CITY OF ORLAND

PERSONNEL RULES

&

REGULATIONS

OCTOBER 2015

CITY OF ORLAND

PERSONNEL RULES AND REGULATIONS

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CITY OF ORLAND
PERSONNEL RULES AND REGULATIONS

PURPOSE AND APPLICATION

These rules establish the personnel system for the City of Orland. These rules shall apply to all employees of the City, except those employees or employee groups excluded below, or except where the rules specifically provide otherwise. Excluded employees and employee groups are:

1. Contract Professionals
2. Employees whose positions are funded under a state or federal employment program

These employees or employee groups hold their positions at the will of either City Council or the City Manager, and are not obligated by or entitled to benefits provided by these rules.

In addition, employees designated as volunteer, temporary, per diem, provisional or seasonal are only entitled to those benefits provided under state and/or federal law.

ARTICLE I

GENERAL PROVISIONS

Section 1-1 Equal Employment Opportunity:

The City of Orland does not discriminate against qualified employees or applicants for employment on the basis of race, color, religion, gender, national origin, ancestry, citizenship, age, marital status, physical disability, mental disability, medical condition, sexual orientation, or any other basis protected by law. The City will afford equal employment opportunity to all qualified employees and applicants as to all terms and conditions of employment, including compensation, hiring, training, promotion, transfer, discipline and termination.

This Equal Employment Opportunity policy applies to all applicants, officers, volunteers, and employees without exception. Employees who believe they have experienced denial of employment opportunity or discrimination are encouraged to report this experience immediately to their supervisor or the City Manager. The City will promptly investigate the report under the Complaint procedure for discrimination, harassment and retaliation as provided in Section 1-10 of these Rules.

Section 1-2 Violation of Rules:

Violation of the provisions of these Rules shall be grounds for disciplinary action, up to and including dismissal.

Section 1-3 Amendment and Revision of Rules:

Amendments and revisions may be suggested to the City Council by any interested party and shall be submitted to the City Council. Advance notice of proposed amendments or revisions shall be given to all employees who would be affected by said proposed amendments or revisions. At the time of consideration by the City Council, all employees shall be consulted on any amendment or rule, which affects them and any other interested party, may appear and be heard. Amendments and revisions shall become effective upon adoption by the City Council.

Section 1-4 Personnel Records:

A. GENERAL:

The City maintains a personnel file on each employee. An employee's personnel file shall contain only material that is necessary and relevant to the administration of the City's personnel program and shall be kept confidential. The City Clerk is the custodian of such records. It shall be the City Manager's or their designee's duty to develop, maintain and administer such personnel files as necessary. Personnel files are the property of the City, and access to the information they contain is restricted.

B. NOTIFYING CITY OF CHANGES IN PERSONAL INFORMATION:

Each employee is responsible to promptly notify the City Clerk or the City Manager of any changes in relevant personal information, including:

1. Mailing address
2. Telephone number
3. Persons to contact in emergency
4. Number and names of dependents

C. LOCATION OF PERSONNEL FILES:

Personnel files are kept in locked cabinets in the City Clerk's office.

D. MEDICAL INFORMATION:

1. Separate Confidential Files. All medical information about an employee or applicant is kept separately and is treated as confidential, in accordance with the Americans with Disabilities Act (42 U.S.C. section 12112(d)(3)(b)) and the California Confidentiality of Medical Information Act (Cal. Civil Code section 56 et seq.).

2. Information in Medical Files. The City will not obtain medical information about an employee or applicant except in compliance with the California Confidentiality of Medical Information Act. To enable the City to obtain certain medical information, the employee or applicant may need to sign an Authorization for Release of Employee Medical Information.

3. Access to Medical Information. Access to employee or applicant medical information shall be strictly limited to only those with a legitimate need to have such information for City business reasons. In the case of an employee with a disability, department heads, managers and supervisors may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

The City will not provide employee or applicant medical information to a third party (except as permitted under the California Confidentiality of Medical Information Act) unless the employee signs an Authorization for Release of Employee Medical Information. The City will release only the medical information that is identified in the employee's authorization. If the employee's authorization indicates any limitations regarding the use of the medical information, the City will communicate those limitations to the person or entity to which it discloses the medical information.

E. REFERENCES AND RELEASE OF INFORMATION IN PERSONNEL FILES:

1. Public Information. Upon request, the City will release to the public information about its employees as required by the Public Records Act. The City will not disclose personnel information that it considers would constitute an unwarranted invasion of personal privacy.

2. Reference Checks. All requests from outside the City for reference checks or verification of employment concerning any current or former employee must be referred to the City Manager or designee. Information will be released only if the employee signs an Authorization for Release of Employee Medical Information, except that without such authorization, the following limited information will be provided: class title, dates of employment, and salary upon departure. Department heads, managers and supervisors are not authorized to provide information in response to requests for reference checks or verification of employment, unless specifically approved by the City Manager on a case–by-case basis

3. Medical Information. Medical information will be released only in accordance with Part D above.

F. EMPLOYEE ACCESS TO PERSONNEL FILE.

1. Inspection of File. An employee may inspect his or her own personnel file, to the extent defined in California Labor Code section 1198.5, at reasonable times and at reasonable intervals. An employee who wishes to review his or her file should

contact the City Clerk to arrange an appointment. The review must be done in the presence of the City Manager or designee.

2. Copies. On request, an employee is entitled to receive a copy of any employment-related document he or she has signed. An employee who wishes to receive such a copy should contact the City Clerk.

Section 1-5 Personnel System Rules and Regulations:

A copy of Resolution No. 1986-5, adopting the Personnel System Rules and Regulations is on file at City Hall for review.

Section 1-6 City Positions Which Are Supervisorial, Confidential/or Managerial Positions:

All department heads, including the Chief of Police, are hereby classified as managerial employees. The position of Chief of Police is additionally designated to be a confidential position. Public Works Director, Public Works Supervisor, Library Director, Recreation Director and Building Official are Department Heads.

The City Manager is hereby designated as a confidential position and managerial position.

The City Clerk and City Treasurer and their assistants are hereby designated confidential employees.

The Public Works Foreman and Assistant Librarian positions are designated as supervisorial positions.

Section 1-7 Harassment and Discrimination Prevention:

The City of Orland is committed to providing a work environment free of discriminatory harassment. This Policy defines discriminatory harassment, and sets forth a procedure for the investigation and resolution of complaints of such harassment by or against any employee or applicant or from a person providing services pursuant to a contract.

Discriminatory harassment violates this Policy, and will not be tolerated. Discriminatory harassment of an applicant or employee or person providing services pursuant to a contract, is harassment based on actual or perceived race, religious creed, sex, national origin, ancestry, disability, medical condition, marital status, age or sexual orientation (protected characteristics). It is also improper to retaliate against any individual for making a complaint of discriminatory harassment or for participating in a harassment investigation. Retaliation constitutes a violation of this Policy.

This Policy applies to all terms and conditions of employment, including but not limited to hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, training opportunities and compensation.
Employees who violate this Policy may be subject to disciplinary action up to and including termination.

A. DEFINITION:

Harassment can consist of virtually any form or combination of verbal, physical, visual or environmental conduct. It need not be explicit, nor even specifically directed at the victim. Sexually harassing conduct can occur between people of the same or different genders.

Harassment includes, but is not limited to the following misconduct:

1. Verbal:

Inappropriate or offensive remarks, slurs, jokes or innuendoes based on actual or perceived sex, religious creed, national origin, ancestry, disability, medical condition, marital status, age or sexual orientation. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status, pregnancy or sexual orientation; unwelcome flirting or propositions; demands for sexual favors; verbal abuse, threats or intimidation of a sexual nature; or sexist, patronizing or ridiculing statements that convey derogatory attitudes about a particular gender.

2. Physical:

Inappropriate or offensive touching, assault, or physical interference with free movement when directed at an individual on the basis of actual or perceived sex, religious creed, national origin, ancestry, disability, medical condition, marital status, age or sexual orientation. This may include, but is not limited to, kissing, patting, lingering or intimate touches, grabbing, massaging, pinching, leering, staring, unnecessarily brushing against or blocking another person, whistling or sexual gestures.

3. Visual or Written:

The display or circulation of offensive or derogatory visual or written material related to sex, religious creed, national origin, ancestry, disability, medical condition, marital status, age or sexual orientation. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics or electronic media transmissions.

4. Environmental:

A work environment that is permeated with racially or sexually-oriented talk, innuendo, insults or abuse not relevant to the subject matter of the job. A hostile environment can arise from an unwarranted focus on topics or statements related to protected characteristics. An environment may be hostile if unwelcome behavior is directed specifically at an individual based on the person's protected characteristics or if the

individual merely witnesses unlawful harassment in his or her immediate surroundings. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's work.

Romantic or sexual relationships between supervisors and subordinate employees are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. The relationship may create an appearance of impropriety and lead to charges of favoritism by other employees. A welcome sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing.

By definition, sexual harassment is not within the course and scope of an individual's employment with the City.

B. PROHIBITED SUPERVISORY OR MANAGERIAL BEHAVIOR:

No supervisor, manager, department head, or other authority figure may condition any employment, employee benefit or continued employment in this City on an applicant's or employee's acquiescence to the behavior defined above.

No supervisor, manager, department head, or other authority figure may retaliate against any applicant, or employee, because that person has opposed a practice prohibited by this policy or has filed a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing conducted by an authorized person related to a violation of this policy.

No person shall destroy evidence relevant to an investigation of harassment discrimination.

C. BEHAVIOR PROHIBITED BY ALL PERSONS:

No supervisor, manager, department head, or any other person employed by this City shall create a hostile or offensive work environment for any other person by engaging in any discriminatory harassment or by tolerating it on the part of any employee.

No supervisor, manager, department head, or any other person employed by the City shall assist any individual in doing any act which constitutes discriminatory harassment against any employee of the City.

No supervisor, manager, department head, or any other person employed by the City may retaliate against any employee because that person has opposed a practice prohibited by this policy or has filed a complaint, testified, assisted or participated in any manner in an investigation proceeding or hearing conducted by an authorized investigator.

D. OBLIGATIONS OF SUPERVISORS, MANAGERS, AND DEPARTMENT HEADS:

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

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

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

The City Manager's office shall make available upon request information from the Department of Fair Employment and Housing and the Equal Employment Opportunity Commission about filing claims of sexual harassment with these entities. A copy of this policy shall appear in any publication of which sets forth the comprehensive rules, regulations, procedures and standards of conduct for employees.

Employees of the City shall receive periodic training on the policy.

E. COMPLAINT PROCEDURE:

Employees who believe they have experienced any form of discriminatory harassment are encouraged to report this experience immediately, using the complaint procedure provide in Section 1-10 of these rules.

1-8 Reasonable Accommodation Policy:

A. POLICY

The City provides employment-related reasonable accommodations to qualified individuals with disabilities within the meaning of the California Fair Employment and Housing Act and the Americans with Disabilities Act.

B. PROCEDURE

An employee or applicant who desires a reasonable accommodation in either the employment selection process or in order to perform essential job functions should make such a request in writing to the City Manager. The request must identify: a) the portion(s) of the selection process or the job-related functions at issue; and b) the desired accommodation.

1. Following receipt of the request, the City Manager or his/her designee may require additional information. For example, the City Manager may require reasonable information to support the existence of a disability. The City Manager may also require an employee to undergo a fitness-for-duty examination to determine whether the employee can perform the essential functions of the job with or without

accommodation. The City Manager may also require that a City-approved physician conduct the examination.

2. The City will arrange to meet with the applicant or employee, and his or her representatives, to work in good faith to fully consider all feasible potential reasonable accommodations.

3. Whether a reasonable accommodation can be made and what reasonable accommodation will be provided shall be determined by the City Manager on a case-by-case basis. The City will not provide accommodations that pose an undue hardship upon City finances or operations.

4. The City will inform the applicant or employee of its decision as to reasonable accommodations(s) in writing.

An employee or applicant who alleges a denial of a reasonable accommodation may file a complaint pursuant to the Complaint Procedure following in Section 1-10 of these personnel rules.

1-9 Reasonable Accommodation for Pregnancy:

Female employees shall be reasonably accommodated for conditions related to pregnancy, childbirth or related medical conditions (including nursing/lactation) if the employee requests an accommodation with the advice of her healthcare provider.

An employee who alleges a denial of a reasonable accommodation may file a complaint pursuant to the Complaint Procedure following in Section 1-10 of these personnel rules.

1-10 Complaint Procedure:

A. OBLIGATIONS OF ALL EMPLOYEES:

All employees should immediately report any conduct that they believe violates the City's Equal Employment Opportunity Policy, Harassment and Discrimination Prevention Policy, Reasonable Accommodation Policy, or Reasonable Accommodation for Pregnancy Policy. This includes conduct they personally experience or directly observe, whether or not reported by the employee who is the object of the conduct. This also includes conduct by non-employees, such as sales representatives or service vendors, or conduct aimed at such contractors.

Employees should immediately report the conduct to their supervisor, manager, any Department Head or the City Manager. Under no circumstances shall employees of the City who believe they have been the victim of any prohibited form of discrimination or harassment be required to first report that conduct to a supervisor or other authority figure if that person or authority figure is the individual who has engaged in the

prohibited conduct. These employees should instead report the conduct to any manager or Department Head or the City Manager.

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

B. RESPONSIBILITIES OF SUPERVISORS AND MANAGEMENT EMPLOYEES:

Any supervisor, manager or Department Head who receives a complaint regarding any prohibited conduct covered by this section shall immediately report it to the City Manager.

Under no circumstances shall a supervisor, manager, Department Head or other authority figure retaliate in any way against an employee who has made a complaint or who has provided information as a witness to an incident of alleged discrimination or harassment.

All supervisors, managers and Department Heads are required to maintain confidentiality to the extent possible in communicating or investigating any claims of alleged discrimination or harassment.

C. INVESTIGATIVE/CORRECTIVE ACTION:

The City Manager will authorize an investigation or conduct an investigation of the complaint. The investigation will be conducted in a manner that ensures, to the extent feasible, the privacy of the parties involved.

The person designated to investigate shall immediately report in writing the findings of fact to the City Manager. The City Manager will determine whether any Policy has been violated and communicate the conclusion to the complainant.

Disciplinary action shall be decided in accordance with City policy.

1-11 Fitness-for-Duty Examinations:

When an employee is having difficulty performing one or more of his/her essential job functions, or for other reasons that the City deems to be job-related and consistent with business necessity, the City Manager may require an employee to undergo a fitness-for-duty examination to determine whether the employee can perform the essential functions of the job with or without accommodation. The City Manager may require that a City-approved physician conduct the examination. The City will pay for fitness-for-duty examinations that it initiates under this rule.

Section 1-12 Alcohol and Drug Abuse Policy:

A. PURPOSE:

The purpose of this policy is to: (1) further enhance safety in the workplace for all employees; (2) promote employee health; (3) maintain a high level of quality in the service to the public; (4) improve productivity; (5) provide protection against public liability; and (6) promote the public's trust in the City.

B. DEFINITIONS:

"Designated City Representative." The City Manager and his or her designated representative(s) is/are designated as the City's Drug and Alcohol Testing Coordinator, and shall ensure that the administration of this policy complies with applicable laws and regulations.

"City" means the City of Orland.

"Accident" means an occurrence which results in: (1) a fatality; (2) bodily injury to a person who, as a result of the injury, immediately receives more than minor medical treatment away from the scene of the accident; (3) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle; or (4) a property damage accident wherein the amount of property loss does or is estimated to exceed $1,000.

"Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohols or other low molecular weight alcohols including methyl and isopropyl alcohol.

"Alcohol use" means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

"Controlled substances" (herein also referred to as "drugs") are: marijuana, cocaine, amphetamines, meth amphetamines, opiates (including heroin), phencyclidine (PCP), and any other substance available only by prescription.

"Performing a safety-sensitive function" means an employee is considered to be performing a safety-sensitive function during any period in which s/he is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

"Safety-sensitive employee" means those employees in the following positions: Public Works, Police, Building Official, Administrative and Library and any other employee in positions which, as a normal course of business, require the employee to operate City vehicles, other motor vehicles or heavy equipment, or those positions in which the employee's performance, reflexes, and/or judgment impact the safety of others.

"Employee" means an employee of the City of Orland.

"Refuse to submit" (to an alcohol or controlled substance test) means an employee: (1) fails to provide adequate breath for testing without a valid medical explanation after s/he has received notice of the requirement for breath testing (i.e., a copy of this policy); (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after s/he has received notice of the requirement for urine testing (i.e., a copy of this policy); or (3) engages in conduct that clearly obstructs the testing process.

"Refusals to test" means: refusal by an employee to cooperate in the testing process in a way that prevents the completion of the test.

"On duty" includes all time spent providing samples or specimens, including travel time to and from the collection site, in order to comply with the required reasonable suspicion, post-accident, or follow-up testing.

C. CLASSIFICATIONS COVERED:

All City employees, whatever their classification, are subject to drug and alcohol testing as outlined in this policy.

D. PROHIBITIONS:

1. No employee shall perform safety-sensitive functions within four hours after using alcohol. No supervisor or manager having actual knowledge that an employee has used alcohol within four hours shall permit an employee to perform or continue to perform safety-sensitive functions.

2. No employee shall report to duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.

3. No employee shall be on duty while the employee possesses alcohol. No manager or supervisor having actual knowledge that an employee possesses alcohol may permit the employee to drive or continue to drive a commercial motor vehicle.

4. No employee shall use alcohol while on duty. No manager or supervisor having actual knowledge that an employee is using alcohol while performing safety-sensitive functions shall permit the employee to continue to work.

5. When circumstances are such that an employee is required to take a post-accident alcohol test, that employee shall not use alcohol for eight hours following the accident, or until s/he has undergone a post-accident alcohol test, whichever occurs first.

6. No employee shall report for duty or remain on duty when the employee uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee in writing that the substance does not adversely affect the employee's ability to safely perform all work duties. No manager or supervisor having actual knowledge that an employee has used a controlled substance shall permit the employee to work.

7. No employee shall refuse to submit to the following required alcohol or controlled substance tests: reasonable suspicion, post-accident, follow-up testing. No supervisor or manager shall permit an employee who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

8. No employee shall report for duty or remain on duty if the employee tests positive for controlled substances. No manager or supervisor having actual knowledge that an employee has tested positive for controlled substances shall permit the employee to remain on duty.

E. CIRCUMSTANCES FOR TESTING:

An employee may be directed to undergo follow-up, reasonable suspicion or post-accident alcohol testing as set forth herein.

Under no circumstances will an employee who is tested as positive under this Policy be permitted to drive any vehicle, including his/her personal vehicle. City personnel shall transport any employee that tests positive to his/her residence or other appropriate destination after the test.

Employees and applicants for employment subject to this policy are required to be tested under the following circumstances:

1. Pre-employment Testing

a. No applicant shall be appointed or assigned to any position with the City unless s/he has been administered an alcohol test with a result indicating a alcohol concentration less than 0.02, and has received a controlled substance test result indicating a verified negative test result.

b. Only those applicants who have been selected for possible appointment shall be tested. Whenever possible, the testing shall be in conjunction with or part of the pre-employment physical examination process.

c. Pre-employment (or post-job offer) drug and alcohol tests will be conducted when an applicant is considered for appointment to any position with the City. Applicants who refuse to submit to testing or who

do not have a verified negative test will not be hired and are not entitled to a second test.

The Designated City Representative shall notify an unsuccessful applicant of the results of a pre-employment controlled substance test, if the applicant requests such results, within 60 calendar days of being notified of the disposition of the employment application.

d. Drug and alcohol tests will be conducted when an incumbent City employee transfers from a non-safety sensitive position to a safety sensitive position.

2. Post-accident Testing

a. As soon as practical following an accident, each surviving employee involved in the accident shall be tested for alcohol and controlled substances. This provision applies to any employee whose performance could have contributed to the accident.

b. The results of a breath or blood test for the use of alcohol or a urine test for the use of controlled substances which is conducted by State or local law enforcement officials may be substituted for required City post-accident testing, provided such tests conform to applicable laws regarding those tests. However, neither the employee nor the supervisor/manager should assume that such test results will be available, and should ensure that the required tests are obtained under this Policy.

c. An employee who is subject to post-accident testing shall remain readily available for such testing or the employee may be deemed to have refused to submit to testing. Such employee may leave the scene of an accident only for the following reasons: (1) to obtain necessary emergency medical care; (2) to obtain necessary medical attention for persons injured in the accident; or (3) to obtain assistance in responding to the accident. However, the employee is expected to notify his/her supervisor or manager at the earliest possible time, and to make him/herself available for testing as soon as possible.

The employee shall be transported to the collection site whenever possible by a City supervisor, manager or other designated person. Under no circumstances shall an employee requiring post-accident testing be permitted to drive any vehicle. A City supervisor, manager or other designated person shall transport the employee to his/her residence or other appropriate destination after the test.

d. An alcohol test should be administered within two hours following the accident. Such test will normally be the breath alcohol test.

If the test is not administered within two hours, a record stating the reasons the test was not promptly administered shall be prepared and maintained on file. If the test is not administered within 8 hours, attempts to administer an alcohol test shall cease and a report prepared and maintained on file.

e. If a controlled substance test is not administered within 32 hours following the accident, a record stating the reasons the test was not promptly administered shall be prepared and maintained on file.

3. Reasonable Suspicion Testing

a. The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or manager and confirmed by the department head. The department heads shall be properly trained with regard to observation of intoxication\influence.

b. The employee(s) shall be transported to the collection site by a City supervisor, manager or other designated department employee. Under no circumstances shall an employee requiring reasonable suspicion testing be permitted to drive any vehicle. A City supervisor, manager or other designated department employee shall transport the employee to his/her residence or other appropriate destination after the test.

c. An employee shall submit to an alcohol test when a supervisor or manager has reasonable suspicion to believe that individual has violated a prohibition in this Policy. The determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. An employee may be directed to undergo reasonable suspicion alcohol testing only if the required observations are made during, just preceding, or just after duty.

If the reasonable suspicion alcohol test is not administered within two hours, a record stating the reasons the test was not promptly administered shall be prepared and maintained on file. If the test is not administered within 8 hours, attempts to administer an alcohol test shall cease and a report prepared and maintained on file.

No employee shall report for duty or remain on duty while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech and performance indicators of alcohol misuse.

d. An employee shall submit to an alcohol or controlled substance test when a supervisor or manager has reasonable suspicion to believe that

the employee has violated this Policy. The determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee, and the observations may include indications of the chronic and withdrawal effects of controlled substances.

A written record shall be made of the observations leading to an alcohol or controlled substance reasonable suspicion test, and signed by the supervisor or manager who made the observations, within 24 hours of the observed behavior or before the results of the controlled substances tests are released, whichever is earlier.

4. Return to Duty Testing

a. Before an employee returns to duty after engaging in conduct prohibited by this Policy concerning alcohol, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

b. Before an employee returns to duty after engaging in conduct prohibited by this Policy concerning controlled substances, the employee shall undergo a return-to-duty controlled substance test with a result indicating a verified negative result for controlled substance use.

5. Follow-up Testing

Following a determination that an employee has engaged in conduct prohibited by this Policy, such employee, if not terminated from employment, is subject to unannounced follow-up alcohol and/or controlled substance testing, not to exceed six tests over two years if no further violation of this Policy.

6. Random Testing

a. All safety sensitive employees are subject to unannounced testing based on random selection.

b. To assure that the selection process is random, all employees covered by this policy will be placed in a common pool.

c. The random selection procedure may be a computer-based number generator, or by a combination of computer based number generator and random number tables that is matched with City identification or other numbers of all employees in the pool. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

F. INFORMATION AND REFERRAL:

1. Each employee shall receive this Policy prior to the start of alcohol and controlled substances testing and each employee subsequently hired shall receive this Policy.

2. Employees who have questions regarding this policy should contact the Designated City Representative.

G. OTHER EMPLOYEE RESPONSIBILITIES:

1. The use of any substance by any employee which carries a warning label that indicates mental functioning, motor skills, or judgment may be adversely affected must be reported to supervisory personnel and medical advice should be sought, as appropriate, before performing safety-sensitive functions.

2. When an employee has been prescribed a controlled substance by a physician, the employee must advise his/her supervisor in writing of such use prior to the performance of safety ¬sensitive functions, together with a statement from the physician that such use does not adversely affect the employee's ability to safely perform safety ¬sensitive functions. The written notice must identify the patient's name, prescribed drug, the quantity/amount to be taken, and the period of authorization.

3. When an employee has received alcohol or controlled substance testing by a law enforcement agency following an on-duty accident which requires post-accident testing (in which there was a fatality or where the employee was cited by the law enforcement agency), the employee shall provide his supervisor with a copy of the results of that testing as soon as possible after receipt.

4. An employee may not identify him/herself as unfit for duty after having been notified of a random, reasonable suspicion, post-accident, or follow-up test to avoid the consequences for a positive test or a refusal to test.

5. It is the responsibility of the employee to complete any treatment program and to comply with any return-to-work and follow-up testing.

6. When an employee is at a collection site or giving a specimen or sample for testing, the employee shall follow all instructions given.

7. In the interest of safety to employees, co-workers and the public, if an employee knows an employee is engaging or has engaged in conduct prohibited under this Policy, the employee should report such conduct to the supervisor or manager.

8. Any employee who is tested as positive under this Policy shall not drive any vehicle, including his/her personal vehicle, while on duty.

H. DENIAL OF EMPLOYMENT/DISCIPLINE:

1. Any applicant for City employment who tampers, alters, substitutes, adulterates, destroys, attempts to falsify or falsifies any alcohol or controlled substance sample, specimen, document, report, or memorandum pertaining to a drug or alcohol test shall be denied employment.

2. Any applicant who interferes with or attempts to interfere with procedures, equipment or personnel in the course of collecting controlled substance specimens or breath alcohol testing shall be denied employment.

3. Any applicant who refuses to submit to testing shall be denied employment.

4. Any employee who tampers, alters, substitutes, adulterates, destroys, attempts to falsify or falsifies any alcohol or controlled substance sample or specimen, document, report, or memorandum pertaining to a drug or alcohol test shall be subject to disciplinary action, including immediate termination, in accordance with applicable rules and procedures.

5. Any employee who interferes with or attempts to interfere with the procedures, equipment or personnel in the course of collecting controlled substance specimens or alcohol testing samples shall be subject to disciplinary action, including immediate termination, in accordance with applicable rules and procedures.

6. Any employee who refuses to submit to testing shall be subject to disciplinary action, including immediate termination, in accordance with applicable rules and procedures.

7. Any employee who engages in conduct prohibited under this Policy shall be subject to disciplinary action, including immediate termination, in accordance with applicable rules and procedures.

8. Any employee who fails to or refuses to complete any treatment program shall be subject to disciplinary action, including immediate termination, in accordance with applicable rules and procedures.

9. Any employee who has a verified positive return-to-work test or after returning to work has a positive follow-up controlled substance test shall be subject to disciplinary action, including immediate termination, in accordance with applicable rules and procedures.

I. CITY CONTROL AND ACCESS TO PROPERTY:

The City reserves the right to search all areas and property in which the City maintains control or joint control with an employee in accordance with applicable state and federal laws. A search of any container for employee property such as desks, cubicles and lockers may be conducted at any time with the affected employee's prior permission. Otherwise, the City may notify the appropriate law enforcement agency that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the City.

1-13 Workplace Security:

A. POLICY:

The City of Orland is committed to providing a safe and secure workplace for employees and the public. The City will not tolerate acts or threats of violence in the workplace. The workplace includes any location where City business is conducted, including vehicles and parking lots. Any violation of this policy will lead to criminal prosecution, and/or disciplinary action, up to and including termination.

B. PROHIBITED BEHAVIOR:

Employees are prohibited from engaging or promoting acts of intimidation, violence, threats, coercion, assault and/or abusive behavior toward any person while in the course of City employment. The City has zero tolerance for any conduct that references workplace violence, even if it was intended to be a prank, harmless, humorous, blowing off steam, or venting.

Employees engaged in City business are prohibited from carrying self-defense weapons in violation of any law or this policy. Employees who have legal authority to carry a self-defense weapon shall notify the department head in writing of what type of weapon is being carried. Employees who have legal authority to carry self-defense weapons violate this policy if they: accidentally discharge or lose their weapon; use, threaten to use, or display the weapon while engaging in City business; or violate any law related to carrying a legal self-defense weapon while engaged in City business.

C. DEFINITIONS:

"Workplace violence" is any conduct that causes an individual to reasonably fear for his or her personal safety or the safety of his or her family, friends, and/or property. Specific examples of workplace violence include, but are not limited to, the following:

- Threats or acts of physical harm directed toward an individual or his/her family, friends, associates, or property.

- The destruction of, or threat of destruction of City property or another employee's property.

- Harassing or threatening phone calls or electronic messages.

- Surveillance.

- Stalking.

- Possession of offensive or defensive weapons (firearms, illegal knives, clubs, mace, pepper spray, tear gas, etc.) unless specifically required or authorized and approved by the City Manager.

- Any conduct relating to violence or threats of violence that adversely affects the City's legitimate business interests.

Weapons are defined as firearms, chemical sprays, clubs or batons, and knives, and any other device, tool, chemical agent or implement that can cause bodily harm if used as a weapon or displayed in such a manner to cause harm or threatened a person with harm.

D. INCIDENT REPORTING PROCEDURES:

Employees must immediately report workplace violence to their supervisor or department head. The supervisor or department head will report the matter to the City Manager.

The City Manager will document the incident, including the employee name(s), date/time, location, incident description, witness names and statements, description of unidentified parties, description of the act(s) and/or behavior arising from the incident, action taken, and provide any other relevant information regarding the incident.

The City Manager will take appropriate steps to provide security, such as:

- Placing the employee alleged to have engaged in workplace violence on administrative leave, pending investigation;

- Asking any threatening or potentially violent person to leave the site;

- Immediately contacting an appropriate law enforcement agency.

E. INVESTIGATION:

The City Manager will see that reported violations of this policy are investigated as appropriate.

F. MANAGEMENT RESPONSIBILITIES:

Each department head has authority to enforce this policy by:

- Training supervisors and subordinates about their responsibilities under this policy;
- Assuring that reports of workplace violence are documented accurately and timely;
- Notifying the City Manager and/or law enforcement authorities of any incidents;
- Making all reasonable efforts to maintain a safe and secure workplace; and
- Maintaining records and follow up actions as to workplace violence reports.

G. FOLLOW UP AND DISCIPLINE:

An employee found in violation of this policy will be subject to disciplinary action, up to and including termination of employment. The City may also direct that an employee submit to a fitness for duty examination. In addition, employees found in violation of this policy may be subject to criminal prosecution.

ARTICLE II

EMPLOYMENT

Section 2-1 Recruitment:

All examinations for classes in City service which are published, will be published by the City Manager or designated department head or City Clerk, by posting announcements in City Hall, on official bulletin boards, website, newspaper, and by such other methods as may be deemed advisable. The announcements shall specify the title and pay of the class for which the examination is announced; the nature of work to be performed; preparation desirable for the performance of the work of the class; the manner of application; and other pertinent information. Announcement may be abbreviated with reference to more thorough information available elsewhere.

Section 2-2 Application:

All applicants for employment shall file a City of Orland application form at City Hall.

Section 2-3 Disqualification of Applicants:

A City Manager may withdraw any application from consideration for any reason, consistent with state and federal law.

Whenever an application is rejected, notice of such rejection with statement of reason shall be mailed to the applicant. Incomplete applications may be returned to the applicant with notice to amend the same, providing the time limit for receiving applications has not expired.

Section 2-4 Nature and Types of Examinations:

The selection techniques used in the examination process shall be impartial, of a practical nature and shall relate to those subjects which fairly measure the relative capacities of the person examined to execute the duties and responsibilities of the class to which they seek to be appointed. Examinations shall consist of selection techniques which will test fairly the qualifications of candidates such as achievement and aptitude tests, personal interviews, performance tests, physical agility tests, evaluation of daily work performance, work samples, medical tests, professional references or any combination thereof.

Section 2-5 Rating Examinations:

The City Manager will establish the minimum rating for which eligibility may be achieved on any examination or on any part of an examination. . Any or all of the selection techniques may be qualifying in nature only, as determined by the Department Head, while written examinations shall be qualifying in nature unless otherwise specified.

At the discretion of the City Manager, failure on any one part of any examination and/or selection procedures may be grounds for declaring that the candidate has failed the entire examination, or that the candidate is disqualified for subsequent parts of the selection process.

Section 2-6 Employment Lists

Upon completion of the testing and ranking, the City Manager shall establish an appropriate employment list containing the names of the successful candidates.

Section 2-7 Duration of Lists:

Employment lists shall remain in effect for six (6) months, unless sooner exhausted, and may be extended, prior to their expiration dates, by action of the City Manager for additional periods, but in no event shall an employment list remain in effect for more than one year.

Section 2-8 Reinstatement Lists:

The names of permanent employees who have been laid off shall be placed on appropriate reinstatement lists in the order of total continuous cumulative time served in permanent status. Rehiring shall be at the discretion of the appointing authority. Such names shall remain thereon for a period of one year.

Section 2-9 Reinstatement:

Permanent employees who have been laid off shall be entitled to reinstatement to positions in the same class where such positions are to be refilled during the period of their eligibility on the layoff list. During such layoff, no benefits will accrue and his anniversary date shall be adjusted if such layoff time exceeds sixty consecutive calendar days.

Section 2-10 Notification of Examination Results and Review of Papers:

Each candidate in an examination may be given written notice of the results thereof and, if successful, of his rank in the employment lists.

The City Clerk shall retain all employment lists, application forms, examination results and ranking sheets.

Any candidate may have the right to inspect his own examination papers within ten calendar days after the notices of examination results are mailed. Any error in computation, if called to the attention of the City Manager within this period, shall be corrected. Such corrections shall not, however, invalidate appointments previously made.

Section 2-11 Types of Appointments:

All vacancies in City service shall be filled by transfer, promotion, demotion, reappointment, reinstatement, or from eligibles certified by the City Manager from an appropriate employment list, if available.

Section 2-12 Appointments:

At the completion of the selection process and establishment of the employment list, the City Manager shall make appointments from those candidates on the employment list who, on the basis of their performance in the selection process, appear most qualified for the position under consideration and are recommended by the Department Heads.

Section 2-13 Reappointment:

With the approval of the City Manager, a former employee who, after achieving regular status in a City position, resigns with a good record, that former employee may be reappointed, to a vacant position in the same or comparable class. If such former employee is reappointed within one year of the effective date of resignation, that employee is entitled to return to the same level of seniority and vacation accrual. Retirement benefits for reappointed employees are governed by PERS/PEPRA regulations.

Section 2-14 Promotional examinations:

Promotional examinations may be conducted whenever, in the opinion of the Department Head, the needs of the service require. Promotional examinations may include any of the selection techniques mentioned in Section 5 of this rule or any combination of them. Only permanent or probationary employees who meet the requirements set forth in the promotional examination announcements may compete in promotional examinations.

Section 2-15 Transfer:

No person shall be transferred to a position for which he does not possess the minimum qualifications. The City Manager may transfer an employee at any time from one position to another position in a comparable class. For transfer purposes, a comparable class is one with the same maximum salary, involves the performance of similar duties, and requires substantially the same basic qualifications. If transfer involves a change from one department to another, both Department Heads must consent thereto unless

the City Manager orders the transfer for purposes of economy or efficiency. Transfer shall not be used to effectuate a promotion, demotion, advancement, or reduction, each of which may be accomplished only as provided in these rules.

Section 2-16 Promotion:

Insofar as consistent with the best interests of the service, all vacancies in the competitive service shall be filled by promotion from within the competitive service after a promotional examination has been given, from the promotional list established.

If, in the opinion of the City Manager, upon recommendation of the Department Head, a vacancy in the position could be better filled by an open competitive examination instead of promotional examination, then they shall direct an open competitive examination and the preparation and certification of an open competitive employment list.

Section 2-17 Employment of Relatives:

Members of the immediate family of regular employees shall not be appointed to employment with the City in the same department, neither shall regular employees who are relatives be transferred, promoted or demoted to the same department, nor placed in such a position as to supervise or evaluate a member of the immediate family.

Section 2-18 Employment of Councilmembers Immediate Family:

No member of the immediate family of any Councilmember shall be appointed to or employed by the City of Orland after the date of appointment or election of such Councilmember. For purposes of Sections 2-17 and 2-18, "immediate" family shall mean spouse, child, stepchild, stepparent, parent, grandparent, parent-in-law, brother-in-law, sister-in-law, brother or sister, grandchild or anyone permanently living in the household.

Section 2-19 Probationary Period:

A. PROBATIONARY PERIOD

All original, re-appointees and promotional appointments shall be probationary and subject to a probationary period for one calendar year after their hire date, except that appointments to the Orland Police Department will be subject to a probationary period of two (2) years after their anniversary date. At that time they will be eligible to go off probation and become regular full or part-time if so recommended in writing by the Department Head. No employee shall become a regular-full or part time employee unless that change in status is made in writing.

B. Objective of Probationary Period

The probationary period shall be regarded as a part of the testing process and shall be utilized for closely observing the employee's work and for securing the most effective adjustment of a new employee to his position and for rejecting any probationary employee whose performance does not meet the acceptable standard of work.

C. Rejection of Probationer:

During the probationary period, an employee may be suspended, demoted or terminated at any time by the Department Head or City Manager without cause and without right of appeal. Notification of rejection in writing shall be served on the probationer.

ARTICLE III

COMPENSATION

Section 3-1 Classification of Employees:

All City positions will be classified as part of the annual budget and salary schedule in accordance with the following classifications:

A. Regular Full-Time - 34 hours or more per week and eligible for full benefits.

B. Regular Part-Time - Not to exceed 999 hours per fiscal year and not eligible for benefits except step increases on a calendar year basis.
Regular status is achieved upon successful completion of the designated probationary period in the appointed full or part-time position.
All conditions and requirements for salary adjustments for Regular Full-Time employees outlined in this rule shall also apply to Regular Part-Time employees.

C. Probationary – All original and promotional appointments shall be tentative and subject to a probationary period of one year of actual and continuous service. Periods of time on paid or unpaid leave exceeding five (5) days (consecutive or not) shall automatically extend the probationary period by the number of days the employee is on leave.

The probationary period is regarded as part of the testing process, and shall be utilized to observe the employee's work and determine the employee's fitness for the position. During the probationary period, the employee may be rejected at any time with or without cause and without the right to appeal.

D. Temporary - Hired on an as-needed, hourly basis, not to exceed 999 hours per fiscal year, and not eligible for benefits.

E. At-will – Department Heads, or other employees appointed who serve at the pleasure of the City Manager.

F. Exempt -- Employees who meet the salary test and one (or more) of the duties test exemptions from overtime under the FLSA (e.g. executive, administrative, professional) and who are paid on a salary basis (compensation in a predetermined amount).

Section 3-2 Hiring Policy:

With the exception of the Police Department, all employees hired will start at entry level, except where a legitimate shortage of highly-qualified candidates exists, or the newly hired employee possesses exceptional skills and experience.
In that case, and after a review of the selection list, the City Manager will be authorized to appoint to a higher step than entry level.

Police Officers will be hired in accordance with the following:

Less than two years experience - Step 1
2 to 4 years experience - Step 2
4 to 6 years experience - Step 3
Over 6 years experience - Step 4
In no instance will a police officer be hired above Step 4.

Section 3-3 Anniversary Date:

Employees (with the exception of temporary employees) starting work from the first to the fifteenth day of any month will be considered as having been employed on the first of the month. An employee starting work from the sixteenth to the last day of the month will be considered as having been employed on the first day of the following month. This formula is to be used for the purpose of determining effective dates for sick leave, vacation leave and ingrade increases as applicable.

Section 3-4 Step Increases:

All permanent employees will be eligible for step increases on a one-year calendar basis, regardless of hours worked, commencing from their anniversary date. No automatic increases will be granted. All increases must be earned and must be approved in writing subsequent to a written performance evaluation by the Department Head or City Manager before the increase will be granted. The decision to approve or not approve an in-grade increase is final and shall not be subject to appeal.

Section 3-5 Anniversary Date Following Promotion:

When an employee in the City service is promoted to a position allocated to a class with a higher salary, a new anniversary date shall be established for the purpose of eligibility for consideration for future wage adjustments as defined in Section 3-3.

Section 3-6 Anniversary Date Following Demotion:

In the case of a demotion of any employee in the City service to a class with a lower maximum salary upon recommendation by the Department Head and approved by the City Manager, the employee shall retain his previous anniversary date.

Section 3-7 Revision of Salary Ranges:

When a salary for a given class is revised upward or downward, the incumbents of positions and classes affected shall have their existing salary adjusted to the new salary range and their anniversary date shall not be changed.

Section 3-8 Attendance:

Employees are expected to come to work regularly and on time as specified in Department rules. All departments shall keep daily attendance records of employees, which shall be reported to the City Treasurer. Repeated tardiness, unscheduled absences, and or any unauthorized absences shall be cause for disciplinary action up to and including termination of employment. An employee absent form work for work without calling in for more than three working days will be considered as having abandoned employment.

Section 3-9 Deductions:

Deductions from paychecks are made in accordance with prevailing laws, contracts, rules and regulations. Additional paycheck deductions may be authorized by an employee, as approved by the City Manager.

Section 3-10 Overtime Policy:

A. Policy:
It is the policy of the City that overtime work is to be kept to a minimum and the City will provide adequate staff to handle normal operations. However, non-exempt employees may be required to work overtime at the discretion of the department head or the City Manager. Non-exempt employees working overtime when not expressly authorized to do so by their department head or the City Manager shall, to the extent authorized by law, not be compensated therefore, and shall be subject to discipline.

B. Overtime defined:
Overtime work for all non-exempt employees shall be defined as hours assigned to be worked and actually worked (except for authorized rest periods) in excess of eight (8) hour days or forty (40) hours in the designated seven (7) day workweek. Vacation, sick leave, holidays, or other paid leave time is not counted as hours worked for the purpose of computing overtime.

Section 3-11 Overtime Compensation and Computation:

Overtime assigned and worked by non-exempt employees shall be compensated at time and one-half (1-1/2) their regular rate of pay. The employee may request, and the department head shall have the unrestricted discretion to approve or not approve, compensation in the form of accrued compensatory time at time and one-half (1-1/2), except an employee may not accrue more than 240 hours of compensatory time at any

time. (With the exception of sworn employees, who may not accrue more than 480 hours of compensatory time at any time).

Use of compensatory time-off earned shall be granted provided that: 1) its use does not unduly disrupt the operations of the City; and 2) the request is made to the employee's department no later than five days prior to the time when the employee desires to use the leave. If the employee does not provide five days of notice, or if the City can document that the use of CTO would unduly disrupt City operations, the City will cash out the CTO requested at the end of the current pay period in the regular pay check. Terminating employees shall be compensated for all accrued, unused CTO.

Section 3-12 Overtime Compensation Not Applicable:

Overtime compensation provisions shall not apply to designated Exempt employees who meet the salary test and one (or more) of the duties test exemptions from overtime under the FLSA (e.g. Council appointed offices, Department Heads) and who are paid on a salary basis. However, compensation time off (CTO) is available to designated Exempt employees.

Section 3-13 Standard Work Periods and Workweek:

The standard work period for permanent and probationary full-time employees is 8 hours per day, 40 hours per week, except police (see OPOA MOU, Section 14). The workweek for all employees shall begin at 12:00:01 A.M., on Thursday and end at 12:00:00 midnight on the following Wednesday for the purposes of payroll.

The work shift for part-time employees shall be such as is established and directed by the Department Head or City Manager.

Section 3-14 Exceptions to Standard Working Hours:

The City Manager is hereby authorized, and reserves the right to change working hours or assign overtime work to employees in emergency situations or when the best interests of the City may be served by such exceptions of standard work hours.

Section 3-15 Pay Periods:

The pay period for all employees shall be bi-weekly. There will be no payment of salaries or wages to employees except on regular paydays. Employees leaving the municipal service shall be paid within 24 hours (one work day) of the date of termination.

ARTICLE IV

SEPARATION FROM THE SERVICE

Section 4-1 Layoff / Reduction in Force:

An employee may be separated by the City Manager because of changes in duties or organization, abolition of position, shortage of work or funds, or completion of work for which employment was made, or for other reorganizational or managerial reason. If the work force is reduced in a department for any of these reasons, separation shall first be by the type of employment status in the following order:

1. Temporary
2. Probationary – Part-time
3. Probationary – Full-time
4. Regular - Part-time
5. Regular - Full-time

Once this sequence is observed, retention of employees shall then be based solely on the earliest date of continuous City employment.

In cases involving regular appointments only, notice of termination will be given to the employee at least two weeks prior to the effective date of termination.

In case of layoff of employees because of lack of work or funds, regular employees who have been laid off shall be notified in writing by the Department Head with the approval of the City Manager at least ten working days prior to date of layoff, and the notices shall contain the reasons thereof. There shall be no right of appeal in such cases.

Regular employees shall have their names placed on the appropriate layoff (reinstatement) list.

Section 4-2 Discharge:

Regular employees may be discharged from the competitive service for cause.

Probationary and temporary employees may be rejected from employment at any time with or without cause, and without the right to appeal.

Temporary employees, and other at-will employees may be removed from employment at any time with or without cause, and without the right to appeal.

Section 4-3 Resignation:

An employee wishing to leave the competitive service in good standing shall file with the City Manager a written resignation stating the effective date and reasons for leaving at least two weeks before leaving the service unless such time limit is waived by such official. Failure to give notice as required by this rule may be cause for denying future employment by the City.

Section 4-4 Retirement:

Retirement from the municipal service shall be subject to the terms and conditions of the City's contract with the Public Employees Retirement System.

Section 4-5 Return of City Property Upon Separation:

Immediately upon separation from City employment for any reason, the employee is expected to return all City-issued keys, and all City-owned tools, equipment and/or other property.

ARTICLE V

DISCIPLINARY ACTION

Section 5-1 Types of Disciplinary Action:

Disciplinary action shall include discharge, demotion, reduction in salary, suspension, written reprimand, and oral reprimand.

Section 5-2 Discharge:

Regular employees may be discharged with notice and in accordance with procedural due process provisions as specified below. Temporary, or other at-will employees may be discharged at any time with or without cause or right to appeal.

Section 5-3 Reduction in Salary:

Reduction in pay shall become effective at the beginning of the next payroll period following the effective date of the disciplinary action. The provisions of this section shall not apply to reductions in pay, which are part of a general plan to reduce salaries and wages or to eliminate positions.

Section 5-4 Demotion:

A Department Head may demote an employee whose ability to perform his required duties falls below standard, or for disciplinary reasons. Upon request of the employee and with the consent of the Department Head, demotion may be made to a vacant position. No employee shall be demoted to a position for which he does not possess the minimum qualifications.

Section 5-5 Suspension:

A Department Head may suspend, (temporarily separate) an employee from his position for a disciplinary purpose. Suspension without pay shall not exceed thirty calendar days at one time.

Section 5-6 Written Reprimand:

A written reprimand shall be formally recorded and placed in the employee's personnel file for five years. After five years, provided the employee has not been further disciplined for any similar or related offense, the employee may request in writing, to the City Manager, for the written warning to be removed from the employee's file.

Section 5-7 Oral Reprimand:

Documentation of oral reprimands will be informally recorded and kept in the supervisor's file for up to one year.

Section 5-8 Disciplinary Action – Level of Penalty:

The extent of the disciplinary action taken shall be commensurate with the offense, provided that the prior employment history of the employee may be considered.

Section 5-9 Authority For Disciplinary Action:

The City Manager is the final authority for all City employee discipline. Department Heads may initiate disciplinary action for employees under their control.

Section 5-10 Notice of Disciplinary Action:

Disciplinary action of any regular employee shall be taken in compliance with the following procedures:

A. NOTICE OF INTENT

Whenever the appropriate authority intends to suspend an employee, demote the employee, reduce the employee in pay or discharge the employee, the appropriate authority will give the employee a written notice of discipline that sets forth the following:

1) The disciplinary action intended;
2) The specific charges upon which the action is based;
3) A summary of the facts upon which the charges are based;
4) A copy of all written materials, reports, or documents upon which the discipline is based;
5) Notice of the employee's right to respond to the charges either orally or in writing to the appropriate authority;
6) The date, time and person before whom the employee may respond and in what time frame;
7) Notice that failure to respond at the time specified shall constitute a waiver of the right to respond prior to final discipline being imposed.

B. RESPONSE BY EMPLOYEE

The employee will have the right to respond to the appropriate authority either orally or in writing. The employee will have a right to be represented at any meeting set by the appropriate authority to hear the employee's response. In cases of suspensions, demotions, reductions in pay or dismissal, the employee's response will be considered before final action is taken.

C. FINAL NOTICE

After the consideration of the employee's response or the expiration of the employee's time to respond to the notice of intent, the appropriate authority shall: (1) dismiss the notice of intent and take no disciplinary action against the employee or (2) modify the intended disciplinary action; or (3) prepare and serve upon the employee a final notice of disciplinary action. The final notice of disciplinary action shall include the following:

1) The disciplinary action taken;
2) The effective date of the disciplinary action taken;
3) Specific charges upon which the action is based;
4) A summary of the facts upon which the charges are based;
5) The written materials, reports and documents upon which the disciplinary action is based;
6) An explanation of appeal procedures.

Section 5-11 Right of Appeal:

Any employee shall have the right to appeal, in accordance with Article VI, Sections 6-7 to 6-16,any disciplinary action, (except for written or oral reprimands) interpretation or alleged violation of the personnel rules.

ARTICLE VI

GRIEVANCE AND APPEAL PROCESS

GRIEVANCE PROCEDURES

Section 6-1 Purpose of Rule:

a) To promote improved employer-employee relations by establishing grievance procedures.
b) To afford employees, individually or through qualified employee organizations, a systematic means of obtaining further consideration of problems after every reasonable effort has failed to resolve them through discussions.
c) To provide that grievances shall be settled as near as possible to the point of origin.
d) To provide that appeals shall be conducted as informally as possible.
e) Memoranda of Understanding take precedence for represented employees of UPEC or OPOA.

Section 6-2 Informal Grievance Procedure:

An employee who has an employment-related problem or complaint should first try to get it settled through discussion with his immediate supervisor without undue delay. If, after this discussion, he does not believe the problem has been satisfactorily resolved, he shall have the right to discuss it with his supervisor's immediate superior, if any, in the administrative service. Every effort should be made to find an acceptable solution by informal means at the lowest possible level of supervision. If the employee is not in agreement with the decision reached by discussion, he shall then have the right to file a formal appeal, in writing, within seven (7) calendar days after receiving the informal decision of his immediate superior. An informal appeal shall not be taken above the City Manager.

Section 6-3 Formal Grievance Procedure:

a) First level of Review: The appeal shall be presented, in writing to the employee's immediate supervisor, who shall render his decision and comments, in writing, and return them to the employee within seven (7) calendar days after receiving the appeal. If the employee does not agree with his supervisor's decision or if no answer has been received within seven (7) calendar days, the employee may present the appeal, in writing, to his supervisor's immediate superior. Failure of the employee to take further action within seven (7) calendar days after receipt of the written decision of his supervisor or within a total of fifteen (15) calendar days, if no decision is rendered, will constitute a dropping of the appeal.

b) Further Level or Levels of Review as Appropriate: The supervisor receiving the appeal shall review it, render his decision and comments in writing and return

them to the employee within ten (10) calendar days after receiving the appeal. If the employee does not agree with the decision, or if no answer has been received within ten (10) calendar days, he may present the appeal in writing to the Department Head. Failure of the employee to take further action within ten (10) calendar days after receipt of the decision, or within a total of fifteen (15) calendar days if no decision is rendered, will constitute a dropping of the appeal.

c) City Manager: The City Manager receiving the appeal, or his designated representative, should discuss the grievance with the employee, his representative, if any, and with other appropriate persons. The City Manager may designate a fact-finding committee, officer not in the normal line of supervision, or City Council to advise him concerning the appeal. The City Manager shall recount appropriate action, in writing, to the employee and Department Head within twenty (20) calendar days after receiving the appeal. The City Manager's decision on a formal grievance shall be final.

Section 6-4 Conduct of Grievance Procedure:

a) The time limit specified above may be extended to a definite date by mutual agreement of the employee and the reviewer concerned.
b) The employee may request the assistance of another person of his own choosing in preparing and presenting his appeal at any level of review.
c) The employee and his representative may be privileged to use a reasonable amount of work time as determined by the appropriate Department Head in conferring about and presenting the appeal.
d) Employees shall be assured freedom from reprisal for using the grievance procedures.
e) The City Manager's decision shall be final, with no right to appeal.

RULES OF APPEAL TO THE CITY COUNCIL

Section 6-7 Right of Appeal:

Any regular employee in the competitive service shall have the right to appeal to the City Council any disciplinary action after any grievance procedure so providing has been completed, except in instances where the right of appeal is specifically prohibited by the Personnel Ordinance or these rules. Probationary and temporary employees do not have appeal rights.

Section 6-8 Method of Appeal:

Appeals shall be in writing, subscribed by the appellant with the City Manager who shall, within seven (7) days after receipt of the appeal, inform each member of the City Council and such other persons or officers named or affected by the appeal or the filing of the appeal. The appeal shall be a written statement, addressed to the City Council, explaining the matter appealed from and setting forth therein a statement of the action desired by the appellant with his reasons therefore. The formality of a legal pleading is not required.

Section 6-9 Notice:

Upon the filing of an appeal, the City Manager shall set a date for a hearing on the appeal not less than seven (7) days, not more than thirty (30) days from the date of filing. The City Manager shall notify all interested parties of the date, time and place of the hearing at such places as the City Council shall prescribe.

Section 6-10 Investigate:

Upon the filing of an appeal, the City Council may make such independent investigation of the matter as it may deem necessary. The result of such investigation shall be made a part of the record of the proceedings, and the appellant shall have the right to have a reasonable time within which to answer or to present evidence in opposition to the findings of this independent investigation.

Section 6-11 Hearings:

The appellant shall appear personally unless physically unable to do so, before the City Council at the time and place of the hearing. Any person or attorney may represent him as he may select and may, at the hearing, produce on his behalf, relevant oral or documentary evidence. Appellant shall state his case first, and at the conclusion, opposition matter may then be presented. Rebuttal matter not repetitive may be allowed at the discretion of the City Council. Cross examination of witnesses shall be under the control of the City Council by the Mayor with due regard to the rights and privileges of the parties appearing before it. Hearings need not be conducted according to technical rules relating to evidence and witnesses. Hearings shall be closed.

The City Council shall have the right of subpoena, the power to examine witnesses under oath, the power to compel the attendance of witnesses and the power to require the production of evidence by subpoena. Subpoenas shall be issued in the name of the City and attested by the City Clerk.

Each member of the City Council shall have the power to administer oaths to witnesses.

Section 6-12 Appeal Process to City Council:

The City Council may make findings, conclusions, and decisions or may impose a lesser or greater discipline based upon the findings, conclusions, and decision presented to the Council. The Council may, but is not held to:

a) Sustain the action of the City Manager or reviewing supervisor.
b) Negate the action of the City Manager or reviewing supervisor and reinstate the employee without prejudice or loss of compensation and order that the employee be restored to his/her position.
c) Impose any disciplinary action, which it judges to be appropriate, based on the factual evidence presented, except that such recommended disciplinary action shall not exceed the penalty imposed. In the event the transcript or synopsis is ordered by the Council for review, the date for said review may be extended for a period not to exceed thirty (30) days to allow for preparation of the transcript or the synopsis. In the case of synopsis prepared by the City's Counsel, the employee or his/her representative shall be afforded ten (10) calendar days within which to comment thereon. Said comments shall be submitted to the City Council for consideration along with the subject synopsis. Any transcription ordered by the Council shall be prepared at City expense. An employee or his/her representative may request a copy of the transcript; a transcript so ordered by the employee shall be prepared at the employee's expense.

Section 6-13 Findings and Recommendations:

The City Council shall certify its findings and decision, in writing, and a copy provided to the appellant, reviewing supervisor, and City Manager within ten (10) days after the Council's decision. The City Council's decision shall be final. Any member of the City Council may submit a minority or supplemental finding and recommendation.

ARTICLE VII

LEAVES

Section 7-1 Annual Vacation Leave:

The purpose of annual vacation leave is to enable each eligible employee annually to return to his work mentally refreshed.

Section 7-2 Vacation Leave Eligibility:

All regular employees in the City shall be entitled to accrue annual vacation leave. Regular part-time employees shall earn annual paid vacation at a prorated rate based on number of hours worked.

Section 7-3 Vacation Leave Accrued:

Vacation hours shall accrue to each employee as provided in Table I. Regular Part-time employees shall be credited vacation on a prorated basis.

Section 7-4 Service Anniversary Vacation Bonus:

All regular, full-time non-law enforcement employees will receive an additional five (5) days paid vacation on each fifth year anniversary (every five (5) years). .

Section 7-5 Vacation Time Scheduling:

The times during a calendar year at which an employee may take his vacation shall be determined by the Department Head with due regard for the needs of the service

Section 7-6 Holidays Falling During Vacation:
In the event one or more municipal holidays fall within an employee's scheduled vacation leave, such holidays shall not be charged as vacation leave.

Section 7-7 Vacation at Termination:

Employees who terminate employment shall be paid in a lump sum for all accrued vacation leave earned to the effective date of termination.

TABLE I

SCHEDULE OF ANNUAL VACATION LEAVE ACCRUAL

Regular full-time employees shall accrue vacation credits according to the following schedule (MOU refers to the General Unit MOU):

Year of Service to City of Orland	Employees on 40 hr. week	See M.O.U.
0-5 years	80 hrs/yr	See M.O.U.
6-10 years	120 hrs/yr	See M.O.U.
11 or more years	160 hrs/yr	See M.O.U.
Longevity		See M.O.U.

Vacation shall be credited as of the first of the month following completion of twelve (12) months of employment, and thereafter prorated at the end of each pay period as earned.

A regular full-time employee who is absent without pay more than forty (40) hours in a calendar month shall not accrue vacation benefits for that month.

Accrual is strictly limited to 240 hours. This 240 hours is a cap and employees shall not accrue vacation in excess of this cap.

Section 7-8 Sick Leave:

A. ELIGIBILITY

Sick leave with pay shall be granted to all regular and probationary employees within the competitive service. Sick leave shall not be considered as a right, which an employee may use at his discretion, but shall be allowed only in case of actual sickness or disability consistent with state law.

An employee may use time equal to one-half of the sick leave earned in one year for the care of a sick child, parent, or other dependent.

Sick leave may also be used for bereavement leave, as provided in Section 7-14.

B. NOTIFICATION FOR USE OF SICK LEAVE:

In order to receive compensation while absent on sick leave, the employee shall notify his Department Head prior to the set time for beginning his daily duties. For any absence, an employee may be required to file a physician's certificate or a personal affidavit with the Department Head stating the cause of the absence.

C. SICK LEAVE ACCRUAL:

Sick leave with pay shall be granted to employees as Scheduled in Table II.

D. WELLNESS BONUS:

Employees who do not use any sick leave within a 6-month period shall be granted 1/2 day paid time off.

E. WORKERS' COMPENSATION AND USE OF SICK LEAVE:

An employee receiving disability payments under the Workers' Compensation laws may use accumulated sick leave in order to continue to maintain his regular income. All employees receiving full salaries in lieu of temporary disability payments pursuant to Section 4850 of the Labor Code are entitled to accumulate sick leave during such periods of disability.

F. FORFEITURE UPON TERMINATION:

Upon termination, unless otherwise provided in these rules, no compensation either in time off or pay shall be granted for accumulated sick leave.

TABLE II

SCHEDULE OF SICK LEAVE CREDITS

Regular full-time employees shall accrue sick leave credits according to the following schedule:

Employees Working 40 hr/week
96 hrs/year

Sick leave shall be credited at the end of each pay period as earned.

A regular full-time employee who is absent without pay more than forty (40) hours in a calendar month shall not accrue sick leave benefits for that month.
Regular part-time employees shall be credited sick leave at a rate equivalent to full-time employees, but prorated based on number of hours worked.

All full-time employees may accumulate up to a maximum of 1,500 hours of sick leave, unless provided otherwise in M.O.U.

All full-time non-law enforcement employees who have over 20 years of service to the City of Orland will receive an equivalent cash payment for 1/2 of their unused sick leave at the time of leaving City service up to a maximum of fifteen (1500) hours.

OTHER LEAVES OF ABSENCE

Section 7-9 Military Leave:

Military leave shall be granted in accordance with the provisions of Federal and State law.
All employees entitled to military leave shall give the Department Head an opportunity within the limits of military regulations to determine when such leave shall be taken.

Section 7-10 Leave of Absence Without Pay:

The City Manager may grant a regular employee leave of absence without pay or seniority for not-to-exceed three months. No such leave shall be granted except upon written request of the employee, setting forth the reason for the request and the approval will be in writing. Upon expiration of a regularly approved leave or within a reasonable period of time after notice to return to duty, the employee shall be reinstated in the position held at the time leave was granted. Failure on the part of an employee on leave to report promptly at its expiration, or within a reasonable time after notice to return to duty, shall be cause for discharge.

Individuals may apply for up to a ninety (90) day extension of any heretofore granted leave of absence without pay. Such extensions as requested shall not exceed ninety days in duration and shall be accompanied by a statement of reasons therefore.

Section 7-11 Jury Leave:

Every employee of the City who is called or required to serve as a trial juror shall be entitled to absent himself from his duties with the City during the period of such service or while necessarily being present in court as a result of such call. Under such circumstances, the employee shall be paid the difference between his full salary and any payment received by him, except travel pay for such duty.

Section 7-12 Holidays:

The following holidays are recognized as City holidays, for pay purposes, and regular employees shall have these days off with pay, except as otherwise provided in these rules

At the beginning of each calendar year employees shall be allowed to shift holidays so as to facilitate a more streamlined work schedule. Department Heads are to present employee requests; all City departments are to close on the same day as approved by the City Manager.

January 1	New Year's Day
Third Monday in January	Martin Luther King's Birthday
Third Monday in February	President's Day
March 31	Cesar Chavez Day
Last Monday in May	Memorial Day
July 4	Independence Day
First Monday in September	Labor Day
November 11	Veteran's Day
4th Thursday in November	Thanksgiving Day
Day after Thanksgiving	Thanksgiving Friday
December 24	Christmas Eve
December 25	Christmas Day
December 31	New Years Eve

The aforementioned days are holidays for pay purposes. In the event that any of the aforementioned days fall on a Sunday, the following Monday shall be considered a holiday for pay purposes. In the event that any of the aforementioned days fall on a Saturday, the preceding Friday shall be considered a holiday for pay purposes.

In addition, regular employees in City service, except for members of the Orland Police officers Association, are granted the day of their birthday as a holiday. If the employee's birthday falls on a Saturday, Sunday, or other designated holiday, the employee must take the nearest regular workday as a holiday or within the payroll period.

All regular employees, with the exception of the Police Department, will receive holiday pay if the employee must work on the holiday. Regular Part-Time employees will receive holiday pay pro rated on the basis of the number of their regularly scheduled work hours, which fall on a holiday.

Every permanent and every probationary employee in City service, except members of the Police Department who are required to be on duty, shall not be required to be on duty on holidays unless the employee's services are needed and required in the interests of the public health, safety or general welfare. See M.O.U.

Floating Holidays – See M.O.U.

Section 7-13 Workers' Compensation Leave and Benefits:

State Workers' Compensation regulations provide leave and benefits to protect an employee who suffered an injury arising out of, or in the course of, the performance of his job. The City provides workers' compensation insurance for all employees covering these injuries that qualify under Workers' Compensation Laws. State law governs these benefits.

Sick leave, vacation or compensatory time off balances, shall not be used for on-the-job or workers' compensation qualifying injuries.

Section 7-14 Bereavement Leave: Death in the Immediate Family:

A maximum of three (3) paid days to be granted at the discretion of the Department Head, for an employee of the City who suffers a death in his/her immediate family. Upon the expiration of the three (3) days there will be a maximum of five (5) days sick leave granted at the discretion of the Department Head

Section 7-15 Severance Pay for Department Heads:

In the event a department head that is not in a bargaining unit is terminated or removed from duty without cause, during such time that department head is willing and able to perform the duties of his/her position and not otherwise employed, City shall pay department head a minimum of (60) calendar days salary. The salary shall be paid on the normal paydays for City employees and on the last day of the period of employment unless the City Council, in its discretion, otherwise orders.

Section 7-16 Pregnancy Leave:

Pregnancy leave shall be granted in accordance with the provisions of Federal and State law.

Section 7-18 Family Care Leave:

A. STATEMENT OF POLICY

To the extent not already provided for under current leave policies and provisions, the City of Orland will provide family and medical care leave for eligible employees as required by state and federal law.

B. DEFINITIONS

1. "12-Month Period" means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.

2. "Child" means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee's child is one for whom the employee has actual day-to-day responsibility for care and includes, a biological, adopted, foster or step-child, legal ward, or a child of a person standing in loco parentis.

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

3. "Parent" means the biological parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.

4. "Spouse" means a husband or wife or domestic partner as defined or recognized under California State law for purposes of marriage.

5. "Serious health condition" means an illness, injury impairment, or physical or mental condition that involves:

a. Inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or

b. Continuing treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

1). A period of incapacity (i.e., inability to work, or perform other regular daily activities due to serious health condition of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

a). Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider; or

b). Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.

2). Any period of incapacity due to pregnancy or for prenatal care. (This entitles the employee to FMLA leave, but not CFRA leave. Under California law an employee disabled by pregnancy is entitled to pregnancy disability leave.)

3). Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

a). Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

b). Continues over an extended period of time (including recurring episodes of a single underlying condition); and

c). May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.

4). A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by a health care provider.

5). Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

6. "Health Care Provider" means:

a. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;

b. Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises treatment of a serious health condition;

c. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;

d. Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;

e. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and

f. Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

C. REASONS FOR LEAVE

Leave is only permitted for the following reasons:

1. The birth of a child or to care for a newborn of an employee;
2. The placement of a child with an employee in connection with the adoption or foster care of a child;
3. Leave to care for a child, parent or a spouse who has a serious health condition; or
4. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position.
5. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty.

D. EMPLOYEES ELIGIBLE FOR LEAVE

An employee is eligible for leave if at the time the employee submits the written request the City employs 50 or more employees, and the employee:

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

E. AMOUNT OF LEAVE

Eligible employees are entitled to a total of 12 workweeks of leave during any 12-month period.

1. <u>Minimum Duration of Leave</u>

   If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one day, but less than two weeks duration on any two occasions.

   If leave is requested to care for a child, parent, spouse or the employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

2. <u>Spouses Both Employed by the City of Orland</u>

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

F. EMPLOYEE BENEFITS WHILE ON LEAVE

Leave under this policy is unpaid. While on leave, employees will continue to be covered by the City's group health insurance to the same extent that coverage is provided while the employee is on the job.

Employees may make the appropriate contributions for continued coverage under the preceding non-health benefit plans by payroll deductions or direct payments made to these plans. Depending on the particular plan the City will inform you whether the premiums should be paid to the carrier or to the City. Your coverage on a particular plan may be dropped if you are more than 30 days late in making a premium payment. However, you will receive a notice at least 15 days before coverage is to cease, advising you that you will be dropped if your premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. The City shall have the right to recover premiums through deduction from any sums due the City (e.g. unpaid wages, vacation pay, etc.).

G. SUBSTITUTION OF PAID ACCRUED LEAVES

While on leave under this policy, as set forth herein, an employee may elect to concurrently use paid accrued leaves. Similarly, the City may require an employee to concurrently use paid accrued leaves after requesting FMLA and/or CFRA leave, and may also require an employee to use Family and Medical Care Leave concurrently with a non-FMLA/CFRA leave which is FMLA/CFRA-qualifying.

1. Employee's Right to Use Paid Accrued Leaves Concurrently With Family Leave

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

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

a. The leave is for the employee's own serious health condition; or
b. The leave is needed to care for a parent, spouse or child with a serious health condition, and would be permitted as sick leave under the City's sick leave policy.

2. The City's Right To Require An Employee To Use Paid Leave When Using FMLA/CFRA Leave

Employees must exhaust their accrued vacation, administrative and sick leaves concurrently with FMLA/CFRA leave with two exceptions:

a. Peace Officers on leave pursuant to Labor Code Section 4850.
b. Employees will only be required to use sick leave concurrently with FMLA/CFRA leave if the leave is for the employee's own serious health condition.

3. The City's Right To Require An Employee To Exhaust FMLA/CFRA Leave Concurrently With Other Leaves

If an employee takes a leave of absence for any reason that is FMLA/CFRA qualifying, the City may designate that non-FMLA/CFRA leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement. The only exception is for peace officers who are on leave pursuant to Labor Code § 4850.

4. The City's and Employee's Rights If An Employee Requests Accrued Leave Without Mentioning Either the FMLA or CFRA

If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to a FMLA/CFRA qualifying purpose, the City may not ask the employee if the leave is for a FMLA/CFRA qualifying purpose. However, if the City denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA qualifying purpose, the City may inquire further into the reason for the absence. If the reason is FMLA/CFRA qualifying, the City may require the employee to exhaust accrued leave as described above.

H. MEDICAL CERTIFICATION

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

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

1. Time to Provide a Certification

When an employee's leave is foreseeable and at least 30 days notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the City within the time frame requested by the City (which must allow at

least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

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

If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to cure any such deficiency.

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

3. Recertification

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 the employee, but paid for by the City. The opinion of the third provider will be binding. An employee may request a copy of the health care provider's opinions when there is a recertification.

4. Intermittent Leave or Leave on a Reduced Leave Schedule

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

I. EMPLOYEE NOTICE OF LEAVE

Although the City recognizes that emergencies arise that may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. If leave is foreseeable, at least 30 days notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. Such notice may be orally given. If the City determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the City may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute.

J. REINSTATEMENT UPON RETURN FROM LEAVE

1. Right to Reinstatement

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

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

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

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

3. Fitness for Duty Certification

As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition that made the employee unable to perform his/her job, 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. Remember: such a requirement is only permissible if your agency has a uniformly applied practice or policy of requiring fitness for duty certifications from employees returning from work after illness, injury or disability.

4. Reinstatement of "Key Employees"

The City may deny reinstatement to a "key" employee (i.e., an employee who is among the highest paid 10 percent of all employed by the City within 75 miles of the work site) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the City, and the employee is notified of the City's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

K. REQUIRED FORMS

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

1. "Request for Family or Medical Leave Form" prepared by the City to be eligible for leave. NOTE: EMPLOYEES WILL RECEIVE A CITY RESPONSE TO THEIR REQUEST THAT WILL SET FORTH CERTAIN CONDITIONS OF THE LEAVE;

2. Medical certification either for the employee's own serious health condition or for the serious health condition of a child, parent or spouse;

3. Authorization for payroll deductions for benefit plan coverage continuation; and

4. Fitness for duty to return from leave form.