



PERSONNEL RULES

2023



PERSONNEL RULES OF THE CITY OF VISTA

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CITY OF VISTA PERSONNEL RULES

RULE 1.0 - PERSONNEL ADMINISTRATION

- 1.1 Purpose and Application of Rules.
These rules establish the personnel system for the City. These rules shall apply to all offices, positions and employments in the service of the City except those exempted by the Municipal Code or by resolution of the City Council or as noted herein.
- 1.2 The Personnel Officer.
The City Manager may delegate the duties and responsibilities of Personnel Administration and those powers specified in the Personnel Ordinance to any qualified officer or employee of the City or may recommend that such services be performed under contract.
- 1.3 Duties of the Personnel Officer.
The Personnel Officer shall interpret, apply, and administer these rules and shall make amendments as required.
- 1.4 Amendment of Rules.
Proposed amendments to these rules may be made by the Personnel Officer for adoption by the City Council. Twenty days prior to City Council consideration, notice shall be given to recognized employee organizations on any amendments which affect wages, hours, and other terms and conditions of employment: and upon request, the City shall provide the opportunity to meet and confer with any recognized employee organization so requesting in accordance with the Employer/Employee Relations Rules. As provided in Section 3500 et. seq. of the Government Code, in cases of emergency, when the City Council determines that amendment(s) to these rules must be adopted immediately without prior notice or meeting and conferring with a recognized employee organization, the City shall provide such notice and the opportunity to meet at the earliest practical time following the adoption of the amendment(s). Amendments shall become effective upon adoption by the City Council unless otherwise specified.
- 1.5 Violation of Rules.
Violation of these rules may be cause for disciplinary action.

RULE 2.0 - DEFINITIONS

- 2.1 Appointing Authority: The City Manager or his/her designee and Department Directors. In the case of the City Manager, City Clerk, and City Attorney, the City Council is the Appointing Authority.
- 2.2 Authorized Position: A position appearing in the staffing detail of the current Classification and Compensation Index authorized by the City Council. This is a position expected to last for an indefinite period of time and would not be considered temporary.
- 2.3 Competitive Service: All positions not designated as exempt from the competitive service by the Municipal Code or by resolution of the City Council.
- 2.4 Days: Calendar days unless otherwise stated.

- 2.5 Demotion: The appointment of an employee to a classification having a lower salary range either as the result of disciplinary action or at the request of the employee. No employee shall be demoted to a position for which he or she does not possess the minimum qualifications. Pre-disciplinary procedures shall be complied with prior to the demotion of any regular employee for disciplinary purposes.
- 2.6 Discharge: A disciplinary action separating the employee from employment with the City. Whenever an employee is to be discharged, the Personnel Officer shall be notified. Pre-disciplinary procedures shall be complied with prior to the discharge of any regular employee.
- 2.7 Eligibility List: A list of individuals, composed according to final ranking of candidates, who have achieved a minimum qualifying rank in an examination for employment with the City of Vista.
- 2.8 Flexible Staffing: The non-competitive promotion of an employee from certain designated classifications in a classification series to certain higher-level classifications in the same classification series.
- 2.9 Layoff: The separation of an employee from employment with the City when, in the judgment of the City Council, it becomes necessary to abolish positions. Refer to Rule 8, or appropriate M.O.U., for procedure.
- 2.10 Personnel Ordinance: Chapter 2.72 of the Vista Municipal Code which creates a personnel system for the City of Vista.
- 2.11 Probationary Employee: An employee serving a probationary period, following a probationary appointment to an authorized position.
- 2.12 Promotion: The movement of an employee from one class to another class having a higher maximum rate of pay. (Movement of a Firefighter/Paramedic to Engineer shall be considered a promotion.)
- 2.13 Reassignment: Movement of an employee from one position to another position within the same classification.
- 2.14 Reclassification: A change in allocation of an individual position by raising it to a higher class, reducing it to a lower class, or moving it to another class at the same pay level on the basis of substantial changes in the kind, difficulty, and/or responsibility of duties performed in such positions.
- 2.15 Reemployment: The appointment of an employee who was laid off to a position in the same classification as his or her former position in accordance with these rules or the appropriate MOU. Such an employee shall receive credit for former service when computing vacation, sick leave, and advancement through the salary range.
- 2.16 Regrading: Movement of a classification and/or position pay range from one range to another.
- 2.17 Regular Employee: An employee, appointed to an authorized position after having successfully completed the probationary period for the position.
- 2.18 Regular Part-Time Employee: A regular employee who works at least 30 hours but less than 40 hours per week on a regularly scheduled basis in an authorized part-time position, designated as such in the currently adopted Classification and Compensation Index.

- 2.19 Reinstatement: The re-appointment, without examination, of a probationary or regular employee within 24 months after he/she has resigned in good standing to a vacant position in the same or comparable class. The appointing authority shall first consider any valid promotional list for the position prior to considering a request for reinstatement. No credit shall be received for prior service in terms of benefits accrued after reinstatement unless otherwise recommended by the appointing authority and approved by the Personnel Officer. The employee shall begin a new probationary period.
- 2.20 Resignation: The voluntary separation of an employee from employment with the City. In order to resign in good standing, an employee shall provide a written statement, indicating the last day of employment and reasons for leaving, at least one week prior to leaving. Once a resignation has been submitted, it may only be withdrawn by approval of the Personnel Officer upon the recommendation of the Department Director.
- 2.21 Suspension: A disciplinary action taken by the appointing authority to prevent an employee from working his/her normal number of hours and thereby exempting him/her from compensation for those hours. Persons under suspension shall not accrue sick leave and vacation during such suspensions. Pre-disciplinary procedures shall be complied with prior to the suspension of any regular employee. Employees designated as exempt from the Fair Labor Standards Act shall not be suspended without pay for a period less than one full week.
- 2.22 Temporary Employee: An employee whose appointment to a position is designated as temporary.
- 2.23 Termination: The act of separation from employment for any reason other than discharge or resignation.
- 2.24 Transfer: The reassignment of an employee from one classification to another classification which has the same salary range and requires substantially the same qualifications. If the transfer involves a change from one department to another, both Department Directors must consent thereto unless the City Manager orders the transfer for reasons of economy and efficiency.

RULE 3.0 - RECRUITMENT AND SELECTION - COMPETITIVE SERVICE

- 3.1 Filling Vacancies.
All vacancies in the competitive service shall be filled by reinstatement, transfer, demotion, reemployment, or by appointment from an eligibility list established by an open, or closed/promotional recruitment. In the absence of persons eligible for appointment in these ways, temporary or acting appointments may be made in accordance with the Personnel Ordinance and these rules.
- 3.2 Fair Employment Practices.
Any technique or procedure used in recruitment and selection of employees shall be designed to measure only the job related qualifications of applicants. No recruitment or selection technique shall be used which, in the opinion of the Personnel Officer, is not justifiably linked to successful job performance.
- 3.3 Types of Recruitment.
The determination of the type of recruitment to be conducted shall be made by the Personnel Officer after consultation with the affected Department Director. Recruitments may be conducted in any of the following manners:

3.3.1 Open:
Open recruitments shall be those in which any individual may apply. An open recruitment may be conducted on a continuous basis when deemed necessary by the Personnel Officer. A continuous recruitment does not have a specified filing period, but continues at the discretion of the Personnel Officer.

3.3.2 Closed/promotional:
Closed/promotional recruitments shall be those in which any current City employee (excluding Temporary Employees) may apply.

Prior to certification of an eligibility list, a recruitment may be reopened for any type of recruitment. Applications received prior to reopening the recruitment shall be included (merged) with applications for the reopened recruitment.

3.4 Applications.
Application for employment with the City of Vista shall be made on forms provided by the Personnel Officer. Any false statement or willful omission of information on the application forms may be grounds for rejection of the application or subsequent discharge of the employee.

Applications must be signed by the applicant and received by the Personnel Officer within the filing period prescribed on the job announcement. Such filing periods may be extended as deemed necessary by the Personnel Officer.

The Personnel Officer may reject any application which on its face does not demonstrate that the applicant meets the minimum qualifications of the position or class for which the application was submitted.

3.5 Job Announcements.
All examinations shall be announced in a bulletin which shall specify at least the major job responsibilities, minimum and desirable qualifications, and the selection process to be used. Job announcements shall be posted on appropriate bulletin boards in City facilities. Special recruitment methods shall be utilized as necessary to ensure that all segments of the labor market available to the City are utilized.

3.6 Examinations.
Examinations for employment shall be competitive and shall include any technique which, in the opinion of the Personnel Officer, fairly measures the job-related qualifications of applicants. These may include written tests, interviews, performance tests, medical examinations and background investigations (as pertains to the job classification applied for only). Examinations may be open or closed/promotional at the discretion of the Personnel Officer.

3.7 Conduct of Examinations.
The Personnel Officer shall construct, develop and administer all examinations for City employment except that the City may contract with any qualified agency, organization or individual to develop and administer examinations provided that the procedures utilized meet the specifications as provided in these rules.

3.8 Eligibility List.

An eligibility list shall be established following an examination, listing the names of those applicants who have achieved a ranking meeting or exceeding a passing point. Such applicants shall be deemed as qualified for appointment, pending further review by the appointing authority and other qualifying procedures such as reference checks, medical examinations or background investigations. Open eligibility lists shall be valid and in effect for a period of six (6) months. Open eligibility lists may be extended to a maximum duration of eighteen (18) months, at the discretion of the Personnel Officer, prior to expiration.

Closed/Promotional eligibility lists for positions except Fire Captain and Fire Engineer shall be in effect for twelve (12) months and may be extended to a maximum duration of eighteen (18) months, at the discretion of the Personnel Officer, prior to expiration. Closed/Promotional eligibility lists for the positions of Fire Captain and Fire Engineer shall be in effect for twenty-four (24) months and may be extended an additional three (3) months, at the discretion of the Personnel Officer, providing that a six (6) month notification was given to the Firefighter Association President prior to the expiration of the list.

Names of those not chosen from an open eligibility list that is in effect less than six (6) months may be merged with names on a newly established list for the same classification but such names shall not remain on the new open list for more than six (6) months from the date of their original examination unless the list is extended under these rules. The names of individuals placed on an eligibility list as the result of a continuous recruitment shall remain on the list for a period of six (6) months unless the list is extended under these rules. Names on such lists shall be merged with others already on the list. The existence of an eligibility list prepared from an open recruitment shall not preclude the City from recruiting to establish a closed/promotional list. The names of employees on promotional eligibility lists who resign, terminate or are discharged from the service shall automatically be dropped from such lists.

3.9 Removal of Names From Eligibility List.

The name of any person appearing on any eligibility list may be removed by the Personnel Officer:

- 3.9.1 If the eligible person requests that his/her name be removed.
- 3.9.2 If the eligible person fails to respond to a written notice by the City that he/she is being considered for appointment. This provision shall not apply to closed/promotional lists.
- 3.9.3 Upon notice from an eligible applicant declining appointment or invitation to continue in the selection process. Current City of Vista employees whose names are on a list may decline and request that their names remain on the list for future consideration.
- 3.9.4 Upon recommendation of the Department Director and approval of the Personnel Officer after the eligible person has been considered for employment and such employment would not be in the best interest of the City. This provision shall not apply to the names of regular or probationary employees.
- 3.9.5 If less than five (5) names of applicants, willing and able to accept appointment, are available on a list, that list may be declared invalid by the Personnel Officer and a new recruitment and examination announced.
- 3.9.6 If the eligible person has made any false statement of material fact or willful omission of information in the application process.

3.9.7 When a person is appointed from an eligibility list to a position in the classification for which the list was developed. Except in the case of a probationary discharge, a person's name may be placed back on an eligibility list prior to completion of the probationary period at the request of the employee with the approval of the Personnel Officer. A subsequent appointment from the list shall require a new probationary period to be served.

3.10 Notification of Applicants.

All applicants shall be notified in writing of the results of the examination. Probationary and regular employees competing in closed/promotional recruitments shall have the right to review their own written examination answer sheet and to challenge questions within ten (10) working days after the results are mailed. The Personnel Officer, or designee, will review challenged items with an employee, to the extent that it does not compromise the security or future uses of a test. Any error in computation, if called to the attention of the Personnel Officer within the ten (10) working days shall be corrected. The Personnel Officer's decision with respect to challenges shall be final.

3.11 Certification of Eligible.

When a vacancy occurs, the appointing authority may request of the Personnel Officer that the vacancy be filled by reinstatement, demotion, transfer, reemployment or by appointment from an appropriate eligibility list. When an appointment is to be made from any eligibility list, the Personnel Officer shall certify names from an appropriate list. The appointing authority shall further review the job-related qualifications of those certified before making selection decisions.

The Personnel Officer may certify names from a list for a higher classification in order to fill a vacancy in a lower classification, when job duties are of a similar nature. In no case shall names be certified from a list for a lower classification to fill a vacancy in a higher classification. In the event a person does not satisfactorily complete his/her probationary period in a lower level classification, his/her name shall be removed from the eligibility list for the higher level classification from which he/she was appointed.

3.12 Selection.

The appointing authority shall notify the Personnel Officer prior to selecting a new employee. He/she shall cause the new employee to report to the Personnel Officer for processing prior to the employee's first day on the job. Each new or promoted employee may be required to pass a medical examination for fitness to perform the job to which they are appointed and may be subject to a background investigation.

3.13 Employment of Family Members and Co-habitants.

Members of the same family or household are eligible for employment with the City of Vista. It is the policy of the City to prevent family relationships and relationships involving members of the same household from adversely influencing employment selections, job assignments, promotions, performance evaluations, and other personnel matters.

The City will allow members of the same family or household to work in the same department, division, or City facility, provided one family member/co-habitant is not responsible for conducting performance evaluations of another family member/co-habitant. Department Directors may not have family members/co-habitants employed within the Department they lead. For purposes of this policy, "members of the same family" is defined as spouses, children, sisters, brothers, mothers, fathers, grandparents, stepchildren, in-laws, nieces, nephews, cousins, and any other persons related by blood or marriage or by means of a "foster" relationship.

This policy is intended to prevent, but is not limited to, the following:

- ▶ Situations that might result in unfair preferential treatment of other employees and/or the public;
- ▶ Professional decisions that might be disadvantageous for the operations of the City;
- ▶ An employee being in a position to directly or indirectly supervise, control, or influence a family member or member of the same household; and
- ▶ An employee having access to the personnel file and other confidential information of a family member or member of the same household.

This policy applies to family members or members of the same household of all employees and elected or appointed officials of the City of Vista. Employees and officials have a duty to disclose relationships that are addressed by this policy.

If two employees become subject to the restrictions of this policy after they are initially employed, the City will meet with the affected individuals and their representative(s) and make reasonable efforts to reassign one of the affected individuals to a different position or area within the City. If a reasonable accommodation is not reached and a legitimate business reason exists, the City may require, at the sole discretion of the affected employees, one of the employees to end his or her employment with the City.

3.14 Physical/Mental Requirements.

The City shall require that all applicants and employees be in such physical or mental condition to perform the duties of their jobs and may require medical or psychological evaluation at City expense. No employee shall hold any position in a classification in which he/she cannot physically or mentally perform the duties of the position at a satisfactory level or without hazard to him/herself or others. Within the limitations indicated below, the City's policy shall be to make such efforts as are consistent with the provisions of these rules to place physically disabled employees in such positions as are available in the City service where their disabilities will not affect their performance of duties, their safety or the safety of others. The employee's length of service, nature of past performance and the availability of openings may be considered in placing disabled employees.

RULE 4.0 - APPOINTMENTS

4.1 Types of Appointments:

Appointments to City service are divided into the following categories:

- 4.1.1 Probationary - Shall be the appointment of a person to an authorized position which the employee must serve a probationary period of a certain designated time span to demonstrate fitness for the position.
- 4.1.2 Regular - Shall be the appointment of a person who has satisfactorily completed his/her probationary period to an authorized position.
- 4.1.3 Acting - Shall be the temporary assignment of a regular or probationary employee to a higher level classification to fill a vacant position or to provide a replacement for an employee who remains on a leave of absence. Acting appointments may end at any time without advance notice or right of appeal.

- 4.1.4 Temporary - Shall be the appointment in one of the categories listed below of a person to a position intended to be occupied on an intermittent basis to cover increased workloads of limited duration, necessary vacation relief and other situations involving fluctuating staff:
- A. Extra Help Appointment - Any appointment not exceeding six (6) months, or, exceeding six (6) months but working less than 995 hours per fiscal year.
 - B. Limited Term Appointment - Any appointment generally for a period of more than six months, but less than 18 months working more than 995 hours per fiscal year.
 - C. Part-time Appointment - Any appointment generally for a period of a fiscal year working over 995 hours but no more than 1300 hours.
 - D. Emergency - To meet immediate needs of an emergency (i.e. civil disaster).
 - E. Provisional - In the absence of individuals eligible or acceptable for appointment from appropriate eligibility lists, a provisional appointment may be made by the appointing authority of an individual who meets the training and experience requirements for the position. Such an appointment shall be limited to one year duration. Extension beyond one year shall be subject to the approval of the City Manager. The City Manager shall specify the term of the extension. If the position is one that falls under representation by one of the City's recognized employee associations, the appropriate association shall be informed of the extension. Such an appointment may be made during the period of suspension of an employee, or pending final action on proceedings to review suspension, demotion, or discharge of an employee. Provisional appointments may also be made under other circumstances deemed for the good of the service by the Personnel Officer. A provisional employee may be removed at any time without rights to a hearing. Provisional employees may accrue fringe benefits as specifically authorized by the City Manager.

Employees, whose appointments are temporary, except as required by the Public Employee's Retirement System (PERS) contract or as specified in these rules or by City Resolution or Ordinance, shall not be covered by the City's group insurance, disability, retirement, or other benefit programs; nor do they accrue vacation, holiday or sick leave benefits. Temporary employees are exempt from the competitive service except as noted herein.

Rule 5.0 - PROBATIONARY PERIODS

5.1 Probationary Period.

The first 2080 hours worked (2912 hours for Fire shift personnel) after an employee has been hired shall be a probationary period during which he or she will be considered as in training. The probationary period for part-time employees shall be prorated on an hourly basis. For example, twelve (12) months would equal 2080 hours (2912 hours for Fire shift personnel). The probationary period is an extension of the examination process and the employee's performance shall be carefully observed. Periods of time on paid or unpaid leave (excluding holidays), exceeding fourteen (14) days (consecutive or not) shall automatically extend the probationary period by that number of days the employee is on leave. An employee shall be notified in writing of the reason(s) the probationary period is extended and the length of the extension. Prior to the anniversary date of hire or anniversary date of promotion, the Department Director shall determine whether the employee shall be granted a regular appointment. The regular

appointment, when granted, shall become effective on the first day of the payroll period during which his/her anniversary date falls.

If, in the opinion of the employee's supervisor, an employee's performance merits an early advancement to regular status after six (6) months of service as a probationary employee, he/she may so recommend to the appointing authority for his/her determination. This provision does not apply to probationary periods served by employees who have been promoted. Such employees must serve the maximum months for promotional probation as noted in Personnel Rule 5.1.1.

Probationary appointments may be terminated at any time without the right of appeal or hearing. Notification of termination shall be in writing and shall be given to the probationary employee with a copy to the Personnel Officer.

Probationary periods may be extended, under certain circumstances upon recommendation of the Department Director and approval of the Personnel Officer. Such extension shall be for no longer than 1040 hours (1456 hours for Fire shift personnel) worked of actual and continuous service. If the Department Director determines that the probationary period should be extended, the probationary employee shall be given notice in writing prior to the expiration of the original probationary period.

5.1.1 Probationary Period for Promotions and Demotions.

When an employee is promoted to a higher classification or demoted, the probationary period shall be 1040 hours. A new probationary period need not be served when demoting to a classification in which an employee previously held regular status, or to a lower classification in the same classification series when the employee has held regular status in a higher classification in that classification series. When a Public Safety Employee, as defined in Personnel Rule 13.2.5, is promoted to a higher classification, the probationary period shall be twelve (12) months. All other provisions of Personnel Rule 5.1 shall apply to probationary periods which result from a promotion.

If an employee is serving his or her initial probationary period and is promoted by either reclassification or a competitive exam, the employee shall obtain regular status in the position he or she promoted from. The employee shall be required to serve a promotional probationary period in accordance with the Personnel Rules.

An employee rejected during the probationary period from a position to which he/she has been promoted, shall be reinstated to a position in the classification from which he/she was promoted unless he/she is discharged from City service as provided in these rules.

RULE 6.0 - EMPLOYEE PERFORMANCE EVALUATION

6.1 Policy.

It is the policy of the City that regular reports be made as to the efficiency, competency, conduct and merit of its employees. To this end, it is declared to be the responsibility of the City Manager, the Department Directors and their subordinate supervisors that these ratings be made. It is also declared that it is the responsibility of the Personnel Officer to provide and prescribe the forms and procedures to be used in such reports of performance and to assist in the training of supervisory personnel of the City so that the program of performance reporting will be carried on in a timely and effective manner.

6.2 Schedule.

Reports shall be prepared and submitted to the Personnel Officer at the midpoint of the probationary period for probationary employees. Reports for employees in the Fire Department who are at the top step of their classification will take place each December, effective January 2020.

Informal review (i.e., feedback concerning the employee's job performance) occurs on an on-going basis during the probationary period. A report for regular employees shall be prepared within fourteen (14) days prior to the anniversary date each year and shall be submitted to the Personnel Officer. In addition, a report may be prepared at any time by request of the employee or at the discretion of the employee's supervisor.

6.3 Authority to Make Reports.

The appointing authority shall have the authority to make reports of performance, however, he/she may delegate such authority to subordinate supervisors who are most familiar with the work of the employee to be evaluated. The appointing authority shall review and approve all performance evaluations of personnel under his/her jurisdiction.

6.4 Review with Employee.

It is acknowledged that one of the prime benefits of a sound performance rating system is that it can bring together the employee and his/her supervisor in a constructive discussion of work performance. Therefore, each performance evaluation shall be appropriately discussed with the employee to point out areas of successful performance and areas that need improvement. The employee shall also be encouraged to comment regarding his/her work performance, either in a written statement attached to the report or orally. The employee shall sign the performance report to acknowledge that he/she is aware of its contents and has discussed the report with the evaluator. The employee's signature does not necessarily mean that he/she fully agrees with the contents of the report.

6.5 Distribution of Reports.

Completed reports shall be forwarded to the Personnel Officer for approval and distribution. A copy of the approved report shall be returned to the employee by the Personnel Officer.

6.6 Effects of Improvement Needed or Major Improvement Needed Ratings.

Any employee who receives an overall "major improvement needed" or "improvement needed" rating will not be eligible to participate in any promotional examination until a satisfactory rating is established.

An overall "major improvement needed" rating shall result in the withholding of any merit increases for which the employee may be eligible. An overall "improvement needed" rating may result in withholding any merit increase upon the recommendation of the appointing authority.

When an employee receives an overall "improvement needed" or "major improvement needed" rating, he/she shall be re-evaluated within three (3) months to document performance. If the employee's performance has improved to such an extent that the appointing authority believes it is justified, the improvement shall be indicated on the report and he/she may specifically recommend the commencement of any merit step increase which had been withheld, effective the first day of the pay period following the date of the re-evaluation. The employee will then have a new salary anniversary date.

RULE 7.0 - DISCIPLINARY ACTION (See MOU for VCEA, VCMA, and VFFA)

RULE 8.0 - LAYOFF

See MOU for Vista City Maintenance Association, Vista City Employees Association, and Vista Firefighters Association.

RULE 9.0 - EMPLOYEE BENEFITS

9.1 Vacation Leave.

9.1.1 Eligibility for Leave.

Employees must serve one (1) full year of continuous service as permanent employees, or its hourly equivalent for permanent part-time employees, to be eligible to utilize accrued vacation leave. The City Manager or his/her designee may authorize an employee to take accrued vacation earlier if, in his/her judgment, there are valid reasons to conclude that it is in the best interests of the City and the employee that an exception be granted.

9.1.2 Scheduling of Vacation.

The time during a calendar year when an employee may utilize vacation leave shall be determined by the Department Director with regard to the wishes of the employee, and due regard for the needs of the City. Timely advance notice will be given to the employee when circumstances preclude an employee from taking a previously approved vacation as scheduled.

9.1.3 Accumulation.

If an employee's written request to take vacation is refused on the grounds that the City's needs preclude the employee taking time off, and such refusal results in the employee exceeding the accrual limit, the employee will be compensated in cash at straight time for the hours accrued in excess of the accrual limit during the time period in which his/her requested leave was denied.

9.1.4 Holidays During Scheduled Vacation.

In the event that one or more holidays, designated in these rules as a recognized municipal holiday, fall during a scheduled vacation leave, such holiday(s) shall not be counted as a vacation day(s) and the vacation leave shall be extended accordingly.

9.1.5 Vacation Pay at Termination.

Employees who separate from the City service shall be paid, at their regular hourly rate, up to the maximum accrual allowed, for all unused vacation at the time of separation.

9.1.6 No Vacation Accrued During Leave Without Pay.

Vacation time is accrued on those hours which are considered as regularly scheduled time worked. Vacation time is not accrued on any time that is recorded as leave time without pay.

9.2 Sick Leave.

Every full-time regular and probationary employee, except 24-hour shift Fire Department employees, shall accrue sick leave at the rate of eight (8) hours per month. An employee on leave without pay does not accrue sick leave. Unused sick leave may accumulate without limit. Sick leave with pay can only be granted by recommendation of the appointing authority for the reasons provided in Rule 9.2.5.

9.2.1 Evidence of Illness.

The appointing authority may require, at any time for Fire Safety Employees, and after the third day for probationary and regular employees, evidence in the form of a physician's certificate, or otherwise, of the adequacy of the reason for an employee's absence during the time for which sick leave was requested.

9.2.2 Penalty for Sick Leave Abuse.

When in the judgment of the appointing authority, the employee's reasons for being absent because of alleged sickness are inadequate, he/she shall indicate on the payroll time report that the absence was leave without pay. In addition, the appointing authority may impose such disciplinary action as in his/her discretion seems warranted, following procedures set forth in these rules.

9.2.3 Illness While on Vacation.

An employee who becomes ill while on vacation may have such period of illness charged to his/her accumulated sick leave instead of to vacation, provided that:

- A. immediately upon return to duty, the employee submits to the appointing authority a written request for sick leave and a written statement is signed by the employee's physician stating the nature and dates of the illness; and,
- B. the appointing authority recommends and the Personnel Officer approves the granting of such sick leave.

9.2.4 Holidays During Sick Leave.

Observed holidays occurring during sick leave shall not be counted as a day of sick leave. (This provision shall not apply to Fire shift personnel.)

9.2.5 Sick Leave Use.

Sick Leave may be used for the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee, including any period of incapacitation caused by pregnancy or childbirth. Up to one-half of an employee's annual sick leave accrual may also be used for any of the following reasons:

- Diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee's family member or designated person; or
- For an employee who is a victim of domestic violence, sexual assault, or stalking, for the purposes described in Labor Code sections 230(c) and 230.1(a);

"Family member" is defined as a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis without regard to age or dependency status; a biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or the person who stood in loco parentis when the employee was a minor child; a spouse; a registered domestic partner; a grandparent; a grandchild; or a sibling.

Employees should take all reasonable measures to schedule medical and dental appointments outside normal scheduled working hours wherever possible.

- 9.2.6 SDI Benefits - General Employees.
Covered employees qualifying for State Disability Insurance benefits may elect to coordinate State Disability Insurance with unused sick leave, such that the employee receives his/her usual gross salary. Procedures for this benefit are to be set by the Personnel Officer. See *SDI Policy, Administrative Policy 89-1.*
- 9.2.7 Payment for Unused Sick Leave on Retirement. (In VCMA, VFFA, VCEA MOUs and Management and Confidential Employee Compensation Plan)
- 9.2.8 Fire Department Employees - Applicable Other Rules.
Rules 9.2.1, 9.2.2, and 9.2.3, also apply to Fire Department employees.
- 9.2.9 Sick Leave for Temporary Employees.
In compliance with the California Healthy Workplaces/Healthy Families Act of 2014, all temporary, part-time employees will receive 24 hours of paid sick leave upon the start of employment. This sick leave will be available for use after an initial, 90 day waiting period. After the initial start of employment, and upon the commencement of the fiscal year, each temporary, part-time employee will have 24 hours of paid sick leave available to them on a per annum basis.

9.3 Bereavement Leave. **(See MOUs for VCEA, VCMA, and VFFA)**

All employees, upon approval of the appointing authority, will be granted three (3) days of paid leave and an additional two (2) days of unpaid leave in the event of the death of the father, mother, stepfather, stepmother, parent-in-law, grandparent, brother, sister, husband, wife, registered domestic partner, child, grandchild or stepchild of the employee or his/her spouse/registered domestic partner. The additional two (2) days of unpaid leave will be charged against earned and unused sick leave. If travel more than three-hundred (300) miles one way is required, no bereavement leave shall be charged to earned and unused sick leave.

9.4 Holidays.

All employees, except 24-hour shift and certain employees of the Fire Department, shall be granted the following holiday time off with pay **(See MOU for VFFA)**:

January 1	"New Year's Day"
Third Monday in January	"Martin Luther King Jr. Day" *
Third Monday in February	"Presidents' Day"
Last Monday in May	"Memorial Day"
July 4	"Independence Day"
First Monday in September	"Labor Day"
November 11	"Veteran's Day"
Fourth Thursday in November	"Thanksgiving Day"
Fourth Friday in November	"The Day After Thanksgiving"
December 25	"Christmas Day";

Any day declared by the President of the United States or the Governor of California as a holiday, provided that the City Council of the City of Vista also recognizes such day as a holiday.

9.5 Tuition Reimbursement. **(See MOUs for VCEA, VCMA, and VFFA and MCP)**

9.6 Replacement of Personal Property.

Any officer or employee who, in the normal course of his/her employment and as a result thereof, suffers damage or loss of items of personal property which are necessary to fulfill the requirements of his/her position, shall be entitled to replacement or repair thereof upon investigation and recommendation by such employee's Department Director, and approval by the Personnel Officer. No payment may be made if the loss or damage was the result of employee negligence. No payment shall exceed two-hundred dollars (\$200.00) per claim.

The above shall not prohibit an employee from filing a claim for damages against the City to recover the cost of replacement or repair of personal property lost or damaged on the job, provided that such a claim shall not be filed in addition to seeking reimbursement under this Rule.

Any employee who experiences a loss or damage to personal property in connection with his/her job responsibilities may submit a claim to his/her immediate supervisor for consideration of reimbursement. The claim shall be submitted within thirty (30) calendar days after the loss or damage is sustained or becomes known. The claim shall contain such information as: type of item, date of purchase, condition, description of damage, circumstances, etc.

The following conditions will be considered:

- a. There must not be negligence on the part of the employee.
- b. There must not be other means of recovery, such as, but not limited to, court action or insurance.
- c. The personal property for which the claim is made must be owned by the employee involved. Exceptions to this may be referred to the Risk Manager.
- d. \$200 limit per item.
- e. Items unrelated to the performance of the job are not eligible for reimbursement (i.e., personal cameras, personal cell phones, portable music players, or jewelry).

9.7 Private Motor Vehicle Reimbursement.

City officers and employees shall be reimbursed for use of their private motor vehicles on City business at the current IRS rate. This rate may increase per the City's Administrative Policy. In order for such employees or officers to receive reimbursement for such use, a form, approved by the Finance Office, shall be used whereupon it shall be stated the date of use, the actual miles driven and the purpose of such use. The form shall be submitted to, and is subject to the approval of, the employee's Department Director and the Finance Office.

9.8 Group Life and Health Insurance. (See specific MOU's and/or MCP for health benefits)

The provisions governing the group life and health insurance programs are as follows:

9.8.1 City Contribution.

The City's contribution toward the cost of group life, vision and health insurance programs contracted for by the City shall be as set forth in appropriate Memoranda of Understanding, Management and Confidential Employee Compensation Plan or unilaterally implemented by the City Council.

9.8.2 Group Insurance Coverage - Industrial Disability Leave.

Group insurance benefits coverage, and the City's contribution to those benefits, shall continue for employees on industrial disability leave until the point of termination of employment or twelve (12) months, whichever is earlier.

Dependent coverage will continue if the employee elects to maintain such coverage and contributes the amount he/she normally would contribute were he/she on the payroll.

9.8.3 Group Insurance Coverage - Non-Industrial Medical Leave Without Pay.

Group insurance benefits coverage, and the City's contribution to those benefits, shall be afforded to employees on approved medical leave without pay for a maximum period of six (6) months of such leave. During this period the City will pay its share of dependent group insurance premiums, if the employee elects to maintain such coverage and contributes from his/her own funds the amount he/she normally would contribute were he/she on the payroll.

9.8.4 Group Insurance Coverage - Personal Non-medical Leave Without Pay.

Group insurance benefits coverage, and the City's contribution to those benefits, shall be afforded to employees on approved non-medical leave without pay for a maximum period of three (3) months of such leave. During this period the City will pay its share of dependent group insurance premiums, if the employee elects to maintain such coverage and contributes from his/her own fund the amount he/she normally would contribute were he/she on the payroll.

9.8.5 Retiree Group Insurance Coverage.

Group insurance benefits shall be afforded to retirees, whose age plus years of service with P.E.R.S. equal the number sixty-five (65). Eligibility for such coverage shall be to age sixty-five (65). Such retirees shall pay all premiums and any increases thereto; payments shall be made to the City of Vista, at minimum, on a monthly basis. If annual claim reports indicate a disproportionate amount of claims for this class of employee, a surcharge may be assessed to the Retiree Employee Premium.

9.9 Regular Part-time Employee Benefits.

Accrued benefits of sick leave, vacation and holiday pay shall be earned by regular part-time employees based upon the number of hours worked to earn the benefit. For example, a person working $\frac{3}{4}$ time (30 hours per week) would earn three-quarters ($\frac{3}{4}$) of the amount of vacation, sick leave and holiday pay earned by a full-time employee. Regular part-time employees are provided group health insurance as set forth in the appropriate Memorandum of Understanding or unilaterally implemented by City Council. Regular part-time employees must be enrolled in the Public Employees' Retirement System.

9.10 Applicability of Benefits.

The provisions of this Rule apply to Management and confidential employees except as otherwise stated in the Management and Confidential Employees Compensation Plan.

RULE 10.0 - RETIREMENT

10.1 Retirement System.

Employees of the City shall be retired from City service pursuant to and in accordance with the provisions of the Public Employees' Retirement Law. The City Manager, or his/her designee, is authorized to execute all necessary and appropriate documents to accomplish retirement of employees.

10.2 Findings and Determinations.

The City Manager, or his/her designee, is further authorized to make such findings and determinations on behalf of and in the name of the City pursuant to disability retirements of public safety employees of the City. These findings and determinations include, but are not limited to, the existence of a disability which prevents the employee from substantially performing the duties of his/her job, whether or not such

disability is industrial within the meaning of the law, and other such determinations as may be required by the Public Employees' Retirement System. Such determinations and decisions made by the City Manager shall be based on such medical reports and other evidence he/she may consider relevant and probative, and his/her decision shall be final, with a copy of the written findings given to the employee.

10.3 Administrative Hearing.

If, within five (5) days of receiving the written findings of the City Manager, the employee so requests in writing, the City Manager shall hear the case of a public safety employee, whose application for industrial disability has been denied, in an informal, administrative hearing. At such hearing, the employee may submit such information in support of his/her contention that the application for retirement should be approved. The City Manager shall consider such information and render a decision to the employee in writing, within five (5) days of the administrative hearing. Time limits specified in this Rule may be extended by mutual agreement between the City and the employee.

RULE 11.0 - CLASSIFICATION AND COMPENSATION

11.1 Preparation of Classification Plan.

All authorized positions in the City service shall be grouped into classes established by Resolution of the City Council. Each class shall include those positions sufficiently similar in duties and responsibilities to require similar standards of education, experience, abilities and personal traits. The Personnel Officer shall be responsible for preparing and maintaining class specifications for all positions. The specifications shall include, but not be limited to, a list of typical duties and a statement of the minimum qualifications required for appointment. All class specifications shall describe duties which employees occupying positions in the class may properly be required to perform. Class specifications are explanatory, but not restrictive. The listing of particular tasks shall not preclude the assignment of others of related kind or character or requiring lesser skills.

11.2 Administration and Maintenance of Classification Plan.

The Personnel Officer shall be responsible for the administration and maintenance of the Classification Plan. A review of the existing Classification Plan to ensure that it is effectively maintained and that it reflects any significant changes in duties and responsibilities of positions shall be conducted from time to time. Such a review may involve only selected classes or the entire Classification Plan.

Reclassification of a position may be made at any time. An employee in a position which is reclassified may be required to qualify through an examination to retain a position that is reclassified to a higher level position unless it is determined in the reclassification study by the Personnel Officer that the incumbent is currently performing a substantial amount of the new duties and responsibilities of the reclassified position and that performance is deemed satisfactory by the appointing authority.

11.3 Pay Plan Structure.

The basic pay plan for all classifications in the competitive service shall consist of monthly salary ranges. Each step in the range shall be approximately five (5%) percent greater than its predecessor up to a maximum salary in the range.

Each classification shall be assigned to a pay range by Resolution of the City Council. Amendments to the pay plan shall be prepared by the Personnel Officer and submitted to the City Council for their approval.

11.4

Advancement Through the Pay Plan.

New employees shall be appointed at the first step of the salary range to which their class is assigned except as follows:

When it appears that the education and previous training or experience of a proposed employee are substantially superior to those required of the class and justify a beginning salary in excess of such minimum compensation, upon recommendation of the Department Director, the City Manager may authorize an appointment to a position at any higher step. Such Department Director shall submit his/her recommendation to the City Manager, together with such information as the City Manager may require.

Upon recommendation of the Department Director, initial employment at a salary step other than entry level may be authorized by the City Manager when a particularly difficult recruiting problem for a class is found to exist.

Normally, and as a general rule, employees may be considered eligible for an increase in salary according to the following plan, unless otherwise provided in these rules or an existing Memorandum of Understanding.

The numbers 1, 2, 3, 4, and 5, respectively, denote the various steps in the pay range.

Salary Step 2 may be paid after six (6) months at Salary Step 1 where the employee has demonstrated satisfactory job progress and normally increasing productivity and upon recommendation of the Department Director and approval of the City Manager.

Salary Step 3 will be paid upon completion of one (1) year of employment in Salary Step 2 where the employee has demonstrated satisfactory job progress and productivity and upon recommendation of the Department Director and approval of the City Manager.

Salary Step 4 will be paid upon completion of one (1) year of employment in Salary Step 3 where the employee has demonstrated satisfactory job progress and productivity and upon recommendation of the Department Director and approval of the City Manager.

Salary Step 5 will be paid upon completion of one (1) year of employment in Salary Step 4 where the employee has demonstrated satisfactory job progress and productivity and upon recommendation of the Department Director and approval of the City Manager.

Salary steps are not automatic. Each change in salary must be accompanied by a written performance review as provided in Rule 6.0 in which the Department Director recommends advancement.

11.4.1 Withholding of a Step Increase.

Step increases may be withheld in the event that an employee's performance, as viewed by the Department Director, has been less than satisfactory. The denial of a step increase shall be in writing and shall be discussed with the employee along with the areas of his/her performance which need improvement and a time limit for the next review of performance.

If at the end of the time period, or anytime prior, the employee's performance is determined to be acceptable and satisfactory, the step increase may be granted upon the recommendation of the Department Director. The effective date of that step increase shall then become the employee's new salary anniversary date.

11.4.2 Annual Review After Granting of Step 5.

After the employee has reached the top of his/her salary range, he/she shall continue to be evaluated on an annual basis, however, no further step increases shall be granted unless the City Manager, upon Department Director recommendation, grants a special merit increase as described in Rule 11.4.4.

11.4.3 Effective Dates of Increases.

For the purpose of administrative convenience, all annual merit increases, granted as provided above, shall take effect on the first day of the pay period in which an employee's anniversary date occurs.

11.4.4 Special Merit Increases.

Upon the recommendation of the Department Director and the approval of the City Manager, an employee may receive a special merit increase. Such special merit increases are to provide recognition for truly exceptional performance beyond the normal expectations of the position. It shall not be necessary to prepare an employee performance evaluation, instead, the Personnel Officer shall prescribe the forms to be used in justification of a recommendation for special merit increases.

Employees who are below the top step in the range may be eligible for an early advancement of a step increase. The granting of a special merit increase shall change the employee's anniversary date.

Employees who are at the top step of their range may be eligible for performance pay above the top of the range, subject to approval by the City Manager. In such cases, the recommending Department Director shall state the term of the special merit increase for final approval by the City Manager. The duration of the special merit pay shall be for no longer than six (6) months unless extended by the City Manager.

Removal of the bonus pay shall not be deemed disciplinary action unless the removal is directly connected to a transgression committed by the employee receiving the bonus.

11.5 Compensation - Probationary/Regular Part-Time Employees.

Probationary/Regular part-time employees shall be paid the hourly equivalent of the monthly salary paid to a full-time employee in the classification to which they are assigned. They shall move through the steps in their range when they have completed the number of hours equivalent to full-time employment in each step.

11.6 Compensation - Temporary Employees.

Temporary employees shall be paid an hourly rate established by the appointing authority as appropriate for the work to be performed and within the budgeted amounts in temporary employee salaries.

11.7 Compensation on Promotion.

Any employee who is promoted to a position in a class with a higher salary range shall be placed on the step in the new higher range which is at least equal to an advancement of a full step over the step he/she held in his/her former range in the basic salary schedule. An employee thus promoted is assigned to a new salary anniversary date effective on the date of promotion. An employee who, on his/her salary anniversary date, is promoted to a class with a higher salary range shall first receive any within range increase to which he/she is entitled, and then the higher step as provided in this section unless the advancement is by flexible staffing provisions. In the case of a flexible staffing advancement to a higher

classification, the employee's compensation shall be set at the step in the range of the higher classification that is equal to a one step increase overall.

11.7.1 Compensation on Promotion - Eligibility for Step Increases.

Any employee, who upon receipt of a promotion, is placed on step 2, 3 or 4 of the new range, shall be eligible for a salary review and merit increase at six (6) months after the effective date of the promotion only if the promotion increase amounts to between five percent (5%) and six-and-nine-tenths percent (6.9%) over the employee's salary prior to the promotion.

11.7.2 Compensation on Promotion - Public Safety.

Any Public Safety Employee as defined in Personnel Rule 13.2.5, who upon receipt of a promotion is placed on step 2, 3 or 4 of the new salary range, shall be eligible for a merit review and merit salary increase at six (6) months after the effective date of the promotion.

11.8 Compensation on Demotion.

Any employee who is demoted to a position in a class with a lower salary range shall have his/her salary reduced to the salary step in the range for the lower class as provided below:

If a disciplinary demotion occurs, the employee is demoted to any designated salary step in the lower range which is at least one (1) step less than that received in the salary range for the class from which the employee was demoted. A new anniversary date shall be established on the basis of the demotion. If a non-disciplinary demotion occurs, the employee is demoted to that salary in the dollar amount he/she would have received in that lower class if his/her services had been continuous in said lower class. He/she shall retain his/her current anniversary date.

11.9 Compensation on Reinstatement.

An employee, who resigned in good standing may, within two (2) years of such resignation and upon recommendation of the appointing authority, be reinstated without examination to a position in the class in which he/she previously had served. Upon such reinstatement, he/she shall receive not more than the step in the salary range he/she previously received prior to his/her separation and his/her anniversary date shall be based upon the date of reinstatement.

11.10 Compensation on Transfer.

Any employee who is transferred from one position to another position in the same class, or to another position in a class having the same salary range, shall be compensated at the same step in the salary range as he/she previously received and his/her salary anniversary date shall not change.

11.11 Compensation on Change in Range Assignment.

Whenever a class is reassigned to either a higher or lower salary range by Resolution of the City Council, the salary step of each incumbent in such class, on the date the reassignment is effective, shall be adjusted to the salary step in the new range that corresponds to the salary step he/she was receiving in the former range and he/she shall retain the same salary anniversary date. When a salary range reassignment becomes effective on the same date as an employee's salary anniversary date, he/she shall first receive any within range increase to which he/she is entitled and then receive the corresponding step adjustment.

11.12 Compensation on Position Reclassification.

The salary of an employee in a position that is reclassified shall be determined as follows:

If the position is reclassified to a class with the same salary range as the previous class and if the incumbent is appointed to the reclassified position, the salary range and the salary anniversary date of the employee shall not change. This provision shall also apply to a change of class title. If the position is reclassified to a class with a higher salary range than the previous class, and if the incumbent is appointed to the reclassified position, the salary of such employee shall be governed by Rule 11.7.

If the position is reclassified to a class with a lower salary range than the previous class, and if the incumbent is appointed to the reclassified position, his/her salary shall not change. If his/her salary is greater than the maximum salary step of the lower salary range, his/her salary shall be "Y" rated until such time as any general increase, inequity adjustment, or other salary increase brings the employee's monthly rate within the limits of the new range. The employee's salary anniversary date shall not change and he/she shall not be required to serve a new probationary period.

11.13 Compensation Upon Reclassification of Entry-Level Positions Due to Flexible-Staffing. (See applicable MOU for VCEA, VCMA and MCP)

The salary of an employee whose position is reclassified due to flexible staffing, pursuant to the provisions of this rule, shall be determined as follows: After the employee's successful completion of the length of service time as outlined in the applicable MOU or MCP with satisfactory evaluations and with the appointing authority's approval, in lieu of a merit step increase, the employee shall be moved to the lowest step of the agreed-upon higher position which grants the employee no less than a five percent (5%) increase in compensation. The employee's salary anniversary date shall not change and he/she shall not be required to serve a new probationary period.

11.14 Compensation For Acting Appointment. (See applicable MOU for VCEA, VCMA and VFFA)

The City will pay any employee, except sworn personnel in the Fire Department, appointed to and required to perform the duties of a higher classification than his/her own, and serving continuously in said higher classification for at least one-hundred sixty (160) hours, the salary rate established for said higher classification for all such time worked in excess of the initial one-hundred sixty (160) hours. The rate of pay shall be at the lowest step established for said higher classification that results in additional compensation for the acting employee.

The total time during which an employee is compensated for acting in a higher classification may not exceed two-hundred (200) hours in a three (3) month period without notification to the recognized employee organization. Nothing in this section shall limit a supervisor's ability to make emergency assignments. The time worked in a higher classification may be considered as qualifying experience for future examinations and promotions.

11.15 Jury Duty Compensation.

Every employee of the City who is called or required to serve as a trial juror shall be entitled to be absent from duties with the City during the period of such service or while necessarily being present in the court as a result of such call. No deductions shall be made from the salary of an employee while on jury duty if he/she has waived or remitted to the City the fee for jury duty. If he/she has not so waived, or remitted the jury fee, he/she shall be paid only for the time actually worked in his/her regular position. An employee accepted for jury duty shall immediately notify his/her Department Director in writing whether or not he/she waives or remits jury fee to the City and the date on which jury duty is scheduled to begin.

Any employee who is released from jury duty with three (3) hours or more remaining in his/her work day shall report back to work.

11.16 Overtime - General Employees.

11.16.1 Compensation.

Employees eligible for overtime who are assigned to work in excess of forty (40) hours in their designated work period shall be compensated at a rate of one-and-one-half (1-1/2) times his/her regular rate of pay. Employees may request and be authorized, if operations permit, to take compensatory time off in lieu of cash at the rate of time-and- one-half. The employee's request to use compensatory time must be granted unless to do so would be unduly disruptive to departmental operations. Such requests shall not be denied for mere inconvenience to the department.

11.16.2 Assignment.

Overtime may be assigned by the immediate supervisor. Effort will be made to assign overtime on an equitable basis among those in the department qualified to perform the overtime work.

11.16.3 Scheduling.

Overtime will be scheduled in advance if possible. In the event that the employee presents the supervisor with a valid reason for his/her inability to perform the overtime work at the time requested, the supervisor will make every effort to find another qualified employee to do the work.

11.17 Record of Overtime Worked.

Departments shall be responsible for making accurate reports of all overtime worked by their employees to the Finance Department who shall be responsible for the official overtime records of the City.

RULE 12 - ATTENDANCE AND LEAVES

12.1 Attendance.

Employees shall be in attendance at their work in accordance with the rules regarding hours of work, holidays and leaves. All departments shall keep daily attendance records of employees which shall be reported to the Finance Office in the specified form and on the specified dates.

12.1.1 Unauthorized Leave of Absence Without Pay.

Failure on the part of an employee to return to duty from any authorized leave or to report to duty as scheduled or ordered shall be an unauthorized leave of absence without pay. Failure to return or report to duty within twenty-four (24) hours after notice to return shall be cause for discharge. The applicable procedures set forth in the VCMA, VCEA and VFFA Memoranda of Understanding shall be followed in the event of disciplinary action. Notice to return to work shall have been made when the employee receives direct verbal notice to return to work from an authorized employee or when a written notice is personally delivered to the employee or when written notice with return receipt requested by Certified Mail, addressed to the employee's last known place of address, has been deposited in the United States Mail.

12.1.2 Current Address Records.

It shall be the responsibility of the employee to provide the Human Resources and Payroll offices with his/her most current mailing address.

12.2 Hours of Work.

Daily hours of work (or shifts) for employees shall be assigned by Department Directors as necessary to meet the operational requirements of said departments and in accordance with any existing Memoranda of Understanding. No authorization may be made for an employee to work less than the full scheduled work week or shift without direct proportionate decrease in compensation.

Any foreseeable absence or deviation from regular working hours shall be documented in advance on an action form prescribed by the Personnel Officer and such absence shall be noted on the employee's time sheet.

For purposes of computing vacation and sick leave accrual pursuant to these rules, hours worked for 40-hour employees total two-thousand eighty (2,080) hours per year and for 24-hour shift employees total two-thousand nine-hundred twelve (2,912) hours per year.

12.3 Eligibility for Leaves.

For the purpose of computing entitlement to leaves for illness and vacation, an employee's continuous service shall be based on the effective date on which he/she received initial probationary appointment in the City service. Actual use of accrued sick leave and vacation leave shall be regulated by the Personnel Rules governing use of such leaves.

12.4 Authorized Leave of Absence Without Pay.

Upon the written recommendation of the Department Director, the City Manager may grant a regular or probationary employee a leave of absence without pay for a period of time not to exceed three (3) months (90 calendar days). After three (3) months (90 calendar days), the leave of absence may be extended if authorized by the City Manager.

The request for leave of absence without pay must be in writing, signed by the employee and must set forth the reason for the request and the effective dates requested. The approval will also be in writing.

Failure on the part of the employee to return from such authorized leave promptly at its expiration date shall subject the employee to all provisions of Rule 12.1.1.

Authorized leaves of absence without pay shall only be approved in those cases where the employee can demonstrate a pressing need for such leave. Except for State Disability Insurance (S.D.I.) Leave, an authorized leave of absence will only be approved when all appropriate accrued sick leave, vacation leave, floating holiday or compensatory time off to cover the absence is not available. Employees on State Disability Insurance (S.D.I.) or long term disability (ltd) may maintain accrued leave balances in accordance with their respective Memorandum of Understanding.

12.4.1 Effect of Leave of Absence Without Pay.

Any leave of absence without pay which exceeds fourteen (14) calendar days shall result in a new salary anniversary date for the employee. Such date shall be based on his/her original salary date plus the number of calendar days of his/her leave in excess of fourteen (14) days. While on leave of absence without pay, no payroll deductions can be made. Therefore, the employee may choose to continue those payments by his/her personal payment of said deductions, in accordance with procedures prescribed by the City's payroll office.

12.5 Family and Medical Leave Policy.

In accordance with the Federal Family and Medical Leave Act and the California Family Rights Act, the City will grant family and medical leave to eligible employees for up to twelve (12) weeks per 12-month period for any one or more of the following reasons:

- A. The birth of a child and in order to care for such child or the placement of a child with the employee for adoption or foster care and to care for the newly placed child (leave for this reason must be taken within the 12-month period following the child's birth or placement with the employee); or
- B. In order to care for an immediate family member (spouse, registered domestic partner, child, parent, grandparent, grandchild, or sibling) of the employee, or a designated person, if such immediate family member, or designated person, has a serious health condition; or
- C. The employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of his/her position.
- D. A qualifying exigency arising out of the fact that an employee's family member (spouse, son, daughter or parent) is on covered active duty or call to active duty status; or
- E. Leave to care for a family member (spouse, son, daughter, parent or "next of kin") who is a covered service member of the United States Armed forces who has incurred a serious injury or illness in the line of duty, while on active military duty. This leave, only, may run up to 26 weeks during a single 12-month period.

Where FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.

12.5.1 Definitions.

- A. "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. Note: An employee is entitled to take leave for a disability on account of pregnancy, childbirth, or related medical conditions beyond the twelve (12) workweeks in a 12-month period; however, such leave beyond the twelve (12) workweeks is pursuant to the California Pregnancy Leave provision under Government Code section 12945 and shall not constitute family and medical leave.
- B. "Spouse" - includes registered domestic partners. If both spouses work for the City, their total leave in any 12-month period may be limited to an aggregate of twelve (12) weeks if the leave is taken for either the birth or placement for adoption or foster care of a child or to care for a sick parent. If their leave is taken to care for a covered servicemember, the total leave in any 12-month period may be limited to 26 workweeks.
- C. "Child" - means a child either under eighteen (18) years of age, or eighteen (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.

- D. "Son" or "Daughter" - as applies to qualifying exigency leave and military caregiver leave, means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty status, and who is of any age.
- E. "Parent" – means the biological, adoptive, step or foster parent of an employee, or an individual who stands/stood in loco parentis to an employee when the employee was a child.
- F. "Designated Person" – means any individual related by blood or whose association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave. An employee is limited to one designated person per 12-month period for family care and medical leave.
- G. "Serious Health Condition" - means an illness, injury, impairment, or a physical or mental condition that involves:
 - 1. 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
 - 2. Continuing treatment by a health care provider for a serious health condition involving continuing treatment by a health care provider and includes any one or more of the following:
 - a) Any period of incapacity due to a serious health condition requiring absence from work for more than three (3) full consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - i) Treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist by a health care provider, by a nurse, or by a provider of health services under orders of, or on referral by a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity; or
 - ii) Treatment by a health care provider on at least one occasion which must take place within seven days of the first day of incapacity and 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.

b) Any period of incapacity due to pregnancy or for prenatal care. This entitles the employee to FMLA leave, but not CFRA leave.

c) Any period of incapacity or treatment for such incapacity due to a serious, long-term or chronic condition or disability. A chronic health condition is one which:

i) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse;

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

iii) 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.

d) 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 not necessarily being actively treated by, a health care provider.

e) 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 (3) full consecutive calendar days in the absence of medical intervention or treatment.

- H. “Covered Active Duty” – pertains to either a member of a regular component of the Armed Forces, duty during the deployment of the member to a foreign country, or a member of a reserved component of the Armed Forces, duty during the deployment to a foreign country under a call or order to active duty under specified provisions.
- I. “Covered Servicemember” – means either (1) a current member of the Armed Forces, including National Guard or Reserves, undergoing medical treatment, recuperation, or therapy for a serious injury, is otherwise in outpatient status, or is otherwise on the temporary disability retired list; or (2) a veteran undergoing medical treatment, recuperation, or therapy, for a serious injury or illness who was a member of the Armed Forces (including National Guard or Reserves) at any time during the period of five years preceding the date s/he undergoes that treatment.
- J. “Outpatient Status” – means either (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of Armed Forces’ members receiving medical care as outpatients.

- K. “Next of Kin of a Covered Servicemember” – means the nearest blood relative other than the servicemember’s spouse, parent, son or daughter.

- L. “Serious Injury or Illness” – in the case of a member of the Armed Forces, including the National Guard or Reserves, means an injury or illness that was incurred while in the line of duty while on active duty that may render the member medically unfit to perform the duties at their office, grade, rank, or rating; or in the case of a veteran who was a member of the Armed Forces (including the National Guard or Reserves), an injury or illness that was incurred or aggravated by the member in the line of duty while on active duty and manifested itself before or after the member became a veteran and is:
 - (1) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember’s office, grade, rank, or rating; or

 - (2) A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or

 - (3) A physical or mental condition that substantially impairs the veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or

 - (4) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

- M. “Qualifying Exigency” – means short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, parental care, and additional activities.

12.5.2 Coverage and Eligibility.

- A. To be eligible for family/medical leave an employee must:
 - 1. Have worked for the City for at least twelve (12) months; being on payroll for any part of a week counts as a week of employment including any periods of paid or unpaid leave during which other benefits or compensation are provided by the City workers' compensation, group health plan benefits, etc.; and

 - 2. Have worked at least twelve-hundred fifty (1250) hours over the twelve (12) month period immediately preceding the commencement of the leave.

12.5.3 Intermittent or Reduced Leave.

- A. An employee may take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule where “medically necessary” to care for an immediate family member with a serious health condition or because of the employee’s own serious health condition or because of serious injury or illness of a family member who is a “covered service member.” A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe morning sickness.
 - 1. "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.
 - 2. The employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave when the leave is planned based on scheduled medical treatment.
- B. An employee may take leave intermittently or on a reduced leave schedule for birth or placement for adoption or foster care of a child only with the Department Director’s consent.
- C. For part-time employees and those who work variable hours, the family and medical leave entitlement is calculated on a pro rata basis. A weekly average of the hours worked over the twelve (12) weeks prior to the beginning of the leave should be used for calculating the employee's normal workweek.

12.5.4 Use of Paid Vacation Time and Compensatory Time.

- A. An employee will be required to use accrued paid vacation time for any part of a family/medical leave taken for any reason.
- B. When an employee has used accrued paid vacation time and compensatory time for a portion of family/medical leave, the employee may request an additional period of unpaid leave to be granted so that the total of paid and unpaid leave provided equals twelve (12) weeks, or twenty-six (26) weeks in cases involving care of a “covered servicemember.”

12.5.5 Use of Sick Leave.

An employee may use paid sick leave for all or part of any (otherwise) unpaid Family and Medical leave needed to care for a family member in accordance with any other City policy that would normally allow the use of sick leave to care for an immediate family member. An employee is required to use accrued sick leave for his/her own serious health condition.

12.5.6 Notice Requirement.

- A. An employee is required to give thirty (30) days notice in the event of a foreseeable leave. A "Request for Family/Medical Leave" form should be completed by the employee and returned to the appointing authority. In unexpected or unforeseeable situations, an employee should provide as much notice as is practicable, usually verbal notice within one (1) or two (2) business days of when the need for leave becomes known, followed by a completed "Request for Family/Medical Leave" form.

- B. If an employee fails to give thirty (30) days notice for a foreseeable leave with no reasonable excuse for the delay, the leave will be delayed until thirty (30) days after the employee provides notice.
- C. The City Manager shall be notified by the appointing authority of a leave exceeding thirty (30) calendar days.

12.5.7 Certification.

For leaves taken because of the employee's or a covered family member's serious health condition, the employee must submit a completed "Certification of Health Care Provider" form and return the certification to the appointing authority. Medical certification must be provided by the employee within fifteen (15) days after requested, or as soon as is reasonably possible.

Employees who request leave to care for a covered servicemember who is a son, daughter, spouse, parent, or "next of kin" of the employee must provide written certification from a health care provider regarding the injured servicemember's serious injury or illness. If leave is requested because of a qualifying exigency, an employee shall provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on covered active duty or call to active duty status in a foreign country and the dates of active duty service. New active duty orders shall be provided if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or different covered military member.

- A. The appointing authority may require a second or third opinion (at City expense), periodic reports on the employee's status and intent to return to work, and a fitness-for-duty report to return to work.
- B. All documentation related to the employee's or family member's medical condition will be held in strict confidence and maintained in the employee's medical records file.
- C. Failure to provide certification within a reasonable time under the pertinent circumstances may result in the City delaying the employee's continuation of leave. If the employee never produces the certification, the leave is not family and medical leave.
- D. A health care provider representing the City may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical certification.
- E. A health care provider representing the City may contact the employee's health care provider with the employee's permission, for purposes of clarification of the employees' fitness to return to work. No additional information may be acquired, and clarification may be requested only for the serious health condition for which the family and medical leave was taken. The City may not delay the employee's return to work while contact with the health care provider is being made.

12.5.8 Effect on Benefits.

- A. An employee granted a leave under this policy will continue to be covered under the employee's existing group health insurance plan, life insurance plan and long-term disability plan under the same conditions as coverage would have been provided if he/she had been continuously employed during the leave period.
- B. Employee contributions will be required either through payroll deduction or by direct payment to the City. The employee will be advised in writing at the beginning of the leave period as to the amount and method of payment. Employee contribution amounts are subject to any change in rates that occurs while the employee is on leave.
- C. If an employee's contribution is more than thirty (30) days late, the City may terminate the employee's insurance coverage.
- D. If the City pays the employee contributions missed by the employee while on leave, the employee will be required to reimburse the Employer for delinquent payments (on a payroll deduction schedule) upon return from leave. The employee will be required to sign a written statement at the beginning of the leave period authorizing the payroll deduction for delinquent payments.
- E. If the employee fails to return from unpaid family/medical leave for reasons other than (1) the continuation, recurrence, or onset of a serious health condition of the employee or a covered family member, or (2) circumstances beyond the employee's control (certification required within thirty (30) days of failure to return for either reason), the City may seek reimbursement from the employee for the portion of the premiums paid by the City on behalf of that employee (also known as the employer contribution) during the period of leave. An employee who transfers directly from taking family leave to retirement, or who retires during the first thirty (30) days after the employee returns to work, is deemed to have returned to work.
- F. An employee is not entitled to seniority or benefit accrual during periods of unpaid leave but will not lose anything accrued prior to leave.

12.5.9 Job Protection.

- A. If the employee returns to work within twelve (12) weeks following a family/medical leave, he/she will be reinstated to his/her former position or an equivalent position with equivalent pay, benefits, status and authority.
- B. The employee's restoration rights are the same as they would have been had the employee not been on leave. Thus, if the employee's position would have been eliminated or the employee would have been terminated but for the leave, the employee would not have the right to be reinstated upon return from leave.
- C. If the employee fails to return within twelve (12) weeks following a family/medical leave, the employee will be reinstated to his/her same or similar position, only if available, in accordance with applicable laws. If the employee's same or similar position is not available, the employee may be terminated.

- d. 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 worksite) 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 City determines that such injury would occur.

12.6 Military Leave.

Military leave shall be granted in accordance with the provisions of State and Federal Law. All employees entitled to military leave shall give the appointing authority written notice of the dates of such leave and shall provide a copy of the documents ordering such military service.

12.7 Industrial Disability.

12.7.1 Industrial Disability Leave.

The City shall provide Workers' Compensation benefits for all employees as required by State Law.

An employee absent from work as a result of injury or illness covered by Workers' Compensation shall utilize sick leave for the first three (3) calendar days of industrial disability leave. Beginning on the fourth calendar day of absence from work for industrial disability leave, the employee shall be paid accrued sick leave to supplement any due temporary disability benefits up to an amount which results in the employee receiving his/her usual gross salary. If the employee has not accrued sick leave or if the employee depletes his/her sick leave accrual during the industrial disability leave period, the employee shall be given the option of utilizing his/her accrued vacation and/or compensatory time to supplement any due temporary disability benefits or shall be placed on industrial disability leave without pay. During a period of industrial disability leave without pay, any due temporary disability payments will be made directly to the employee from the City or from the City's adjusting firm and no City payroll check will be issued to the employee. During this period, all payroll deductions will be suspended; retirement contributions by the City will also be suspended. The City will pay its share of employee and dependent group insurance premiums.

12.7.2 Industrial Disability Compensation Procedures - Public Safety Employees.

The City shall provide Workers' Compensation benefits for all public safety employees as required by applicable State Law.

12.7.3 Documentation of Industrial Disability Leave.

All City employees who lose time from work as a result of injury or illness covered by Workers' Compensation shall receive a medical examination and, when required, treatment. The City Personnel Officer may approve industrial leave without medical examination on the day of injury. Medical treatment documentation forms prescribed by the City Personnel Officer shall be returned to the City whenever an employee loses time from work as a result of an industrial disability injury or illness.

12.7.4 Termination for Medical Reasons.

If any employee is determined, through review of medical evidence, to be physically or psychologically disabled to perform the duties of his/her position due to industrial

injury/illness, the employee may be terminated for inability to perform the duties of his/her position. Such termination may occur after twelve (12) months of cumulative industrial disability leave or earlier if the medical evidence indicates that the disabling medical/psychological condition is permanent and stationary. Pursuant to Rule 3.14, the City will make such efforts to place the disabled employee in such a position where his/her disability will not affect the performance of duties or endanger him/herself or others. Termination for reasons of medical or psychological disability shall be preceded by written notification to the employee of the intent to terminate and citing the medical/psychological reasons for the termination. If, within ten (10) City Hall working days, the employee so requests, the Department Director shall provide an opportunity for the employee to respond to the psychological/medical findings in writing or orally and such response shall be considered before taking any action. A written decision shall be provided to the employee within ten (10) City Hall working days following receipt of the employee's response. The decision of the Department Director may be appealed to the City Manager or Hearing Officer pursuant to the procedures applicable for the appeal of a dismissal. The decision of the City Manager shall be final.

12.7.5 Designation of Personal Physician.

Pursuant to guidelines established in the Labor Code and Worker's Compensation Rules and Regulations, any employee may notify the City in writing of the name of his/her personal physician for treatment of Worker's Compensation injuries which may occur after the date of such notice.

12.8 Industrial Disability Leave - Public Safety Employees.

The City shall provide Workers' Compensation benefits for all employees as required by applicable State Law for public safety employees.

12.8.1 Sick Leave.

Sick leave shall not be used for industrial disability leave or upon receipt of an industrial disability retirement from the Public Employees' Retirement System in the case of public safety employees.

12.8.2 Termination for Medical Reasons.

If, after twelve (12) months of cumulative industrial disability leave, an employee is determined (through review of medical evidence) to be physically or psychologically disabled to perform the duties of his/her position due to industrial injury/illness, the employee may be terminated for inability to perform the duties of his/her position. Pursuant to Rule 3.14, the City will make such efforts to place the disabled employee in such a position where his/her disability will not affect the performance of duties or endanger him/herself or others.

Termination for reasons of medical or psychological disability shall be preceded by written notification to the employee of the intent to terminate and citing the medical/psychological reasons for termination. If within five (5) City Hall working days the employee so requests in writing, the City Manager, or his/her designee, shall provide an opportunity for the employee to respond to the psychological/medical findings in writing or orally and such response shall be considered by the City Manager or designee. A written decision shall be provided to the employee within ten (10) City Hall working days following receipt of the employee's response. The decision of the City Manager or his/her designee shall be final.

RULE 13.0 - EMPLOYER/EMPLOYEE RELATIONS

13.1 Purpose.

The purpose of this Rule is to implement Sections 3500 et. seq. of the Government Code of the State of California (also known as the Meyers-Millias-Brown Act, hereinafter referred to as the Act) by providing for the administration of employer/employee relations.

13.2 Definition

As used in this rule, the following words or phrases shall have the meanings as indicated:

- 13.2.1 City: Means the City of Vista, which is a public agency. Where appropriate herein, City Council refers to the City Council of the City of Vista.
- 13.2.2 Employee: Means any person employed in a full or part-time, regular position by the City except those persons elected by popular vote.
- 13.2.3 Confidential Employee: Means an employee who is so designated by resolution of the City Council and who, by the nature of his/her job duties and responsibilities, is privy to decisions made by City Management affecting employer/employee relations.
- 13.2.4 General Employee: Means those employees of the City who are in regular or probationary positions other than Management, Confidential or Public Safety employees.
- 13.2.5 Public Safety Employee: Means, for the purpose of this Rule, employees holding the following regular or probationary positions: Fire Captain, Fire Engineer, Firefighter, Firefighter/Paramedic, Fire Inspector, Supervising Fire Inspector and Senior Fire Inspector.
- 13.2.6 Management Employee: Means an employee in a position so designated by Resolution of the City Council.
- 13.2.7 Employee Organization: Means any organization which includes employees of the City as members and which has as one of its primary purposes the representation of such employees in their employment relations with the City.
- 13.2.8 Meet and Confer in Good Faith (sometimes referred to herein as "meet and confer" or "meeting and conferring"): Means the mutual obligation of the City and of recognized employee organizations to personally meet and to confer in order to freely exchange information, opinions and proposals and to endeavor to reach agreement on matters within the scope of representation.
- 13.2.9 Consultation: Means discussion and consideration of ideas and opinions.
- 13.2.10 Employer/Employee Relations Officer: Means the City's principal representative in all matters of employer/employee relations designated as such by the City Manager.
- 13.2.11 Recognized Employee Organization: Means an employee organization which has been formally acknowledged by the Employee Relations Officer, by procedures specified herein, as an employee organization that represents one of the designated employee groups for the purpose of representation.

13.2.12 Scope of Representation: Means all matters relating to employer/employee relations including, but not limited to, wages, hours and other terms and conditions of employment, except, however, that the scope of representation shall not include the merits, necessity or organization of any service or activity provided by the City. The scope of representation shall not include the matters set forth in Rule 13.4 hereunder as being within the Management rights of the City.

13.2.13 Days: Means "calendar days" unless otherwise stated.

13.3 Employee Rights

Employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer/employee relations including, but not limited to, wages, hours and other terms and conditions of employment. Employees of the City shall also have the right not to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the City. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against by the City or by an employee organization because of his/her exercise of these rights.

13.4 City Rights

Except as otherwise specifically provided in this Rule, or amendments or revisions hereto, and subject to the right of an affected employee, personally or through his/her authorized representative, to dispute the actual application and impact of City actions, and of a Recognized Organization to claim that the exercise thereof violates the express provisions of an existing Memorandum of Understanding between the City and said Organization, the City has and retains the sole and exclusive rights and functions of management, including, but not limited to, the following:

13.4.1 To determine the merits, necessity, nature or extent of services to be performed, as well as the right to determine and implement its public function and responsibility, and the mission of its constituent departments, commissions and boards: and to determine budgets and appropriations of funds and to set municipal fees and charges.

13.4.2 To decide upon and manage all facilities and operations carried on by or in behalf of the City, including the work locations, methods, means and personnel by which the City's functions are to be conducted.

13.4.3 To establish, modify and change working schedules and shifts, job content, methods, techniques, processes and standards and allot and assign work.

13.4.4 To control and determine the use and location of City's plants, facilities, property, material, machinery and equipment.

13.4.5 To determine and establish the size and composition of the working force, and to direct the working forces, including the right to hire, promote, demote, discharge or transfer any employee.

13.4.6 To determine and establish the layout, the machinery, the equipment and the materials to be used, and to introduce new, improved, adjusted or different methods of operations or to change existing methods.

- 13.4.7 To determine and establish the policy and procedure affecting the selection or training of new employees.
- 13.4.8 To establish, implement and use employee performance standards, including, but not limited to, quality and quantity appraisal standards, the frequency and criteria of employee performance appraisal, and the application and results of said appraisals.
- 13.4.9 To determine and establish measures to promote safety and to protect health and property.
- 13.4.10 To transfer work from one job to another or from one plant or unit to another.
- 13.4.11 To relieve employees from duty for lack of work, lack of funds or for other reasons deemed by management to be in the public interest.
- 13.4.12 To promote, grant pay increases and otherwise reward employees and to reprimand, suspend, discharge or otherwise discipline employees.
- 13.4.13 To establish and determine job classifications.
- 13.4.14 To contract for the performance of City services, construction, maintenance, distribution or any other work with outside public or private entities.
- 13.4.15 To take such other and further action as may be desirable or necessary to organize and operate the City in the most efficient and economical manner for the best interest of the public it serves.

13.5 Designation of Employee Groups for the Purpose of Representation

The City has studied the services performed by its employees, their working conditions, job duties and the necessity for the maintenance of efficient operations in conjunction with the requirement of establishing sound provisions for employee/employer relations. The City has concluded that the following employees groups for representation purposes are appropriate:

- A. Vista Firefighters' Association, representing fire safety employees and fire inspectors.
- B. Vista City Maintenance Employees, representing General maintenance employees of the City.
- C. Vista City Employees Association, representing all General employees other than those listed in "B" above and those employees covered under the Management Compensation Plan.

Requests for modification to the above employee groups for the purposes of representation may be submitted by a Recognized Employee Organization to the Employee Relations Officer for determination. New classifications shall be assigned to an employee group, as appropriate, by resolution of the City Council. The Employee Relations Officer shall advise the affected employee organization, if any, at least fourteen (14) calendar days prior to the City Council action. The affected employee organization may submit recommendations to the Employee Relations Officer within the fourteen (14) day notice period.

13.6 Petition for Recognition of an Employee Organization

An employee organization which desires to be formally accredited as a Recognized Employee Organization, representing employees in any one of the employee groups for representation purposes, shall submit to the Employee Relations Officer a written request for recognition containing the following information.

- 13.6.1 Name of the employee organization and its status (i.e. corporate or otherwise): and
- 13.6.2 Names and titles of each of the officers and directors of such employee organization: and
- 13.6.3 The names and addresses of the members of such employee organization who are designated to accept, for all purposes, written notice on behalf of such employee organization: and
- 13.6.4 A designation of the employee group for which such organization desires to represent: and
- 13.6.5 A statement that the employee organization has proof of employee support to establish that a majority of employees in the employee group for representation purposes desires to be represented by the employee organization. Such written proof shall be submitted concurrently with the request for recognition in the form of a signed petition, certified election results or other proof satisfactory to the Employee Relations Officer and shall be subject to confirmation by him/her.
- 13.6.6 A copy of the Constitution and/or By-Laws, or Articles of Incorporation or documentation of any other organizational existence, purposes and policies shall accompany the request. If a copy of the Constitution, By-Laws or Articles of Incorporation has been submitted in a request for recognition in the previous twelve (12) months, only the changes in such documents which have occurred since need be submitted.

After receiving acknowledgment of its status as a Recognized Employee Organization, as set forth in Rule 13.7, an employee organization's representative shall immediately advise the Employment Relations Officer of any change with reference to the information required by Rule 13.6.1 through 13.6.6 of this Rule.

13.7 Recognition Procedures

13.7.1 Qualification of Organization

The Employee Relations Officer shall formally acknowledge and certify an employee organization as a Recognized Employee Organization as to a designated employee group for the purpose of representation specified in the request, only if he/she finds:

- A. Such organization has complied with all of the requirements in Section 13.6 and 13.7 hereof; and
- B. More than fifty percent (50%) of the employees in the designated employee group for representation purposes have designated such organization as their choice for representation.

13.7.2 Recognition Limitation

Not more than one (1) employee organization shall be acknowledged as a Recognized Employee Organization for any one (1) designated employee group for purposes of representation at any one time. If two (2) or more employee organizations request recognition relating to the same designated employee group, each organization shall submit to the Employee Relations Officer, on forms to be prepared by him/her, a statement of choice of representative, signed by each regular employee/member, to be considered by the Employee Relations Officer, each such form shall be signed and dated by each employee within a period of thirty (30) days of its submission to the Employee Relations Officer.

Through this procedure, the Employee Relations Officer shall determine which organization represents more than fifty per cent (50%) of the employees in the designated employee group. If, in the opinion of the Employee Relations Officer, there still appears to be reasonable doubt of which employee organization represents more than fifty per cent (50%) of the employee-members of the employee group for representation purposes, he/she shall use such other methods as he/she deems appropriate. If, after an employee organization has been designated as a Recognized Employee Organization for a designated employee group, one or more additional employee organizations file an otherwise qualified request for recognition relating to the same designated employee group, the Employee Relations Officer shall take no action until the expiration or revocation of recognition of the employee organization which had been formerly recognized. Such determination shall thereupon be made as to the appropriate employee organization, if any, to be recognized in accordance with this Rule.

13.7.3 Dates

Requests for recognition shall be received only in January or February of any calendar year.

13.7.4 Revocation of Recognition

The status of an Employee organization as a Recognized Employee Organization shall be revoked or suspended only if the Employee Relations Officer finds:

- A. That the Recognized Employee Organization no longer complies with the provisions of Rule 13.7.1 relating to its qualifications; or
- B. That the Recognized Employee Organization or any of its officers, employees, agents, representatives, or other persons acting under color of authority thereof has interfered with, intimidated, restrained, coerced or discriminated against any public employee who is exercising, or who desires to exercise rights pursuant to the Act; or
- C. That the Employee Organization by its actions has interfered or encouraged, aided or assisted its represented employees to interfere with the normal operations and services of the City.

When it is alleged that grounds exist for the revocation of recognition as to a Recognized Employee Organization, the Employee Relations Officer shall set a time and place for hearing upon the issue of revocation and shall give at least seven (7) calendar days written notice thereof to the Recognized Employee Organization.

At the time set for such hearing, the Employee Relations Officer acting as the hearing officer, shall consider all relevant, competent evidence relating to such charge or charges, and based upon the evidence so presented, shall determine whether or not the recognized status of the organization should be revoked. The decision of the Employee Relations Officer shall be final and conclusive.

13.8 Meet and Confer Process

13.8.1 Designation of Representatives of Recognized Employee Organizations

Within not to exceed thirty (30) days after an employee organization is designated as a Recognized Employee Organization, pursuant to the provisions hereof, such organization shall, in writing, advise the Employee Relations Officer of the names, addresses and telephone numbers of not more than four (4) persons who will act as representatives of such organization for the meet and confer process. It shall be the responsibility of each Recognized Employee Organization to immediately advise the Employee Relations Officer of any change in such representation. The Employee Relations Officer or a designated representative shall be required to meet only with those persons currently designated as representatives from that organization.

13.8.2 Proposals

Only a Recognized Employee Organization, by and through its designated representatives, at any time subsequent to January 1 and prior to April 1 of any calendar year, may submit to the Employee Relations Officer a written proposal in such form as the Recognized Employee Organization deems appropriate, indicating the items and matters it wishes to submit for discussion in the meet and confer process as required pursuant to the provisions of said Act. Any Recognized Employee Organization which does not, with the time permitted therefore, submit such a written proposal shall be deemed, for all purposes, to have waived its right to engage in the meet and confer process during that calendar year, provided, however, that meet and confer sessions will be held at other times than specified herein upon mutual consent of the representatives of the City and the Recognized Employee Organizations; and the City will give a Recognized Employee Organization the opportunity to meet with it at other times regarding the effect of any proposed action of the City relating to matters within the scope of representation unless foreclosed by a Memorandum of Understanding then in force between the City and the Recognized Employee Organization.

13.8.3 Matters Subject to the Meet and Confer Process

The scope of representation shall include all matters relating to employment conditions and employer/employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of any service or activity provided by law or executive order, or the existence of those City rights indicated in Rule 13.4, or any subject pre-empted by applicable laws, nor any proposed amendments to this Rule.

13.8.4 Proposal Meeting

At such time as a Recognized Employee Organization submits a proposal, the Employee Relations Officer shall review the same, and within a maximum of thirty (30) days after April he/she shall establish a time and place for the commencement of the meet and confer process. He/she shall give at least twenty-four (24) hours written notice to the representatives of such organization of the time and place of such proposal meeting. Only

matters set forth in such proposals shall be discussed as a part of such meeting of the representatives of the City and the employee organization.

The notice provisions contained herein need not be observed where a proposal meeting is continued to another time and place by mutual consent of such representatives. Additional items may be added to an agenda upon the request of either party provided that such requests are made not less than twenty-four (24) hours in advance of a scheduled meeting, and only if such items are the proper subject matter of such meet and confer process.

Except as otherwise provided herein, attendance at such meetings shall be limited to not more than four (4) designated representatives of the Recognized Employee Organization submitting the proposal and three (3) or less representatives of the City.

13.8.5 Memorandum of Understanding

At the conclusion of the meet and confer process, if agreement is reached, the representatives of such Recognized Employee Organization and the Employee Relations Officer shall execute a memorandum of such understanding. The memorandum shall be transmitted to the City Council for its determination.

All Memoranda of Understanding acted upon by the City Council shall be implemented by appropriate amendments to the City's ordinances, resolutions, rules and regulations and administrative practices for which said memoranda provide.

13.8.6 Notices

Except as otherwise provided herein, notices required, pursuant to the provisions of this Rule or the Meyers-Millias-Brown Act, shall be given by United States mail, postage prepaid, addressed to the recipient at his/her last known address. In lieu of mailed notices required, personal delivery of such notices may be made in order to assure timely receipt thereof. Notice shall be deemed, for all purposes, to have been given upon physical delivery thereof, or upon its deposit in the custody of said postal service.

13.8.7 Designation of Ineligible Employees

Those employees designated as Management, or Confidential employees by Resolution of the City Council shall be ineligible to act as representatives of any Recognized Employee Organization.

13.8.8 Impasse Procedure

If the meet and confer process has reached impasse, either party may initiate the impasse procedure by filing with the other party a written request for an impasse meeting, together with a statement of its position on all issues. An impasse meeting shall then be scheduled promptly by the Employee Relations Officer. The purpose of such meeting shall be:

- A. To review the position of the parties in a final effort to reach agreement on a Memorandum of Understanding;
- B. To identify and specify in writing the issue(s) that remain(s) in dispute; and
- C. If the impasse is not resolved, to discuss the mutual selection of an impasse procedure.

In the absence of agreement between the parties on the selection of an impasse resolution procedure, the matter shall be referred to the City Council by the following procedure:

- A. The Recognized Employee Organization and the City Management Negotiating Team shall each file a statement of their respective positions in writing on all issues in contention with the City Clerk, the City Manager and the other party within ten (10) days of the impasse meeting.
- B. The City Manager shall cause the matter to be placed on the City Council agenda no sooner than ten (10) days after it has been filed with the City Clerk and no later than twenty (20) days after the impasse meeting.
- C. The City Council, after the statements of position have been filed or after the expiration of the date for filing such statements, shall take such action regarding the impasse as it, in its discretion, deems appropriate as in the public interest. Any legislative action by the City Council shall be final and binding.
- D. Nothing in this section shall prohibit a more expeditious resolution of the impasse if such is mutually agreed to by the parties or if, in the judgment of the City Council, public or operational necessity dictates immediate action.

The costs, if any, for the services of an impasse procedure utilized by the parties, and other mutually incurred costs of impasse resolution, shall be borne equally by the City and the Employee Organization.

13.9 Reasonable Time Off to Meet and Confer

The Recognized Employee Organizations of VCEA and VCMA may select not more than five (5) City employee members of such Employee Organization to attend scheduled meetings with the Employee Relations Officer or other Management officials on subjects within the scope of representation during regular work hours without loss of compensation. VFFA may select not more than three (3) City employee members.

13.10 Access to Work Locations (See VCEA MOU)

Reasonable access to employee work locations shall be granted officers of Recognized Employee Organization and their officially designated representatives provided that such access shall be restricted so as not to interfere with the normal operations of the department(s) or with established safety or security requirements, and provided further that such rights are subject to any provisions relating thereto contained in any applicable Memorandum of Understanding.

13.11 Violation of Act

Any officer or employee of the City who interferes, intimidates, restrains, coerces, or discriminates against any other City officer or employee with respect to the exercise of such officer's or employee's rights, pursuant to the Act, shall be subject to disciplinary action.

13.12 Administrative Rules

The Employee Relations Officer is hereby authorized and directed to prepare and issue, after reasonable consultation with any and all Recognized Employee Organizations, such supplementary rules as he/she deems appropriate relating to employer/employee relations which are not in conflict with the expressed provisions of this Rule.

13.13 Employee Activities

No City employee on behalf of an employee organization shall engage in any type of activity relating to an employee organization during such time as such employee is on duty, except as expressly provided in Rule 13.9, nor shall anyone use any City supplies or equipment in conjunction with any activity for any such employee organization, except as may be provided in the rules referred to in Rule 13.12 hereof.

Employee organizations may, with the prior approval of the Employee Relations Officer, be granted the use of City facilities for meetings of City employees provided space is available, and provided further that such meetings are not used for membership drives of City employees.

RULE 14.0 - GRIEVANCE PROCEDURES (See MOUs for VCEA, VCMA, and VFFA)

14.1 Grievance Defined

A grievance is a complaint of an employee or group of employees initiated on the employee(s) own behalf and arising out of the City's application or interpretation of existing City rules or practices or provisions of an existing Memorandum of Understanding, except in cases of disciplinary actions which are governed by Memorandum of Understanding or these rules.

14.2 Informal Grievance

An informal grievance is one which is discussed between the employee and his/her supervisor and is subsequently resolved, dropped or passed on to the formal grievance level.

14.3 Formal Grievance

A formal grievance is one which has been submitted in writing and which meets all of the following criteria:

- A. The grievance must arise out of and result in a complaint of an employee or employees relating to a working condition, violation of the Personnel Ordinance or Rules, or violation of a provision of an existing Memorandum of Understanding, except in instances where the right of appeal is prohibited by the Personnel Ordinance or Rules;
- B. The grievance must concern specific situations, matters or incidents that have occurred;
- C. The grievance must be within the power of the City Manager to correct;
- D. The grievance must not require the modification of any ordinance, rule or policy established by the City Council or law.

14.4 Grievances Initiated by Employee Only

A grievance shall be initiated and pursued only at the employee's request.

14.5 Time Spent in Grievance Procedure

Grievances may be heard during normal working hours.

An employee shall not be compensated for time spent in hearings outside of normal working hours.

14.6 Time Limits

Time limits specified in these procedures may be extended by mutual agreement between the City and the employee. Regularly scheduled days off shall not be counted when applying any of the time limits provided for in these procedures. For this purpose, vacation and sick leave are not considered regularly scheduled days off. Grievances that are not taken to the next step within the time limits will be considered resolved and the employee presumed to be satisfied.

14.7 Combining Grievances

Grievances involving a group of employees or one issue grieved by several employees may be handled as a single grievance.

14.8 No Reprisal

No reprisal shall ever be taken by the City against any employee by reason of his assertion of his/her rights under this Rule.

14.9 Informal Grievance Procedure

Whenever possible, every effort will be made to resolve an employee grievance at the informal level. The employee and his/her supervisor shall discuss the matter informally and shall attempt to resolve the problem together. The supervisor shall respond to the grievance orally within two (2) days of the original discussion.

14.10 Formal Grievance Procedure

Formal grievances which meet the criteria set forth in Rule 14.3 shall be submitted on the form prescribed by the Personnel Officer. The grievance form shall at least contain:

- A. The specific circumstances complained of;
- B. The inequity or damage suffered by the employee;
- C. The relief sought.

The employee may have representation of his/her choice and such representative(s) shall be named on the grievance form. The City may limit the number of representatives to one (1).

14.10.1 Formal (Written) Grievance

If the issue is not resolved to the satisfaction of the employee, the employee may present a written grievance to the supervisor within ten (10) days of the supervisor's oral decision or twenty (20) days of the incident giving rise to the grievance. The supervisor shall respond on the form and present it to his/her immediate superior (if any below the Department Director level) within two (2) days of receipt, and forward a copy of the formal grievance to the Personnel Office. The superior shall hear the grievance within ten (10) days of receipt and provide a written decision within ten (10) days after the hearing.

14.10.2 Grievance to Department Director

If the issue is not resolved, the employee may present his/her written grievance to the Department Director within ten (10) days of receiving the superior's written decision. The Department Director shall hear the formal grievance within ten (10) days of its receipt and shall render a decision in writing within ten (10) days of the hearing.

14.10.3 Grievance to the City Manager

If the issue is not resolved, the employee may present his/her written grievance to the City Manager, or his/her designee, within ten (10) days after receipt of the Department Director's decision. The City Manager, or his/her designee, shall hear the grievance within ten (10) days of its receipt and provide a written decision within ten (10) days of the of the hearing.

14.10.4 Grievance to the Personnel Officer (Applicable to VCEA Only)

A violation of the MOU may be grieved by the Association and shall be submitted to the Personnel Officer and then to the City Manager.

RULE 15.0 - CONSTRUCTION

Nothing in this Rule shall be construed to any person or employee the rights granted by Constitution, Federal or State Laws.

RULE 16.0 - CITY COUNCIL POWERS AND AUTHORITY

The rights, powers and authority of the City Council of the City of Vista in all matters, including the right to maintain any legal action, shall not be modified or restricted by this Rule.

RULE 17.0 - SEPARABILITY

If any provisions of this Rule or the application of such provisions to any person or circumstance, shall be held invalid, the remainder of the Rule, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

RULE 18.0 - GENERAL WORK RULES

18.1 Purpose and General Information

In order to maintain an orderly and safe place to work, the following work rules have been established. These rules are not meant to be exhaustive, but are a general outline of behavior or actions that are not acceptable for employees of the City of Vista. The rules are established to ensure that all employees are aware of these rules and are aware that documented, willful violation of these rules may result in disciplinary action.

Individual departments may have individual work rules and regulations specific to their own operation. These rules shall be maintained in writing, and shall be made available for all employees of the department and posted in a conspicuous location.

When City employees are in public, they represent the organization. Wearing a City uniform, badge or nametag, driving a City vehicle and/or distributing City business cards are all activities that spotlight the individual's connection to the City. Employees should be mindful of the higher profile that often comes with serving the public.

18.2 Responsibility for Communication of Rules

Supervisors have the primary responsibility of communicating and interpreting these rules. If employees have questions regarding the rules, the supervisor should be consulted for clarification.

18.3 Severity of Infraction

The nature of disciplinary action taken depends on the severity of the offense, the nature of the offense and the circumstances surrounding the offense. All of these must be considered by the supervisor when determining when and if disciplinary action should be taken.

18.4 General Work Rules

No employee shall engage in, encourage or assist in any of the following activities or behavior:

- 18.4.1 Any deliberate falsification or misrepresentation of information in connection with the preparation of City records, documents or correspondence including an application for employment.
- 18.4.2 Falsifying one's own time sheet or the time sheet of another employee.
- 18.4.3 Deliberately and knowingly disclosing information known to be confidential in nature.
- 18.4.4 Stealing, willful damage, willful abuse or willful destruction of City property or the property or equipment of another employee or the public.
- 18.4.5 Removing City property from City premises without authorization/permission.
- 18.4.6 Reckless driving or illegal operation of a City vehicle.
- 18.4.7 Unauthorized use of City property or City vehicles.
- 18.4.8 Repeated documented personal use of City telephones.
- 18.4.9 Possession or use of illegal drugs on City premises or while on duty.*
- 18.4.10 Unauthorized or illegal use of any firearms or unauthorized possession, conveyance or storage of explosives or other dangerous weapons on City premises.
- 18.4.11 Consumption of intoxicating beverages while on duty* or while in City uniform. Exceptions may be made in the event of a City-sponsored function at which such beverages may be served.
- 18.4.12 Being at work under the influence of intoxicants to the extent that it affects job performance or safety of oneself or others.
- 18.4.13 Indecent or morally offensive behavior while on duty*, which is in violation of State, County and/or Federal law.
- 18.4.14 Fighting, coercing, interfering with or threatening injury to other employees, the public or supervisors.
- 18.4.15 Careless, reckless or unsafe conduct, endangering the employee him/herself, fellow employees, the public or City or private property.
- 18.4.16 Discourteous treatment of the public, fellow employees or supervisors.

- 18.4.17 Unauthorized sleeping while on duty.*
- 18.4.18 Deliberately delaying or restricting services or work efforts or inciting others to do the same.
- 18.4.19 Selling, soliciting or distributing literature or goods on City premises and time without permission.
- 18.4.20 Posting unauthorized material on City bulletin boards or removing or defacing notices thereon without permission. City bulletin boards are considered to be those bulletin boards located on City premises in facilities furnished and maintained by the City.
- 18.4.21 Leaving regularly assigned work locations without supervisor's knowledge and permission except to take usual breaks and lunch periods or to perform assigned work duties.
- 18.4.22 Deliberate failure to observe scheduling rules regarding assigned work days, starting and quitting times, breaks and lunch periods established by a supervisor.
- 18.4.23 Misuse of time on the job.
- 18.4.24 Unauthorized tardiness or excessive absenteeism.
- 18.4.25 Insubordination, including refusal to perform work as directed by a supervisor, except in such cases where the activity directed or the equipment involved is unsafe.
- 18.4.26 Unsatisfactory, negligent or incompetent work performance.
- 18.4.27 Political campaigning of any kind on City premises, while on duty or while in a City uniform or using one's official City title or position in connection with political campaign literature or activities.
- 18.4.28 Any form of harassment or discrimination in the workplace. This includes but is not limited to harassment or discrimination based on sex, race, national origin, religion, disability, age, or sexual orientation.
- 18.4.29 Unauthorized absence.
- 18.4.30 Abuse of sick leave privileges.
- 18.4.31 Dishonesty.
- 18.4.32 Any act or acts which are incompatible with or contrary to the public service.

*NOTE: On duty time is considered to be the hours of each working day that employees are expected to be performing their duties, excluding lunch periods.

RULE 19.0 – DISCRIMINATION, HARASSMENT, AND RETALIATION PREVENTION POLICY

19.1 Policy

It is the policy of the City of Vista to assure equal employment opportunity and fair employment practices to all persons. The City has a zero-tolerance policy prohibiting all forms of discrimination, harassment (including sexual harassment), retaliation, and abusive conduct in the workplace. The City will not tolerate unlawful discrimination or harassment of any kind. Through enforcement of this policy and education of employees, the City seeks to prevent and correct behavior that violates this policy. This policy informs City employees of their rights and responsibilities, and establishes procedures for the proper handling of complaints.

The City prohibits discrimination, harassment, and retaliation of any individual on the basis protected by federal, state or local law. These protected categories include ancestry, age, color, disability (physical or mental, perceived or actual including HIV and AIDS), genetic information, gender, gender identity, or gender expression, marital status, medical condition (genetic characteristics, cancer or a record or history of cancer), military or veteran status, national origin (including language use restrictions), race, religion (religious dress and grooming practices), sex (including pregnancy, childbirth, breastfeeding and/or related medical conditions), sexual orientation, and use of family or medical leave. The City also prohibits abusive conduct in the workplace. Retaliation from co-workers or supervisors against an individual for filing a complaint or being involved in an investigation, constitutes a violation of this policy.

19.2 Application

This policy applies to City of Vista employees, volunteers, job applicants, unpaid interns, vendors, customers, and contractors and is intended to protect the City's personnel from all forms of discrimination, harassment, retaliation, or abusive conduct by any person in connection with the performance of job duties for the City. All persons affiliated with the City, regardless of their positions, are required to comply with this policy, and to take appropriate measures to ensure that prohibited conduct does not occur by using appropriate education, training, and remedial measures.

19.3 Definitions of Prohibited Conduct

Prohibited conduct includes, but is not limited to:

- A. Discrimination – to treat one individual worse than another individual based on the individual's membership in a particular group or category. Such protected categories include ancestry, age, color, disability (physical and mental, including HIV and AIDS), genetic information, gender, gender identity, or gender expression, marital status, medical condition (genetic characteristics, cancer or a record or history of cancer), military or veteran status, national origin (including language use restrictions), race, religion (including religious dress and grooming practices), sex (including pregnancy, childbirth, breastfeeding and/or related medical conditions), sexual orientation, use of family or medical leave, or any other basis protected by federal, state or local law.
- B. Sexual Harassment - a form of gender discrimination and includes harassment based on pregnancy, childbirth or related medical condition. Sexual harassment includes unwelcome sexual advances, or visual, verbal or physical conduct of a sexual nature directed at an employee which is presented as a condition upon an employment benefit, unreasonably interferes with an individual's work performance or creates an offensive work environment.

Sexual harassment includes requests for sexual favors, and other visual, verbal or physical conduct of a sexual nature when (a) submission to the conduct is made either explicitly or implicitly as a term or condition of employment (quid pro quo sexual harassment); or (b) submission to or rejection of the conduct of an individual is used as a basis for employment decisions affecting the employee (quid pro quo sexual harassment); or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive work environment (hostile work environment sexual harassment).

Sexually harassing conduct on the job can occur between people of the same or opposite sex, between peers, supervisor to subordinate, subordinate to supervisor, or by persons doing business with the City such as clients, customers, vendors or contractors. Sexual harassment need not be motivated by sexual desire. A single incident of harassing conduct may be sufficient to create a hostile work environment if the conduct unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment.

Examples of sexual harassment include, but are not limited to, the following when such acts or behavior come within one of the above definitions:

- Either explicitly or implicitly conditioning any term of employment (i.e., continued employment, wages, evaluation, advancement, assigned duties or shifts) on the provision of sexual favors;
- Touching or grabbing a part of an employee's body in a suggestive manner;
- Unwelcome touching or hugging;
- Eye contact, leering staring or gazing at a person in a way that implies a sexual message or relationship;
- Continuing to ask an employee to socialize on or off-duty when that person has indicated that she or he is not interested;
- Displaying or transmitting sexually suggestive pictures, objects, cartoons, posters, calendars, electronic or text messages, tweets, and internet postings.
- Continuing to write sexually suggestive notes, letters, or electronic messages if it is known or should be known that the person does not welcome such behavior;
- Referring to or calling a person by a sexualized name;
- Telling sexual jokes or using sexually vulgar or explicit language in the workplace;
- Derogatory remarks about or relating to an employee's sex or sexual orientation;
- Harassing acts or behavior directed against a person on the basis of the employee's sex or sexual orientation;
- Conduct of a sexual nature that is neither explicit nor even specifically directed at the victim, but rather creates a hostile or offensive work environment.
- Off-duty conduct that falls within the above definition and affects the work environment;
- Intimidating, abusive or hostile behavior of a nonsexual nature toward an employee on the basis of gender. Verbal abuse and hostility that is not sexual in character but is directed solely or primarily at females because they are females, or males because they are male.

- Some subtle forms of sexual harassment are, referring to women as “girls” men as “boys”, or using demeaning, inappropriate, and unwelcome terms of endearment while at work; comments directed at the way a person looks rather than commenting on the quality of the person’s work; and
 - Flirting, teasing, touching, joking propositions, or comments filled with sexual innuendo or double meanings.
- C. Other Types of Harassment - verbal, visual, or physical harassment based on the individual’s membership in a particular group or category. Such protected categories include ancestry, age, color, disability (physical and mental, including HIV and AIDS), genetic information, gender, gender identity, or gender expression, marital status, medical condition (genetic characteristics, cancer or a record or history of cancer), military or veteran status, national origin (including language use restrictions), race, religion (including religious dress and grooming practices), sex (including pregnancy, childbirth, breastfeeding and/or related medical conditions), sexual orientation, use of family or medical leave, or any other basis protected by federal, state or local law.
- D. Retaliation - any adverse employment action taken against an employee by a co-worker, supervisor, or other City employee because of the employee’s participation in a complaint or investigation of discrimination or harassment. Examples of adverse employment action include ostracizing the person, pressuring the person to drop or not support the complaint, or adversely altering the person’s job duties or work environment.
- E. Abusive Conduct - conduct undertaken with malice, that is unrelated to the City’s legitimate business interest and that a reasonable person would find hostile or offensive. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating. A single act should not constitute abusive conduct, unless especially severe and egregious.

19.4 The City’s Responsibility

The City will take prompt appropriate action to correct reported incidents of discrimination, harassment, retaliation and abusive conduct. The City will pursue preventative measures to protect employees from discrimination and harassment and will take appropriate disciplinary action against anyone found to be in violation of this policy. The City will not tolerate retaliation of a person who opposes, reports or assists another person to oppose unlawful discrimination. The City will communicate and distribute this policy to all employees and include it in all new employee orientation packets. This policy will also be posted on the City’s internal computer drive and is available in the Human Resources Department. Mandatory training sessions about this policy and the prevention of discrimination, including sexual harassment and abusive conduct, will be held for all personnel as required by law.

19.5 Management’s Responsibilities

Supervisors and managers of all levels are responsible for the following:

- Reporting to the Human Resources Department any complaint under this policy where the supervisor knew or should have known of the incident, regardless of the desire of the victim of the discrimination and/or harassment.
- Being familiar with this policy and the procedures referencing discrimination and/or harassment, retaliation, and abusive conduct and conducting themselves in a manner consistent with this policy;

- Understanding the role of the Equal Employment Opportunity Commission (EEOC) and Department of Fair Employment and Housing (DFEH) pertaining to discrimination and harassment.
- Taking all complaints or concerns of alleged or possible discrimination or harassment seriously, no matter how minor or who is involved. If a complaint is received or if an incident of discrimination or harassment becomes apparent, immediately contact the Human Resources Director to investigate and bring the matter to a final determination. Supervisors should also obtain appropriate background information from an employee who files an initial complaint, including details of the incident, witnesses, and desired outcomes. Supervisors should document any discussions with the complainant.
- Advising complainants that the matter will be taken seriously, be investigated, and coordinated for investigation by the Human Resources Department for a final determination;
- Protecting employees from harassment from third-parties, including clients, customers and vendors.
- Taking any immediate and appropriate steps necessary to separate the complainant and the accused person after consulting with the Human Resources Department.
- Maintaining confidentiality and fully documenting the entire process; and
- Seeking to prevent any acts of retaliation against those reporting discrimination or harassment.

19.6 Employee Responsibilities

All employees are expected to comply with this policy and treat other employees with respect and professionalism. An employee who perceives comments, gestures, or actions of another employee or supervisor to be offensive are encouraged to make attempts, if possible, to inform the person alleged to have violated this policy that the behavior is unwelcome. Employees are encouraged to do this, but it is not necessary in order to file a complaint.

19.7 Employee Rights

The City provides the following rights to all personnel:

- The right to a discrimination and harassment-free work environment;
- The right to a thorough, impartial, and prompt investigation by qualified personnel, or qualified designee, of a complaint without retaliation for filing a complaint or for participating in the investigation of a complaint;
- The right to a timely decision on a complaint after full consideration of all relevant facts and circumstances; and
- The right to file a complaint of discrimination in employment with the State Department of Fair Employment and Housing and/or the Federal Equal Employment Opportunity Commission without seeking resolution through the City, with the assurance that employer retaliation will not occur if such action is taken.

19.8 Confidentiality

The City will make every effort to handle complaints of discrimination, harassment, retaliation and abusive conduct in a confidential manner to protect the privacy of the parties involved. The City will only disclose the contents of a complaint to those persons who have a need to know. All personnel shall maintain confidentiality about complaints in order to protect the parties involved to the extent appropriate, and

information shall not be disclosed other than to assist in the investigation. All information pertaining to a complaint or investigation under this policy will be maintained in secure files within the Human Resources Department.

19.9 Compliant Procedure and Investigation

In the City's effort to maintain an environment free from discrimination, harassment, and retaliation, employees are encouraged to allow the City to remedy any incidents by following the complaint procedure.

1. Any employee, who believes he or she has been discriminated, harassed or retaliated against, or subjected to abusive conduct, should immediately report the incident to his or her supervisor, Department Head or the Human Resources Director at (760) 639-6145. Employees are permitted to go outside of their chain of command. The City encourages all employees to report complaints of this policy as soon as possible so that the complaint can be timely and fairly resolved. In the event that the complaint involves the Human Resources Director, the complaint should be report to the City Manager's Office at (760) 643-5200.
2. A complaint may be filed verbally or in writing. A formal complaint shall be in writing and submitted on the Discrimination/Harassment Complaint Form. A copy of the form is available in the Human Resources Department or on the City's internal computer drive. The Human Resources Department may assist the complainant in completing a written statement and the complainant should sign the complaint form. In the event that the complainant is unable or refuses to provide information in writing, the Human Resources Department will dictate the verbal complaint and allow the complainant an opportunity to review and sign the dictated complaint to ensure accuracy. The complaint should be as specific as possible and may be filed verbally or in writing. Because sexual harassment frequently involves interactions between persons that are not witnessed by others, reports of sexual harassment cannot always be substantiated by additional evidence. Lack of corroborating evidence or "proof" should not discourage individuals from reporting sexual harassment under this policy. The initiation of a complaint, in good faith, shall not under any circumstances be used against the employee or have an adverse impact on the individual's employment status. However, individuals who make complaints that are proven to be intentionally false may be subject to corrective action, up to and including termination.
3. Any manager or supervisor receiving a complaint of discrimination, harassment, or retaliation shall immediately notify the Human Resources Director or the City Manager's Office, in the event the complaint involves the Human Resources Director. Failure by a manager or supervisor to appropriately report and address discrimination, harassment or retaliation complaints or acts shall be considered a violation of this policy.
4. Upon receiving a complaint or being advised by a supervisor or manager that violation of this policy may be occurring, the Human Resources Department shall notify the City Manager's Office and if necessary, review the complaint with the City's legal counsel.
5. The Human Resources Director, or designee, will initiate an investigation to determine whether there is a reasonable basis for believing that the alleged policy violation has occurred. The City's investigation of any complaint of discrimination, harassment, or retaliation will be prompt, thorough, and impartial. Managers and supervisors shall make available any employee for interviews and present any documents required by the investigator. During the investigation, steps will be taken to ensure that harassment or retaliation does not continue while the investigation is pending and that the complainant is kept apprised of the progress of the investigation. The person accused shall have a right to representation

during the investigation and retains all rights provided in applicable Memorandum of Understanding and the City's Personnel Rules.

6. Upon conclusion of the investigation, the Human Resources Director or designee shall prepare a report and determination regarding the findings of the investigation. Whether or not any alleged action constitutes discrimination, harassment, or retaliation, will be determined on a case-by-case basis by assessing the entire record and the totality of the circumstances. If it is determined that this policy has been violated, appropriate corrective or remedial action shall immediately be taken in accordance with the City's policies and procedures. Appropriate action will also be taken to deter any future harassment, including providing additional training to City personnel.
7. Managers and supervisors who knowingly allow or tolerate discrimination, harassment, retaliation or abusive conduct, including the failure to immediately report such misconduct to the Human Resources Department, are in violation of this policy and may be subject to corrective action. Personnel who are determined to be responsible for discrimination, harassment or retaliation of another person while pursuing work for the City, either on or off the job, will be subject to appropriate corrective action, up to and including termination.

19.10 Fraternization Policy

In an effort to promote efficient operation of the City and avoid complaints of favoritism, conflicts of interest, sexual harassment and/or gender based discrimination, romantic relationships between supervisors and subordinates, and between co-employees in the same department, are prohibited. See *Fraternization Policy, Administrative Policy 13-5*.

19.11 Respectful Workplace

The City is committed to providing a safe and productive work environment. All personnel have the right to be treated professionally and with respect and should not be subjected to abusive conduct which is conduct undertaken with malice, that is unrelated to the City's legitimate business interest and that a reasonable person would find hostile or offensive. City personnel are expected to follow this policy and to participate fully in creating and maintaining a respectful workplace.