defined below with another employee or official of the City.

24.2. Notwithstanding the above, the City retains the right to take appropriate steps to avoid inappropriate working relationships among relatives, including married persons. For administrative purposes, a relative shall be defined as a spouse, domestic partner, child, step-child, parent, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, cousin, niece, nephew, parent-in-law, brother-in-law, sister-in-law or any other individual related by blood or marriage. The City retains its rights to:

- (a) Refuse to place one party to a relationship under the direct or indirect supervision of the other party of a relationship.
- (b) Refuse to place both parties to a relationship in the same department, division, or facility when such action has the potential for creating adverse impact on supervision, safety, security, or morale, or involves potential conflicts of interest.
- (c) Disqualify one party to a relationship for a position privy to confidential personnel matters who has a relative already in the City's employment when the relationship may compromise confidential information.
- (d) Effect a transfer in the event the City learns of circumstances described above.

## **25. GIFTS AND GRATUITIES**

25.1. No employee of the City shall solicit or accept, for self or family, favors, benefits, gifts or gratuities under circumstances which might be construed by reasonable persons as influencing the performance of the employee's governmental duties.

## **26. USE OF INFORMATION AND ELECTRONIC SYSTEMS**

### **26.1. General**

26.1.1. The following reaffirms the City of Dublin's policy on access to and use of its electronic systems pursuant to the City's Electronic Information Policy (AP 12-2002) or as amended. Electronic systems are all hardware, software, and other electronic communication or data processing devices owned, leased, or contracted for by the City of Dublin and available for official use, by the City of Dublin's employees. This use includes, but is not limited to, computer networks, cellular telephones, personal digital assistants (PDA), digital cameras, electronic mail, voice mail, calendaring, and systems such as the Internet.

### **26.2. Public Disclosure**

26.2.1. Employees who use electronic systems and/or tools provided by the City of Dublin cannot be guaranteed privacy. Under the Public Records Act, email messages and information stored in computers and other electronic systems of the City are public records subject to disclosure to the public or may be subpoenaed. In addition, the City reserves the right to review, audit, and disclose all matters sent over and/or stored in the City's system at any time without advance notice. The City Manager, or his/her designee, retain the right to enter and/or retrieve an employee's electronic communication system, data files, logs and programs used on City owned electronic systems. Security features provided by the electronic communication system, such as, passwords, access codes, or delete functions, shall not prevent authorized City personnel from accessing stored electronic communications. Deletion of email messages or files may not fully eliminate the message from the system. Employees have no right of privacy in communications engaged in on City-owned computers or equipment.

### **26.3. Serial Meetings**

26.3.1. In accordance with the Brown Act (Govt. Code Section 54950 et seq.), City employees must take care to ensure that electronic systems are not used to transmit, either all-at-once or serially, City legislative officials' positions on matters of City business to a majority of any City body of elected officials.

### **26.4. Public Records**

26.4.1. All permanent City records, including those stored on paper and electronic media, may be governed by the mandatory public disclosure requirements of the Public Records Act (Government Code section 6250 et seq.), and the limited exceptions thereto. If a draft record is retained, it may become a public record subject to disclosure unless it is subject to an exception under the Public Records Act.

26.4.2. All permanent records, whether stored on paper or electronic media, shall not be destroyed unless prior written authorization is obtained pursuant to Government Code Section 34090 and City Resolution No. 41-05 or as may be amended, which provides the process for the destruction of most public records by the City.

26.4.3. Public Records requests are coordinated through the City Manager's Office/City Clerk and shall be handled in accordance with Government Code section 6250 et seq. Requests for Police reports pursuant to Government Code 6254(f) are handled directly by Police Services.

## **26.5. Intellectual Property Rights**

26.5.1. No employee shall violate any copyright or license to software or other online information (including, but not limited to, text images, icons, programs, etc.) whether created by the City or any other person or entity.

## **27. DRESS CODE**

27.1. Employees of the City are required to dress appropriately for the jobs they are performing. Therefore, the dress regulations contained in this section shall be followed.

- (a) All clothing must be neat, clean and in good repair.
- (b) Prescribed safety equipment must be worn or utilized where applicable.
- (c) Footwear must be appropriate for the work environment and functions being performed.
- (d) Hair must be neat, clean and well groomed.
- (e) Beards, mustaches and sideburns must be maintained in a neat and well-groomed fashion.
- (f) Jewelry is acceptable except in areas where it constitutes a health or safety hazard.
- (g) Good personal hygiene is required.
- (h) Dress must be appropriate to the work setting, particularly if the employee deals with the public.
- (i) Employees may be required to wear uniforms specified by the City. City uniforms shall be worn in a professional manner.
- (j) Employees shall be mindful of other employees' sensitivity to perfume and other fragrances, and employees shall refrain from wearing fragrances that are offensive or harmful to others.

The City reserves the right to direct any employee who is dressed inappropriately for work to go home and make appropriate changes to their work attire before returning to work.

## **28. USE OF CITY EQUIPMENT**

28.1. No City-owned equipment, autos, trucks, instruments, tools, supplies, machines, or any other item that is the property of the City shall be used by an employee other than for City business, unless the City Manager or designee approves in advance. No employee shall allow any unauthorized person to rent, borrow, or use any City property, except upon prior written approval of the City Manager or designee.

## **29. TRAVEL AND TRAINING POLICY**

29.1. The City is committed to ensuring that its employees receive adequate training to perform their jobs. Training and travel are subject to department approval. Training opportunities that occur outside normal work hours require approval by the Department Head. Overnight travel also requires approval by the Department Head.

29.2. The City generally requires that training, and attendant travel, be scheduled in a way that will minimize the City's overtime liability. From time to time, the City issues policies that govern these areas. Employees must observe these policies.

29.3. City business travel shall be carried out in an efficient, cost-effective manner resulting in the best value to the City. Telecommunications instead of travel should be considered when possible. The City will pay or reimburse all business travel related expenses based on reasonableness and on the actual amount of expense incurred by the employee pursuant to the City's Travel and Other Business and Reimbursement of Expenses Policy (AP 18-2006) as may be amended. Employees having questions about the City's travel and training policies should contact their supervisor or the Administrative Services Department.

## **30. MISCELLANEOUS**

### **30.1. City May Amend Or Revise Policies**

30.1.1. From time to time the City may adopt new or amended policies, after appropriate consultation with the City employees.

### **30.2. No Contract**

30.2.1. These policies do not create a "contract" of employment between the City and any employee. Public employment is statutory, not contractual.

### **30.3. Severability**

30.3.1. If any part of these rules is determined to be unconstitutional or illegal, such part shall be severed from these rules and the remaining rules shall be given full force and effect.

### **30.4. Word Usage**

30.4.1. The term "City" as used in these rules refers to the City of Dublin. Responsibilities and rights of the City under these rules are exercised by the City Manager, and may be delegated by the City Manager in his/her discretion.