

**CITY OF BAY CITY**

# **EMPLOYEE GUIDELINES**

**FOR CITY EMPLOYEES**



## NOTICE TO EMPLOYEES

This manual is designed to acquaint you with the City of Bay City and provide you with information about working conditions, employee benefits, and some of the policies affecting your employment. You should read, understand, and comply with all provisions of the manual. It describes many of your responsibilities as an employee and outlines the programs developed by the City of Bay City to benefit employees. One of our objectives is to provide a work environment that is conducive to both personal and professional growth.

No employee manual can anticipate every circumstance or question about policy. As the City of Bay City continues to grow, the need may arise and the City of Bay City reserves the right to revise, supplement, or rescind any policies or portion of the manual from time to time as it deems appropriate, in its sole and absolute discretion. The only exception to any changes is our employment-at-will policy permitting you or the City of Bay City to end our relationship for any reason at any time.

The City of Bay City operates under the legal doctrine of **voluntary employment-at-will** and, within requirements of state and federal law regarding employment, can dismiss an employee at any time, with or without notice, for any reason or no reason. No representations to the contrary by any employee will be binding unless reduced to writing and signed as authorized by the Mayor. Texas law allows the City of Bay City to maintain this at-will employment relationship with its employees.

No policies or procedures contained in this document or in any other City of Bay City memorandum, manual, or publication may be construed to create a contractual employment relationship, nor do policies and procedures contained in this manual give rise to any contractual rights of any kind. This document is not intended to, nor does it, create a contract of employment between an employee and the City of Bay City. Further, this manual and its contents do not modify the City of Bay City's employment-at-will relationship with each of its employees.

These policies and procedures may be modified or withdrawn at any time, with or without notice. Although printed copies will be distributed to City of Bay City employees, the most current version of the *City of Bay City Employee Guidelines for City Employees* will be the copy maintained in the City Secretary's office.

If any statement in these policies is not completely clear to you, ask the City Secretary or the Mayor.

# TABLE OF CONTENTS

<b>1. GENERAL PROVISIONS.....</b>	<b>1</b>
1.1 AUTHORITY.....	1
1.2 SUNSET CLAUSE .....	1
1.3 SEVERABILITY (EACH POLICY STANDS ON ITS OWN) .....	1
1.4 PURPOSE.....	2
1.5 APPLICABILITY .....	2
1.6 RESPONSIBILITY FOR IMPLEMENTATION.....	2
1.7 AMENDMENTS.....	3
1.8 EMPLOYEES RECEIVE PERSONNEL POLICIES.....	3
1.9 AT-WILL EMPLOYMENT .....	3
1.10 EQUAL EMPLOYMENT OPPORTUNITY - GENERAL.....	4
1.11 SEXUAL HARASSMENT .....	4
1.11.1 GENERAL POLICY AND DEFINITION .....	4
1.11.2 EXAMPLES OF SEXUAL HARASSMENT.....	5
1.11.3 HOW TO REPORT SEXUAL HARASSMENT .....	6
1.11.4 SUPERVISOR RESPONSIBILITY AND COMPLAINT PROCEDURE.....	6
1.11.5 DUTIES OF EMPLOYEES .....	6
1.11.6 SEXUAL HARASSMENT INVESTIGATIONS.....	7
1.11.7 RETALIATION IS PROHIBITED .....	7
1.11.8 EMPLOYEES ACKNOWLEDGE RECEIPT OF POLICY.....	7
1.11.9 ANTI-HARASSMENT POLICY.....	7
1.12 PERSONS WITH DISABILITIES.....	8
1.12.1 PURPOSE.....	8
1.12.2 DEFINITIONS: .....	8
1.12.3 REQUESTS FOR ACCOMMODATIONS.....	9
1.12.4 COMPLAINTS AND GRIEVANCE PROCEDURE.....	10
1.13 CITY PROPERTY .....	10
1.14 VIOLENCE IN THE WORKPLACE.....	11
1.15 WEAPONS.....	11
1.16 SEARCHES.....	12
1.17 EMPLOYEE PERSONNEL RECORDS.....	13
1.17.1 PERSONNEL FILES – GENERAL.....	13
1.17.2 CONTENTS OF PERSONNEL FILES.....	14
1.17.3 EMPLOYEE LEAVE RECORDS.....	14

<b>2.</b>	<b>EMPLOYEE RESPONSIBILITIES .....</b>	<b>15</b>
2.1	EMPLOYEE RESPONSIBILITIES – GENERAL.....	15
2.1.1	WORK ETHIC .....	15
2.1.2	USE OF PERSONAL CELL PHONES .....	15
2.2	PROFESSIONAL APPEARANCE .....	16
2.3	PERSONAL VISITORS IN THE WORKPLACE.....	16
2.4	TIMELINESS AND ATTENDANCE .....	17
2.4.1	GUIDELINES .....	17
2.4.2	DISCIPLINE .....	18
2.4.3	PROGRESSIVE DISCIPLINE .....	18
2.5	OUTSIDE EMPLOYMENT .....	18
2.6	GIFTS AND GRATUITIES.....	19
2.7	CONFLICT OF INTEREST.....	19
2.8	POLITICAL ACTIVITY LIMITED .....	20
2.8.1	EMPLOYEES COVERED BY FEDERAL HATCH ACT.....	20
2.8.2	NO POLITICAL ACTIVITY IN CITY UNIFORM.....	20
2.8.3	INVOLVEMENT IN LOCAL ELECTIONS .....	21
2.9	NON-DISCLOSURE POLICY .....	21
2.10	COMMUNICATIONS .....	22
2.11	OFFICE DONATIONS ARE VOLUNTARY .....	22
2.12	COMPUTERS AND ELECTRONIC COMMUNICATION DEVICES ARE FOR CITY BUSINESS.....	22
2.12.1	CITY EQUIPMENT FOR CITY BUSINESS USES.....	22
2.12.2	NO OR LIMITED PERSONAL USE .....	23
2.12.3	CITY ISSUED CELLULAR PHONES .....	23
2.12.4	CITY COMPUTER SYSTEMS .....	25
2.12.5	EMPLOYEES RESPONSIBLE FOR CONTENT OF MESSAGES .....	26
2.13	SOCIAL MEDIA.....	26
2.13.1	DEFINITIONS .....	27
2.13.2	GUIDELINES .....	28
2.13.3	WRITTEN ELECTRONIC COMMUNICATIONS ACCESSIBLE TO THE PUBLIC – SB 1297 .....	29
2.13.4	EMPLOYEE SOCIAL MEDIA.....	31
2.14	REQUESTS FOR JOB CLARIFICATION ENCOURAGED .....	32
2.15	RETALIATION PROHIBITED .....	32
2.16	SECRET RECORDINGS.....	32
2.17	RETURN OF CITY PROPERTY AND EQUIPMENT .....	32
2.18	RESPONSIBILITY FOR CITY FUNDS.....	32

2.19	CONFIDENTIALITY AGREEMENT .....	33
<b>3.</b>	<b>EMPLOYMENT PRACTICES.....</b>	<b>35</b>
3.1	PROCESS FOR RECRUITMENT .....	35
3.1.1	METHODS OF RECRUITMENT.....	35
3.1.2	ANNOUNCEMENT OF POSITION OPENINGS.....	35
3.1.3	QUALIFICATIONS FOR CITY JOBS.....	36
3.2	PROCESS AND REQUIREMENTS FOR SELECTION.....	36
3.2.1	SELECTION OF CITY EMPLOYEES.....	36
3.2.2	NO UNDERAGE EMPLOYMENT IN HAZARDOUS POSITIONS.....	36
3.2.3	APPLICATION FOR EMPLOYMENT REQUIRED .....	37
3.2.4	BACKGROUND CHECKS.....	37
3.2.5	NEPOTISM (EMPLOYMENT OF RELATIVES).....	38
3.2.6	GRANDFATHER CLAUSE.....	39
3.2.7	RESIDENCY REQUIREMENT/RESPONSE TIME.....	40
3.2.8	RELOCATION EXPENSES .....	40
3.2.9	PHYSICAL STANDARDS FOR CITY JOBS .....	40
3.2.10	TESTING.....	41
3.2.11	DRUG AND ALCOHOL TESTING.....	41
3.2.12	VERIFICATION OF ELIGIBILITY TO WORK.....	41
3.2.13	DRIVING RECORD .....	41
3.2.14	DISQUALIFICATION .....	42
3.2.15	PRIOR SERVICE WITH THE CITY .....	42
3.2.16	ORIENTATION AND TRAINING.....	42
3.2.17	MEDICAL RECORDS.....	43
3.2.18	NOTICE OF PRIVACY PRACTICES.....	43
<b>4.</b>	<b>TYPES OF EMPLOYMENT.....</b>	<b>45</b>
4.1	CATEGORIES OF EMPLOYMENT.....	45
4.2	INTRODUCTORY PERIOD.....	46
<b>5.</b>	<b>EMPLOYEE COMPENSATION AND ADVANCEMENT.....</b>	<b>47</b>
5.1	PAY STRUCTURE .....	47
5.1.1	PAYCHECKS.....	47
5.1.2	DEDUCTIONS .....	47
5.2	PROMOTIONS.....	49
5.3	DEMOTIONS.....	50
5.4	DISCIPLINARY SUSPENSIONS FOR VIOLATING SERIOUS WORKPLACE CONDUCT OR SAFETY RULES.....	50

5.4.1	EXEMPT EMPLOYEES .....	50
5.4.2	NON-EXEMPT EMPLOYEES .....	50
5.5	ON-CALL PAY .....	51
5.6	CALL-BACK PAY .....	51
5.7	INTERIM PAY .....	51
5.8	LONGEVITY PAY .....	52
<b>6.</b>	<b>WORK SCHEDULE AND TIME REPORTING.....</b>	<b>53</b>
6.1	ADMINISTRATIVE WORKWEEK.....	53
6.2	SMOKING BREAKS.....	53
6.3	ON-CALL STATUS.....	53
6.4	CALL-BACK STATUS .....	54
6.5	SCHEDULE ADJUSTMENTS .....	54
6.6	EXEMPTIONS FROM FLSA .....	54
6.7	EXPLANATION OF EXEMPTIONS FROM FLSA (OVERTIME COMPENSATION) .....	56
6.8	HOURS WORKED AND OVERTIME COMPENSATION EARNED .....	58
6.9	COMPENSATORY TIME (IF USED BY A CITY DEPARTMENT).....	59
6.10	TIMESHEETS .....	60
6.11	EMERGENCY POLICY .....	61
6.11.1	PURPOSE.....	61
6.11.2	CITY FACILITIES ASSUMED OPEN .....	61
6.11.3	CLOSING OF CITY FACILITIES.....	62
6.11.4	REQUIRED WORK DURING AN EMERGENCY .....	62
6.11.5	COMPENSATION DURING EMERGENCY.....	62
6.11.6	PROVISIONS.....	62
<b>7.</b>	<b>BENEFITS .....</b>	<b>64</b>
7.1	MEDICAL, DENTAL, LIFE, AND ACCIDENTAL DEATH AND DISMEMBERMENT (AD&D) INSURANCE 64	
7.2	SOCIAL SECURITY .....	64
7.3	RETIREMENT .....	64
7.4	SECTION 457 DEFERRED COMPENSATION PLAN .....	66
7.5	WORKERS' COMPENSATION .....	66
7.6	UNEMPLOYMENT INSURANCE .....	66
7.7	LEAVE TIME .....	66
<b>8.</b>	<b>LEAVE TIME .....</b>	<b>68</b>
8.1	DEFINITIONS.....	68
8.2	APPROVAL OF LEAVE.....	68

8.3	VACATION LEAVE .....	69
8.4	HOLIDAYS .....	70
8.5	SICK LEAVE .....	72
8.5.1	ELIGIBILITY AND ACCRUAL .....	72
8.5.2	USES OF SICK LEAVE .....	72
8.5.3	CARRYOVER .....	72
8.5.4	MEDICAL STATEMENT .....	72
8.5.5	SICK LEAVE POOL .....	73
8.5.6	ILLNESS WHILE ON VACATION LEAVE .....	74
8.5.7	CANCELLATION UPON TERMINATION .....	74
8.5.8	OUTSIDE EMPLOYMENT .....	74
8.6	FAMILY AND MEDICAL LEAVE (FMLA) .....	75
8.6.1	DEFINITIONS .....	75
8.6.2	COVERAGE AND ELIGIBILITY .....	77
8.6.3	INTERMITTENT OR REDUCED LEAVE .....	77
8.6.4	SERIOUS HEALTH CONDITION .....	78
8.6.5	CALCULATION OF 12-MONTH PERIOD .....	78
8.6.6	DEFINITION OF FAMILY MEMBERS .....	78
8.6.7	LIMITATIONS/RESTRICTIONS .....	79
8.6.8	TEMPORARY TRANSFER .....	79
8.6.9	MAXIMUM DURATION .....	79
8.6.10	PART-TIME/VARIABLE HOUR EMPLOYEES .....	79
8.6.11	NOTICE .....	79
8.6.12	CITY DESIGNATION OF FMLA LEAVE .....	80
8.6.13	CERTIFICATION REQUIREMENTS .....	80
8.6.14	SECOND, THIRD OPINIONS .....	81
8.6.15	HOLIDAYS FALLING DURING FMLA LEAVE PERIOD .....	82
8.6.16	RECERTIFICATION .....	82
8.6.17	RETURN TO WORK/ASSURANCES .....	82
8.6.18	FITNESS FOR DUTY CERTIFICATION .....	82
8.6.19	HEALTH INSURANCE COVERAGE WHILE ON FMLA LEAVE .....	83
8.6.20	RETENTION OF BENEFITS .....	83
8.6.21	POSTING OF SUMMARY OF ACT .....	83
8.6.22	REQUEST FOR LEAVE IMMEDIATELY FOLLOWING FAMILY AND MEDICAL LEAVE .....	83
8.6.23	DOCUMENTATION .....	84
8.7	OTHER LEAVES OF ABSENCE .....	84
8.7.1	REVOCAION OF LEAVE OF ABSENCE .....	84

8.7.2	AUTHORIZED REASONS FOR A LEAVE OF ABSENCE.....	84
8.7.3	APPROVAL OF LEAVE OF ABSENCE .....	85
8.7.4	RETURN TO WORK AFTER A LEAVE OF ABSENCE .....	85
8.7.5	SEPARATION OF EMPLOYMENT .....	85
8.8	BEREAVEMENT LEAVE.....	85
8.9	MILITARY LEAVE AND YOUR RIGHTS UNDER USERRA .....	86
8.10	JURY/CITIZENSHIP LEAVE .....	87
8.11	LEAVE OF ABSENCE WITHOUT PAY.....	88
8.12	INJURY LEAVE.....	88
8.13	USING LEAVE IN COMBINATION.....	88
8.14	DURATION OF LEAVE .....	88
<b>9.</b>	<b>HEALTH AND SAFETY/WORKERS' COMPENSATION.....</b>	<b>89</b>
9.1	SAFETY POLICY .....	89
9.2	EMPLOYEE RESPONSIBILITIES AND REPORTS.....	89
9.3	EMPLOYEE SAFETY SUGGESTIONS .....	89
9.4	FITNESS REQUIREMENTS .....	90
9.5	ON-THE-JOB INJURIES AND WORKERS' COMPENSATION .....	90
9.5.1	INSURANCE.....	90
9.5.2	MEDICAL ATTENTION .....	90
9.5.3	INITIATION OF INJURY LEAVE.....	91
9.5.4	COMPENSATION.....	91
9.5.6	TERMINATION OF INJURY LEAVE .....	92
9.5.7	CONTINUATION OF SUPPLEMENTAL AND/OR DEPENDENT'S INSURANCE .....	92
9.5.8	EXCLUSIONS .....	92
9.5.9	REPORTING REQUIREMENTS.....	92
9.5.10	RETURN TO SERVICE.....	93
9.5.11	LIGHT DUTY STATUS .....	93
9.5.12	FINAL RELEASE OR SETTLEMENT.....	94
9.5.13	CLAIMS REVIEW .....	95
9.5.14	PRIVACY PROTECTION .....	95
9.5.15	FRAUD .....	95
<b>10.</b>	<b>SUBSTANCE ABUSE AND ALCOHOL MISUSE.....</b>	<b>97</b>
10.1	SCOPE AND INTENT .....	97
10.2	DRUG-FREE WORKPLACE .....	97
10.3	GENERAL POLICY .....	98
10.4	SUPERVISORY RESPONSIBILITIES.....	99

10.5	REHABILITATION.....	99
10.6	RETURN TO WORK .....	99
10.7	DRUG AND ALCOHOL TESTS.....	99
10.7.1	PRE-EMPLOYMENT TESTING.....	100
10.7.2	POST-ACCIDENT TESTING .....	100
10.7.3	REASONABLE SUSPICION TESTING.....	100
10.7.4	RANDOM TESTING .....	100
10.7.5	RETURN-TO-DUTY TESTING .....	101
10.7.6	FAILING A DRUG OR ALCOHOL TEST.....	101
<b>11.</b>	<b>USE OF AND ACCOUNTABILITY FOR CITY EQUIPMENT AND PROPERTY ..</b>	<b>102</b>
11.1	USE OF CITY PROPERTY – GENERAL .....	102
11.2	USE OF TOOLS, EQUIPMENT, PROPERTY, AND VEHICLES.....	102
11.3	VALID DRIVER'S LICENSE .....	102
11.4	ACCIDENT REPORTING.....	103
11.5	CITY-OWNED VEHICLE AND EQUIPMENT USE.....	104
11.5.1	PURPOSE.....	104
11.6	DEFINITIONS.....	104
11.7	UTILIZATION OF VEHICLES AND EQUIPMENT .....	105
11.7.1	TAKE HOME VEHICLES .....	105
11.7.2	ELIGIBILITY FOR OPERATING CITY-OWNED VEHICLES AND EQUIPMENT .....	106
11.7.3	GENERAL MAINTENANCE AND CONDITION OF VEHICLES .....	107
11.7.4	VEHICLE AND EQUIPMENT ACCIDENTS .....	108
11.7.5	RESPONSIBILITIES OF VEHICLE AND EQUIPMENT OPERATORS.....	108
11.7.6	DISCIPLINARY ACTION .....	109
<b>12.</b>	<b>DISCIPLINE .....</b>	<b>111</b>
12.1	PROGRESSIVE DISCIPLINE .....	111
12.2	DISCIPLINE – GENERAL .....	112
12.3	CRIMINAL HISTORY .....	113
12.4	FELONIES AND MISDEMEANORS.....	113
12.5	DISCIPLINARY CONFERENCE .....	113
12.6	ADMINISTRATIVE LEAVE.....	114
12.7	IMPROPER DEDUCTIONS.....	114
<b>13.</b>	<b>RESOLUTION OF DISPUTES/GRIEVANCES .....</b>	<b>115</b>
13.1	GRIEVANCE POLICY .....	115
13.2	PROCEDURE .....	115
13.2.1	INFORMAL GRIEVANCES .....	115

13.2.2	FORMAL GRIEVANCES .....	116
13.2.3	MAXIMUM TIME PERIODS .....	116
13.2.4	GRIEVANCES RELATING TO SEXUAL HARASSMENT OR DISCRIMINATION .....	116
13.2.5	GRIEVANCES RELATING TO SUSPENSION, DEMOTION AND/OR TERMINATION .....	116
13.2.6	DOCUMENTATION .....	118
<b>14.</b>	<b>JOB (CLASS) DESCRIPTIONS AND PERFORMANCE EVALUATION .....</b>	<b>119</b>
14.1	JOB DESCRIPTIONS .....	119
14.2	DISTRIBUTION .....	119
14.3	REQUESTS FOR CLARIFICATION .....	119
14.4	EMPLOYEE PERFORMANCE EVALUATIONS .....	119
<b>15.</b>	<b>PROFESSIONAL DEVELOPMENT AND EDUCATIONAL REIMBURSEMENT ..</b>	<b>120</b>
15.1	PROFESSIONAL DEVELOPMENT – GENERAL .....	120
15.2	REQUIRED ATTENDANCE AT SEMINARS .....	120
15.3	TUITION REIMBURSEMENT .....	120
15.3.1	ELIGIBILITY REQUIREMENT .....	121
15.3.2	TUITION REIMBURSEMENT PROGRAM .....	121
15.3.3	REIMBURSEMENT PROCESS .....	122
15.3.4	REIMBURSEMENT LIMITS .....	123
15.3.5	REPAYMENT OF TUITION .....	123
15.4	OPTIONAL CONFERENCES AND TRAINING .....	123
<b>16.</b>	<b>SEPARATIONS .....</b>	<b>124</b>
16.1	TYPES OF SEPARATIONS .....	124
16.2	RESIGNATIONS .....	124
16.2.1	RESIGNATION PROCESSING .....	124
16.2.2	REQUEST TO WITHDRAW RESIGNATION .....	125
16.3	RETIREMENT .....	125
16.4	REDUCTION-IN-FORCE (LAYOFFS) .....	125
16.5	DISMISSAL .....	126
16.6	DISABILITY .....	127
16.7	DEATH .....	127
16.8	CALCULATION OF SEPARATION PAY .....	127
16.9	EXIT INTERVIEWS AND RECORDS .....	128
16.10	CONTINUATION OF GROUP HEALTH INSURANCE (COBRA) .....	128
16.10.1	ELIGIBLE EMPLOYEE .....	128
16.10.2	ELIGIBLE CIRCUMSTANCE .....	128
16.10.3	NOTICE .....	129

16.10.4	LIMITATIONS AND EXTENSIONS.....	129
16.11	ABANDONMENT OF POSITION .....	130
<b>17.</b>	<b>TRAVEL AND BUSINESS EXPENSES .....</b>	<b>131</b>
17.1	PURPOSE.....	131
17.2	IN-CITY TRAVEL .....	131
17.3	OUT-OF-CITY TRAVEL .....	131
17.4	SUBSISTENCE EXPENSES.....	132
17.5	CREDIT CARD POLICY.....	132
17.5.1	PURPOSE.....	132
17.5.2	ISSUANCE.....	133
17.5.3	USAGE.....	133
17.5.4	RECONCILIATION .....	133
17.5.5	CANCELLATION .....	134

# **CITY OF BAY CITY EMPLOYEE GUIDELINES**

## **1. GENERAL PROVISIONS**

### **1.1 AUTHORITY**

These policies completely replace and supersede any and all personnel policies/employee guidelines previously adopted, individually or as a set of policies, by the City Council. As provided by the City Charter, the Mayor has the authority to exercise control over all departments and divisions of the City and to supervise all officers and employees of the City.

The City Secretary is assigned responsibility for developing, administering, and explaining personnel policies and procedures for all City employees. The City Secretary is delegated the authority to implement and explain policies and procedures as specified by this manual. The final authority in the form of review and approval is reserved to the Mayor and City Council as specified by the City Charter.

No employee manual can anticipate every circumstance or question about policy. As the City continues to grow and as the need may arise, the City reserves the right to revise, supplement or rescind any policies or portion of the manual from time to time as it deems appropriate, in its sole and absolute discretion. The only exception to any changes is the “at-will” employment policy permitting the employee or the City to end the employment relationship for any reason at any time. Any future changes to this manual shall be communicated to employees through official notices.

Department Directors and subordinate management personnel are responsible for the administration and enforcement of these policies and procedures and for cooperating with the City Secretary in the discharge of his/her responsibilities.

### **1.2 SUNSET CLAUSE**

In order to stay abreast of internal and external changes, the City Secretary will propose amendments to the policies as state and federal laws and regulations mandate changes. In addition, the City Council of the City of Bay City will review the personnel guidelines every three (3) years, to make any necessary changes.

### **1.3 SEVERABILITY (EACH POLICY STANDS ON ITS OWN)**

The provisions of these policies are severable, and if any provision or part of a provision is held invalid, illegal, or unenforceable, this shall not affect the validity of the remaining provisions or parts of provisions, which shall remain in force and effect.

In addition, if the City fails or refuses to enforce any provision in these policies, that failure or refusal to enforce a policy will not cause a waiver of any other provision in these policies.

## **1.4 PURPOSE**

The purpose of these policies and procedures is to provide efficient and effective City services and operations by satisfied and productive City employees. These policies and procedures are designed to fulfill this purpose by:

- 1.) Providing a fair and equal opportunity to all qualified persons who enter into and advance in employment on the basis of merit as ascertained through fair and practical methods of personnel management;
- 2.) Promoting and increasing effective, efficient and economical municipal service;
- 3.) Maintaining recruitment and advancement practices that will make the service of the City attractive as a career and that will encourage each employee to render excellent service to the City;
- 4.) Ensuring an employee's right to be treated with respect, dignity, and fairness;
- 5.) Promoting high morale among City employees by providing good working relationships, uniform city-wide application of personnel policies, opportunities for advancement where possible, and consideration for employee welfare; and
- 6.) Ensuring that the City and its employees comply fully with all federal, state, and local laws in relation to employment and working conditions.

## **1.5 APPLICABILITY**

These personnel policies apply equally to all employees unless a class of employees is specifically exempted by these policies.

Unless specifically stated, these policies do not apply to elected or appointed City Officials; members of city boards or commissions, independent contractors, or volunteers; unless they are appointed by Council and employed in a full time capacity by the City.

In cases where federal or state laws or regulations supersede these policies for specific groups of employees, such laws or regulations will substitute for these personnel policies only insofar as necessary for compliance.

## **1.6 RESPONSIBILITY FOR IMPLEMENTATION**

The Mayor and the City Secretary are responsible for implementation of these policies.

## **1.7 AMENDMENTS**

Because the City is a growing and changing organization, it may be necessary to modify these policies at any time with or without advance notice to the employees. The City Secretary is responsible for recommending to Council any changes, additions or deletion to this policy; but it is the City Council that has the sole discretion to unilaterally amend the personnel policy at any time with or without notice, and for any reason it deems appropriate. The Council may revise the policy in whole, in part, or elect to not have any written personnel policy.

## **1.8 EMPLOYEES RECEIVE PERSONNEL POLICIES**

Each employee is provided a copy of the personnel policies and is required to read the manual carefully and to adhere to the rules and regulations established in the policies. Potential employees will be provided the City's personnel policy, prior to completing the new hire paperwork. The potential employee is to read and understand the policy. On the first scheduled day of work the City Secretary or his or her designee will review the policy with the new hire. Each employee is required to sign a form stating that he or she has received and read the personnel policies and acknowledge that he or she understands the policies contained in it.

The City Secretary maintains the official set of the personnel policies with all revisions for reference by employees. In addition, the City Secretary will distribute a complete copy of these policies and copies of subsequent revisions to each employee. If a question arises about a particular policy or version, the official set of policies maintained by the City Secretary should be consulted and will control.

The City has the right to change these policies at any time, without prior notice to employees. Revisions and amendments will be distributed to employees.

## **1.9 AT-WILL EMPLOYMENT**

The City of Bay City operates under the legal doctrine of voluntary employment-at-will and, within requirements of state and federal law regarding employment, can dismiss an employee at any time, with or without notice, for any reason or no reason. No representations to the contrary by any employee will be binding unless reduced to writing and signed as authorized by the Mayor. Texas law allows the City of Bay City to maintain this at-will employment relationship with its employees.

No policies or procedures contained in this document or in any other City of Bay City memorandum, manual, or publication may be construed to create a contractual employment relationship, nor do policies and procedures contained in this manual give rise to any contractual rights of any kind. This document is not intended to, nor does it, create a contract of employment between an employee and the City of Bay City. Further, this manual and its contents do not modify the City of Bay City's employment-at-will relationship with each of its employees.

## **1.10 EQUAL EMPLOYMENT OPPORTUNITY - GENERAL**

It is the policy of the City of Bay City to prohibit discrimination against any person in job structuring, recruitment, examination, selection, appointment, placement, training, upward mobility, discipline, or any other aspect of personnel administration based on a person's race, age, sex, religion, color, disability, national origin, genetic infor

mation that could reveal a possible predisposition to certain diseases, or any other non-merit factor. Personnel decisions will be made on the basis of occupational qualifications and job-related factors such as skill, knowledge, education, experience, and ability to perform a specific job.

An employee will not engage in conduct at work that involves joking, derogatory remarks, or the display of images or symbols that demonstrate racial, age, sex, religious, or ethnic discrimination. Reports of such conduct will be investigated, and disciplinary action will be taken, if appropriate.

The city prohibits retaliation or discrimination against any employee for opposing an unlawful or discriminatory employment practice, or for alleging such a practice or participating in an investigation of an allegation of discrimination.

*(Legal reference: U.S. Civil Rights Acts of 1871 and 1964, as amended; Lilly Ledbetter Fair Pay Act of 2007; Genetic Information Nondiscrimination Act of 2009; V.T.C.A. Civil Practices and Remedies Code, Chapter 106; Texas Commission on Human Rights Act, V.T.C.A. Government Code, Sec. 461; V.T.C.A. Labor Code, Chapters 21-22; U.S. Age Discrimination in Employment Act of 1967, as amended; U.S. Rehabilitation Act of 1973, as amended; U.S. Americans with Disabilities Act of 1990 and ADA Amendments Act of 2008; U.S. Executive Order 11246; U.S. Equal Pay Act; V.T.C.A. Health and Safety Code, Chapters 592.)*

## **1.11 SEXUAL HARASSMENT**

### **1.11.1 GENERAL POLICY AND DEFINITION**

It shall be the policy of the City of Bay City to provide and maintain a work environment free of sexual harassment, sexual exploitation, and sexual intimidation by employees, contractors, vendors, members of the City Council, the Mayor, or visitors to the workplace. The City of Bay City has a "zero tolerance" policy regarding sexual harassment; sexual harassment will not be tolerated by the City. The City will investigate any complaint of sexual harassment promptly. All employees are expected to comply with this policy, and failure to do so will result in disciplinary action up to and including immediate termination.

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964, as amended, and **will not** be tolerated by the City of Bay City. Sexual harassment can occur in many forms, including but not limited to, unwelcome physical contact, verbal abuse, leering, gestures, and more subtle advances and pressure inviting sexual activity. Such conduct is unlawful where:

- 1) Submission to such conduct is made a term or condition of an individual's employment;
- 2) Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual (i.e., denial of a pay increase, promotion, transfer, leave of absence, imposing disciplinary action, promising to withhold disciplinary action, etc.); or
- 3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, or creating an intimidating, hostile or offensive working environment.

Several factors are important for you to note:

- 1) The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex;
- 2) The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee;
- 3) The victim does not have to be the person harassed but could be anyone affected by the offensive conduct;
- 4) Unlawful sexual harassment may occur without economic injury to or discharge of the victim; or
- 5) Any circumstance in which the harasser's conduct is unwelcomed.

### **1.11.2 EXAMPLES OF SEXUAL HARASSMENT**

It is illegal and against the City's policy for anyone, male or female, to harass a city worker or to create a hostile working environment by either committing or encouraging any of the following. This policy extends to city employees, contractors, vendors, members of the City Council, the Mayor, or visitors to the workplace.

- Physical assaults on another employee, including but not limited to, rape, sexual battery, molestation, or attempts to commit these assaults; or
- Intentional physical contact that is sexual in nature, including but not limited to, touching, pinching, patting, or brushing up against another employee's body; or
- Unwanted sexual advances, propositions, or sexual comments, including sexual gestures, jokes, or comments made in the presence of any employee who has indicated in any way that such conduct in his or her presence is unwelcome; or
- Posting or displaying pictures, posters, calendars, graffiti, objects, images, or other materials that are sexual in nature or pornographic.

The creation of an intimidating, hostile, or offensive working environment includes such actions as persistent sexual comments or the display of obscene or sexually oriented photographs, images, or drawings. However, actions that arise out of a personal or social relationship and are not intended to have a discriminatory employment effect might not be viewed as harassment. The city will determine whether such conduct constitutes sexual harassment, based on a review of the facts and circumstances of each situation.

### 1.11.3 HOW TO REPORT SEXUAL HARASSMENT

If an employee is either subjected to or witnesses sexual harassment, he or she should immediately inform the harasser that the conduct is offensive and insist that it stop. If sexual harassment continues, the employee should report the matter to his/her immediate supervisor, within twenty-four (24) hours. If you are unable or unwilling to speak with your supervisor about the harassment, you should report the incident directly to the City Secretary or the Mayor. If the City Secretary or the Mayor is the source of the alleged harassment, the employee should report the problem directly to the City Attorney.

### 1.11.4 SUPERVISOR RESPONSIBILITY AND COMPLAINT PROCEDURE

Each supervisor has the responsibility to maintain the workplace free of sexual harassment and to ensure that employees are not subjected to insulting, degrading, or exploitative sexual treatment.

### 1.11.5 DUTIES OF EMPLOYEES

**The complainant**—If you are making the complaint, the investigator will need to know all the details, unpleasant though they will be to recount. The investigator has a duty to be fair to everyone involved and needs as much information as possible. Be prepared to give the following information:

- 1) The names of everyone who might have seen or heard about the offensive conduct;
- 2) The names of everyone who may have had a similar experience with the alleged harasser;
- 3) A chronology—when and where each incident occurred;
- 4) The reasons why you did not report the incidents earlier (if you have delayed at all); and
- 5) Your thoughts on what the employer should do to correct the problem and maintain a harassment-free environment.

**The accused**—If you are the person accused of harassment, you must remember that you have a duty to cooperate in the investigation, regardless of whether you believe the allegations to be true or false. You will be expected to answer questions completely and honestly. You may be asked not to communicate with certain individuals during the course of the investigation. You must remember that you are not to retaliate against the person who made the complaint or against anyone who participates in any way in the investigation. You must treat them in the same fair and even-handed manner you would if no complaint had ever been raised. Failure to abide by these rules may result in discipline against you, even if the investigation shows no harassment occurred.

**A potential witness**—You may be asked to provide details concerning alleged harassment between other employees. You have a duty to respond truthfully to the questions concerning these allegations.

### **1.11.6 SEXUAL HARASSMENT INVESTIGATIONS**

The city's grievance procedure provides procedures for reporting alleged sexual harassment. The city will investigate such reports immediately. The City Secretary will arrange for each complaint of sexual harassment to be investigated. As soon as an employee reports an incident to the City Secretary or the Mayor, the City Secretary is responsible for investigating it (even if the employee does not want anything said or done about it). The City Secretary will:

- Obtain facts and views from the persons involved as well as from any witnesses. The person(s) accused of discrimination or sexual harassment will be advised of the allegations and given the chance to respond.
- Keep records of the investigation. Documentation will be kept of all phases of the investigation, from the initial complaint to any written warning or action taken.
- Attempt to resolve the complaint. The City Secretary will present findings and recommendations to the appropriate parties.
- Maintain privacy and confidentiality to the extent possible. Most aspects of the investigation are confidential. Once the employee has contacted the City Secretary, any discussion regarding the issue should be limited to those directly involved with the investigation.

Any employee who knowingly or maliciously makes a false sexual harassment complaint or report will be subject to appropriate disciplinary action.

### **1.11.7 RETALIATION IS PROHIBITED**

An employee will not be subjected to retaliation for pursuing a sexual harassment complaint.

### **1.11.8 EMPLOYEES ACKNOWLEDGE RECEIPT OF POLICY**

To emphasize the importance of this policy and ensure employees' understanding, the City requires each employee to sign a statement acknowledging receipt and understanding of this Sexual Harassment Policy. The signed acknowledgement is kept in the employee's personnel file.

*(Legal reference: Title VII of the U.S. Civil Rights Act, Section 703, as interpreted by EEOC: Sex Discrimination Guidelines, Section 1604.11; Meritor Savings Bank v. Vinson, U.S. Supreme Court, 1986; the Lilly Ledbetter Fair Pay Act of 2007; and the Genetic Information Nondiscrimination Act of 2009.)*

### **1.11.9 ANTI-HARASSMENT POLICY**

Many forms of harassment, including harassment due to one's race, ethnicity, gender, religion, sexual orientation or sexual harassment, are prohibited by federal and state laws. It is the City's policy to prohibit harassment of any kind, and the City of Bay City will take appropriate action swiftly to address any violations of this policy. The definition of harassment is verbal or physical conduct designed to threaten, intimidate or coerce. Also, verbal taunting (including racial and ethnic slurs) that, in the employee's opinion, impairs his or her ability to perform his or her job. Examples of harassment are:

- 1.) Verbal: Comments that are not flattering or are unwelcome regarding a person's nationality, origin, race, color, religion, gender, sexual orientation, age, body disability or appearances, epithets, slurs, and/or negative stereotyping.
- 2.) Nonverbal: Distribution, display, or discussion or any written or graphic material that ridicules, denigrates, insults, belittles, or shows hostility or aversion toward an individual or group because of national origin, race, color, religion, age, gender, sexual orientation, pregnancy, body disability or appearances, gender identity, marital or other protected status.

Any allegation of harassment, other than sexual harassment, shall be addressed in accordance with the Disciplinary Procedures in Section 12 Discipline of these Guidelines. Allegations of Sexual Harassment shall be addressed in accordance with this section, Section 1.11 and Section 12 Discipline of these Guidelines.

## **1.12 PERSONS WITH DISABILITIES**

### **1.12.1 PURPOSE**

It is the policy of the City to make its employment application process, employee activities, working environment, employee benefits, employee training, and employee advancement process accessible to persons with disabilities and to make reasonable accommodations to a qualified individual with a disability who is an applicant or employee, unless that accommodation will place an undue hardship on city finances or operations, or will pose a danger to the applicant, the employee, or others.

The City of Bay City, Texas offers equal employment opportunity to qualified individuals with a disability and strictly prohibits discrimination against qualified individuals on the basis of disability. In compliance with the Americans with Disabilities Act (ADA) of 1990 as amended, the City will provide reasonable accommodations to otherwise qualified individuals with disabilities as prescribed in accordance with the Act.

The City recognizes that employees with life-threatening and/or infectious illnesses or physical and/or mental disability may wish to continue to engage in as many of their normal pursuits as their condition allows. The City will allow such individuals to continue with their employment as long as they are able to perform the essential functions of their job, with or without a reasonable accommodation, without creating an undue hardship to the City and with medical evidence which indicates their condition does not present a direct threat to themselves or others.

### **1.12.2 DEFINITIONS:**

**“Disability”** refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual. A major life activity is considered to be substantially limited if an individual cannot perform the activity at all or is limited in the “condition, manner, or duration under when an individual can perform” the activity when compared to what an average person can do. An individual who has such an impairment has a record of such an impairment is also deemed a “disabled individual.” An individual may also be deemed “disabled” if the person is regarded as

having such impairment. Pursuant to the ADA, if the condition is transitory and minor with an actual or expected duration of 6 months or less, then the condition does not qualify as a disability.

**“Direct threat to safety”** refers to a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

**“Essential job functions”** refers to those activities of a job that are the core to performing the job in question and must be performed with or without an accommodation.

**“Major life activity”** may include things such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating or working. A “major life activity” may also include bodily functions such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive systems (this list is illustrative but not exclusive).

**“Qualified Individual with a Disability”** refers to an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or has applied for.

**“Reasonable Accommodation”** refers to making existing facilities readily accessible to and usable by individuals with disabilities, including but not limited to; job restructuring, part-time or modified work schedules, reassignment to an existing vacant position, acquisition or modification of equipment or devices, adjustment or modification of examinations, adjustment or modification of training materials, adjustment or modification of policies, and similar activities. An accommodation is reasonable if it does not pose an undue hardship to the City of Bay City, Texas.

**“Undue Hardship”** refers to an action requiring significant difficulty or expense by the employer. The factors to be considered in determining an undue hardship include: (1) the nature and cost of the accommodation; (2) the overall financial resources of the facility at which the reasonable accommodation is to be made; (3) the number of persons employed at the facility; (4) the effect on expenses and resources or other impact upon that facility; (5) the overall financial resources of the City; (6) the overall number of employees and facilities; (7) the operations of the particular facility as well as the entire City; and (8) the relationship of the particular facility to the City. These factors are not exclusive as undue hardship can include an action requiring significant difficulty or expense (e.g. an action is unduly costly, extensive, substantial, and disruptive or fundamentally alters the nature of city business).

### **1.12.3 REQUESTS FOR ACCOMMODATIONS**

City of Bay City, Texas employees are responsible for bringing up any disability related issues. The request form may be found in the City Secretary’s Office. A “reasonable accommodation” may be provided when it enables the employee to perform the essential functions of the job, does not cause undue hardship, and does not cause a threat to safety.

#### **Procedure**

1. The request for a “reasonable accommodation” should be directed to the employee’s department director/designee and should be made in writing.

2. The Department Director/Designee with the assistance of City Secretary/Designee determines if the employee is a qualified individual with a disability. If the impairment is not obvious, the Department Director/Designee should request that the employee submit documentation from a qualified professional, such as a physician and it must include:
  - a. Diagnosis to substantiate the existence of the impairment;
  - b. Evaluation of functional limitations which impact performance of the essential functions of the job or access to benefits of employment; and
  - c. A functional job description provided by the qualified professional for the purposes of this evaluation.
  - d. Note: the employee is responsible for acquiring the diagnosis and evaluation.
3. The employee and the Department Director/Designee discuss functional limitations:
  - a. If the employee has a disability as defined by the ADA, the employee and Department Director will discuss the specific physical or mental abilities only as they relate to the performance of essential functions of the job or access to benefits and privileges of employment; and
  - b. Assess and discuss how these barriers can be overcome with accommodation.
4. The Department Director/Designee and City Secretary/Designee will identify and communicate to the employee a reasonable accommodation. The accommodation will be determined on a case by case basis taking into consideration the documentation and information provided by the employee.
5. When a reasonable accommodation cannot be provided, the City Secretary will discuss with the employee what options are available.

#### **1.12.4 COMPLAINTS AND GRIEVANCE PROCEDURE**

Employees who have a complaint involving potential violations of the Americans with Disabilities Act or ADAA, including but not limited to harassment, discrimination, or failure to provide a reasonable accommodation, must immediately report such complaint as outlined in the City's Sexual Harassment Policy.

Should the employee disagree with the findings of the City Secretary/Designee, the employee may appeal the decision within five (5) working days to the Mayor/Designee. The request for appeal must be provided in writing. The decision of the Mayor/Designee will be final.

*(Legal Reference: U.S. Americans with Disabilities Act of 1990 and ADA Amendments Act of 2008.)*

### **1.13 CITY PROPERTY**

“City Property” means any real or personal property owned, leased, or used for city business. This includes facilities, buildings, premises, land, parks, rights-of-way, vehicles, sites of city-sponsored events, office furniture, machines, City records, and tools.

City records will be defined for the purposes of these guidelines as Local Government Record, which is defined by the Texas Local Government Code §201.003(8). A Local Government Record means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created, or

received by a local government or any of its officers or employees pursuant to law, including an ordinance or in the transaction of public business.

## **1.14 VIOLENCE IN THE WORKPLACE**

The safety and security of all City employees and other persons on City premises or work sites is of primary importance to the City of Bay City. Threats, threatening or abusive behavior, or acts of violence against citizens, employees or officials, visitors, or other individuals on City premises or equipment is prohibited.

This policy applies to City employees, City officials, City contractors and vendors, and any other persons present on City property or worksites or at City-sponsored events.

Violators of this policy are subject to disciplinary action, up to and including discharge, and to prosecution.

Any person who makes threats, exhibits threatening behavior, or engages in violent acts on City property or equipment will be removed from the City property as quickly as safety permits. The City of Bay City's response to violent acts, threats, or behavior may include, but is not limited to, employment suspension or termination, suspension or termination of business relationships, or criminal prosecution of the persons involved and/or request of a restraining order from the appropriate judicial official.

City employees are responsible for notifying their supervisor or the City Secretary of any threats, or threatening behavior, that they witness or receive, in addition to any threats that they are told another person witnessed or received, that occurred on City property, or while on City equipment, or in relation to City business. Employees are responsible for making these reports regardless of the relationship between the individual initiating the threat or threatening behavior and the person(s) being threatened.

A City employee or official who applies for or obtains a protective or restraining order which lists the City of Bay City premises or equipment as protected areas, must immediately provide their supervisor or the City Secretary with a copy of the petition and declarations used to seek the order, a copy of any temporary protective or restraining order which is granted, and a copy of any protective or restraining order that is made permanent. The City Secretary will forward the order to the City Attorney. Unless otherwise required by law, any information of this nature will be released on a need to know basis only to the appropriate law enforcement, management, and/or administrative personnel.

## **1.15 WEAPONS**

The City of Bay City prohibits any applicant, employee, contractor, subcontractor, vendor, agent, representative, or officials from possessing, using, concealing, carrying or maintaining weapons of any kind on City property or on City equipment, or while representing the City in any capacity. This prohibition includes carrying or maintaining a concealed weapon or handgun in any City vehicle used in connection with employment. Prohibited weapons include, but are not limited to, the following:

- All firearms;

- Knives with blades more than five inches in length;
- Any form of explosive weapon or other explosive device;
- Any knife, chain, club, axe, or instrument when carried or displayed as a weapon;
- Any explosive or incendiary devices; or Noxious, caustic, or toxic chemicals.

This policy does not apply to a peace officer or animal control officer employed by, or assigned to duty with, the City.

Pursuant to Texas Labor Code §52.061, this policy does not apply to an employee who holds a license to carry a concealed handgun under Chapter 411 of the Texas Government Code, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition from transporting or storing a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the City provides for employees. Employees licensed to carry concealed weapons must report to the Chief of Police their identity and license plate numbers of all vehicles that employee may park in City parking lots.

If an employee is unsure whether an item is covered by this policy, he or she should contact the City Secretary for verification. Any violation of this policy will result in disciplinary action up to and including termination.

While the City has a policy prohibiting weapons, nothing in this policy shall be construed as creating any duty or obligation on the City's part to take any actions beyond those required of an employer by existing law.

## **1.16 SEARCHES**

The City reserves the right to make general or random searches of City property, premises, and equipment to include buildings, parking lots, vehicles, lockers, closets, and desks without the consent of employees. The objects of searches may include alcohol, prohibited drugs, drug paraphernalia, pornography, explosives, firearms, knives, or other prohibited weapons, or unauthorized City property or information.

The use by employees of privately owned padlocks or other locking mechanisms for City property is prohibited, unless the key or the combination to the lock is provided to the employee's supervisor or to his or her designee. If an employee does use a privately owned padlock or other locking mechanism on any City property, the City may remove it at any time, and the employee will not be entitled to any reimbursement for damage to the mechanism. The use of any privately owned padlock or other locking mechanism for City property does not create an expectation of privacy with regard to any contents within the locked city property.

Objects brought into the workplace by an employee, such as personal effects, purses, briefcases, vehicles, bags, boxes, or electronic devices, may be subject to search at any time if an individualized reasonable suspicion or probable cause exists that alcohol, prohibited drugs, drug paraphernalia, pornography, explosives, prohibited weapons, or unauthorized City property may be found. If the employee is available, he or she will be asked to consent to the search, but the search may not be dependent upon that consent.

Any search will be conducted as privately as possible, involving only persons with a need to know and only with the authorization of the Mayor, City Secretary, or Police Chief.

## **1.17 EMPLOYEE PERSONNEL RECORDS**

### **1.17.1 PERSONNEL FILES – GENERAL**

Personnel files are maintained in the City Secretary's office.

Information in an employee's personnel file is public information and must be disclosed upon request unless specific items are excepted from disclosure by law. No information from any record placed in an employee's file will be communicated to any person or organization except by the City Secretary, the Mayor, or by another employee authorized to do so by the Mayor.

Each employee may choose whether the city discloses the employee's home address and telephone number. A form for this purpose is available from the City Secretary. If a new employee does not request confidentiality within the first 14 days of employment, the home address and telephone number on file are considered public information. Employees may change their elections for disclosure or confidentiality at any time by contacting the City Secretary. (Legal reference: *Public Information Act, V.T.C.A. Government Code, Sec. 552.024.*)

An employee or his or her representative designated in writing may examine the employee's personnel file upon request during normal working hours in the presence of the City Secretary at the city offices. The employee may request copies of items or materials in his or her personnel file but may not remove anything from the file. Once the employment relationship between the City and an employee ends, the employee will no longer have the ability to view their personnel file.

It is the responsibility of the employee to provide the City Secretary with any changes in or corrections to information recorded in their individual personnel files such as:

- Home address;
- Telephone number;
- Person to be notified in case of emergency;
- Change in marital status or in the number of dependents (for the purposes of health insurance and income tax withholding);
- Change in beneficiary for life insurance and retirement benefits;
- Any additional schooling, certificates, or degrees earned during the course of your employment;
- Any changes in Social Security or driver's license numbers;
- Or other pertinent information.

*(Legal reference: V.T.C.A. Government Code, Sec. 552.102)*

## **1.17.2 CONTENTS OF PERSONNEL FILES**

An employee's official personnel file contains:

- An employment record;
- A copy of the employee's application for employment/resume;
- A copy of the employment offer letter;
- A signed copy of the employee's acknowledgment of having reviewed a copy of the City of Bay City Employee Guidelines for Employees;
- The employee's current job description and job description(s) for other positions held with the City;
- The election to disclose or keep confidential home address and home telephone number form;
- Personnel action forms;
- Records of any citations for excellence, awards for good performance, or job-related training/education;
- Records of any disciplinary action(s);
- Performance evaluations;
- Copies of any grievances and related materials;
- Any other pertinent information having a bearing on the employee's status; and
- Any written statements from the employee explaining, rebutting, or clarifying other items in the file.

An employee's personnel file does not contain information regarding an employee's medical record(s), nor does it contain any information relating to drug or alcohol testing. These medical files are confidential and are not released to anyone unless a "need to know" has been clearly established. Only the City Secretary has routine access to employee medical records. *(Legal reference: U.S. Americans with Disabilities Act of 1990 and ADA Amendments Act of 2008, and Health Insurance Portability and Accountability Act of 1996, as amended.)*

## **1.17.3 EMPLOYEE LEAVE RECORDS**

Official records of earned vacation leave, sick leave, compensatory leave, and of leave usage are kept for each employee by the City Secretary at the end of each calendar year. Leave records are updated at the close of each pay period. Leave balances are shown on the official record to reflect any remaining leave to which an employee is entitled.

## **2. EMPLOYEE RESPONSIBILITIES**

### **2.1 EMPLOYEE RESPONSIBILITIES – GENERAL**

#### **2.1.1 WORK ETHIC**

The City is a public organization. Its employees are expected to adhere to high standards of service that emphasize professionalism, courtesy, and avoidance of even the appearance of illegal or unethical conduct at all times. Employees shall, during both working and non-working hours, act in a manner which will inspire public trust in their integrity, impartiality, and devotion to the best interests of the City, its customers, and citizens. Employees are required to give a full day's work, to carry out efficiently the work tasks assigned as their responsibilities, to maintain good moral conduct, and to do their parts in maintaining good relationships with the City's customers, their supervisors, and their fellow employees.

Prompt settlement of lawful bills is your solemn obligation wherever you work. As an employee of the City, your obligation to pay bills on time becomes even more serious. The reputation of all municipal employees can be directly affected by your actions. All employees are expected to keep their personal financial affairs in good order. Failure to pay just debts, including taxes, may constitute grounds for disciplinary action.

City employees may be offered honorariums<sup>1</sup>. If the employee is being paid by the City for the time for which the honorarium will be received, the honorarium must be rejected.

The City may require some positions to obtain a notary license. In that event an employee shall be required to use their license in an ethical manner. An employee shall only notarize City related documents with their City paid notary during business hours.

#### **2.1.2 USE OF PERSONAL CELL PHONES**

Employees may be permitted to bring their personal cell phones to work, but excessive use of personal cell phones during working hours will not be tolerated. Any employee who violates this policy will be subject to disciplinary action. Individual departments or units may impose stricter rules regarding use of personal cell phones.

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<sup>1</sup> Honorarium can be defined as a payment for service.

## 2.2 PROFESSIONAL APPEARANCE

While the City does not have a formal dress code, employees are expected to exercise regular hygiene care and to dress and groom themselves in a neat and tasteful manner which is appropriate to the particular job being performed. Every attempt should be made to keep tattoos covered and inconspicuous. Expensive clothes are not necessary, but a neat, well-groomed appearance and a courteous attitude are necessary in creating and maintaining a professional, favorable image of the City's work force. Employees in certain departments are required to wear uniforms which must be maintained and worn in a clean, neat manner.

The acceptable professional business attire guidelines are as follows:

1. Slacks.
  - a. Jeans and/or khakis can be worn on Friday's only with a blouse (woman) as described below, or a City polo shirt is acceptable.
  - b. No shorts.
2. Dresses and skirts should be of a professional nature. The length should be knee length or near knee length.
3. Tailored capris.
4. Dress Shirts and Polo Shirts.
  - a. Women's blouses must be professional and modest.
    - i. No low cut tops.
    - ii. No tank tops, unless worn under a shirt or jacket.
    - iii. No t-shirts.
    - iv. No exposed bra straps.
  - b. Men's: every attempt should be made to tuck in shirts when working in the office.
    - i. No tank tops
    - ii. No t-shirts
  - c. Advertising and Comments on shirts will not be acceptable, unless advertising for a future City event or project.
5. Shoes.
  - a. Dress strappy sandals that have a back or strap.
  - b. Closed toe shoes.
  - c. Boots.
  - d. Tennis shoes (only on Friday).
  - e. No flip flops and/or beach flip flop shoes.

## 2.3 PERSONAL VISITORS IN THE WORKPLACE

In the event that a non-work related person visits an employee during working hours, the employee is responsible for the conduct and safety of his or her visitor(s). Personal visits with City employees should be limited so as not to be unduly disruptive of the work environment. In some City facilities or areas, personal visitors may be prohibited, i.e., the dispatch area in the Police Department. Individual departments may impose stricter rules regarding personal visitors in the workplace.

## 2.4 TIMELINESS AND ATTENDANCE

Punctuality in reporting for work and regular attendance are absolutely essential to the City's fulfillment of its mission to the citizens of our community. Employees are required to be at their places of work or performing their assigned duties in accordance with the work schedules established for their department or division, unless officially excused by their supervisor. Any employee that fails to report for duty, is repeatedly tardy, leaves the workplace without proper authorization, or misuses leave, is subject to disciplinary action, up to and including termination. All departments will maintain attendance records.

### 2.4.1 GUIDELINES

- 1.) When you have advance knowledge of an impending absence, you must request permission to be absent at least three (3) days (72 hours) in advance of the scheduled absence. The request must be directed to and approved by your supervisor. Some departments may have stricter requirements because of scheduling and shifts.
- 2.) If because of some personal or family emergency or illness, you are unable to provide advance notice of your absence, you must notify **your supervisor** as soon as permitted by the emergency circumstance. The notification should occur no less than fifteen (15) minutes prior to the start of your scheduled shift. Incidental knowledge of the planned absence by the City as a result of comments of other employees, emails, or information from public communications sources does not constitute notice to the City from the employee.
- 3.) Tardiness is defined as one (1) minute past the start of your shift. If you expect to be late you must call your supervisor and inform him or her of the delay.
- 4.) An unexcused absence occurs when an employee's supervisor or Department Head has not been properly notified that an employee will be late or absent.
- 5.) If you are not able to reach your immediate supervisor or Department Head, notify the City Secretary's Office of your absence or tardiness. **It is not acceptable, except under emergency situations, to have a family member or friend call in to arrange absence notices.** Absences that are not specifically covered by the City's employee benefit program will be without pay.
- 6.) If you are absent from your job, due to an illness, for three (3) or more consecutive workdays, you must submit a doctor's note upon your return. The doctor's note should provide the date of your illness or injury, an explanation of the nature of your illness or injury, and a release that allows you to return to work without limitation.
- 7.) Departments may allow for an employee to utilize flex-time to address unforeseen situations that may arise.

See also Section 8 "Leave Time" of these policies for matters involving planned absences.

## **2.4.2 DISCIPLINE**

An employee who fails to properly notify the appropriate personnel in advance of an absence or tardiness will be subject to disciplinary action, up to and including termination of employment.

An employee who fails to report, is habitually tardy, leaves the workplace without proper authorization, has unacceptable absenteeism or misuses leave will be subject to disciplinary action, up to an and including termination of employment.

If you have been absent and the City has not heard from you for two (2) consecutive work days, you will be considered to have quit your job.

## **2.4.3 PROGRESSIVE DISCIPLINE**

1. An employee with two (2) unexcused absences or tardies in one month will receive a first written reprimand. The written reprimand should be signed by the employee and the supervisor and a copy placed in the employee's personnel file.
2. An employee with six (6) unexcused absences or tardies in a two month period will receive a second written reprimand. The written reprimand should be signed by the employee and the supervisor and a copy placed in the employee's personnel file.
3. An employee with eight (8) unexcused absences or tardies in a three month period will be terminated.

## **2.5 OUTSIDE EMPLOYMENT**

An employee of the City of Bay City will not be permitted to engage in outside employment where such employment conflicts or interferes with the performance of duties with the City. An employee must seek approval from his or her director and/or supervisor before accepting outside employment. Work requirements including overtime will have precedence over any other employment. Law enforcement personnel must receive the express written approval of their supervisors and of the Chief of Police for any outside employment in law enforcement or security work. The following guidelines shall also apply with regard to outside employment:

- 1) A full-time regular employee will consider their job with the City as their primary job.
- 2) If an employee is planning on taking an additional job, including self-employment, prior notification must first be given to their immediate supervisor and the department director.
- 3) Permission will not be granted for an employee to work with an organization or municipality that is in competition with or presents a potential conflict of interest with the City of Bay City.
- 4) Outside employment will not be considered an excuse for poor job performance, absenteeism, tardiness, leaving early, refusal to travel, or refusal to work overtime or different hours. If the work standards or performance of an employee of the City suffers and it is determined to be caused by outside employment, permission to work at the outside job may be rescinded, or the employee may be subject to discharge.

- 5) If a City employee is injured on the job in the course of employment outside of his or her employment with the City, the employee is not eligible to file a workers' compensation claim against the City for benefits related to the injury, regardless of the fact that the City may have approved of the outside employment.
- 6) The City employee will notify their supervisor immediately upon any change in outside employment status or condition.

Approval for outside employment as set out in this policy does not authorize an employee on Family and Medical Leave (FMLA) leave, sick leave, disability leave, workers' compensation leave, or an unpaid leave of absence, to engage in outside employment. Under no circumstances may an employee on FMLA leave, sick leave, disability leave, workers' compensation leave, or an unpaid leave of absence, engage in outside employment as defined in this policy unless expressly authorized in writing by the Mayor.

## **2.6 GIFTS AND GRATUITIES**

A City employee may not solicit, accept, or agree to accept any substantial gift, gratuity, favor, loan, free service, or anything else of monetary value that might tend to influence the employee's official actions or impair his or her independence of judgment in the performance of duties for the City. See "Conflict of Interest" section below.

Employees (and their relatives and significant others) may not receive any income or other material gain from anyone outside the City for services provided by the employee in the performance of his or her job with the City. "Significant others" means engaged couples or relationships between individuals the substance of which reflects a marital relationship.

An employee who accepts the following will not be considered in violation of this policy:

- A non-financial award publicly presented in recognition of public service;
- An occasional meal where business is discussed;
- Tee-shirts, caps, and other similar promotional material; or
- A gift which would have been offered or given to the employee even if the employee were not a City employee.

## **2.7 CONFLICT OF INTEREST**

An employee of the city may not have a financial interest in the profit of any contract, service, or other work performed for the City or derive personal profit directly or indirectly from any contract, purchase, lease, sale, or service between the City and any person or company.

An employee may not:

- 1.) Solicit or accept or agree to accept a financial benefit, other than from the City, that might reasonably tend to influence his or her performance of duties for the City or

that he or she knows or should know is offered with intent to influence the employee's performance;

- 2.) Accept employment or compensation that might reasonably induce him or her to disclose confidential information acquired in the performance of official duties;
- 3.) Accept outside employment or compensation that might reasonably tend to impair independence of judgment in the performance of duties for the City;
- 4.) Make any personal investment that might reasonably be expected to create a substantial conflict between the employee's private interest and duties for the City; or
- 5.) Solicit or accept or agree to accept a financial benefit from another person in exchange for having performed duties as a City employee in favor of that person.

*(Legal reference: V.T.C.A., Local Government Code, Section 171; V.T.C.A. Penal Code, Chapter 36).*

## **2.8 POLITICAL ACTIVITY LIMITED**

Employees of the City are encouraged to vote and to exercise other prerogatives of citizenship consistent with state and federal law and these policies.

An employee may not:

- 1.) Use his or her official authority or influence to interfere with or affect the result of an election or nomination for office; or
- 2.) Directly or indirectly coerce, attempt to coerce, command, or advise a local or state officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for a political purpose.

### **2.8.1 EMPLOYEES COVERED BY FEDERAL HATCH ACT**

In addition, a City employee who is subject to the provisions of the Federal Hatch Act may not be a candidate for elective office in a partisan election. (A partisan election is an election in which candidates are to be nominated or elected to represent a party whose candidates for presidential electors received votes in the last preceding election at which presidential electors were selected). City employees are subject to this additional Hatch Act restriction if their principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the federal government. *(Legal reference: V.T.C.A., Penal Code, Chapter 36; Hatch Act: 5, U.S. Code, 1501 - 1508, as amended, P.L. 93-443.)*

### **2.8.2 NO POLITICAL ACTIVITY IN CITY UNIFORM**

City employees are prohibited from participating in any way in any partisan political activity while wearing a City uniform, shirt, badge, nametag, or emblem, regardless of whether the employee is on duty or on his or her own time. In addition, City owned premises, property, vehicles, and equipment may not be used for displaying campaign materials or for conducting any

partisan political activity. However, use of the Service Center (USO) will be excepted from this rule on Election Day.

### **2.8.3 INVOLVEMENT IN LOCAL ELECTIONS**

- 1.) All employees must notify their supervisor when seeking or accepting nomination or election to any public office that provides remuneration for the same. Employees who are elected or appointed to a public office are required to resign from City employment, if the candidacy or position creates a conflict of interest with their City position, or the position provides for remuneration. (*Legal Reference: Article 16, Sec. 40, Constitution, State of Texas*).
- 2.) No employee, while in uniform, of the City shall circulate petitions or campaign literature for candidates for City offices or in any way be concerned with soliciting or receiving any subscriptions, contributions, or political service from any person on behalf of such candidate or elected official.
- 3.) All employees of the City shall refrain from using their influence publicly in any way regarding any candidate for elective City office or regarding any election where an issue or proposal involves only City employees.
- 4.) No employee, while in uniform, shall engage in political activities while on his/her working hours with the City. Political activity includes wearing political buttons, handing out political literature, and the like.

An employee's political activity, not in violation of this section, will not be used in determining his or her compensation, eligibility for promotion or assignment, leave or travel request, or in applying any other employment practices to the employee. Likewise, no employee will be threatened or otherwise disciplined, terminated, or deprived of his or her employment rights for refusing to participate in such activities.

## **2.9 NON-DISCLOSURE POLICY**

The City recognizes the right of all of its employees to speak out on matters of public concern, even when they disagree with an official policy or regulation. Employees should refrain, however, from:

- 1.) Releasing confidential information about business negotiations conducted by the City, where such disclosure would give an unfair advantage to a party to those negotiations;
- 2.) Releasing information regarding an ongoing investigation, where such disclosure would interfere with or compromise the efficient conduct of the investigation or the protection of confidential informants;
- 3.) Spreading malicious gossip about anyone in the community, where the employee knows the assertions are false or acts with reckless disregard for their truth or falsity;
- 4.) Misrepresenting official City or department policy; or
- 5.) Acting without permission as an official spokesperson for the City or for a department.

Any employee violating this rule may be subject to disciplinary action. Questions regarding this rule should be presented to the employee's Department Head, who will seek appropriate guidance through the City Attorney.

## **2.10 COMMUNICATIONS**

From time to time, an employee may be given directions from persons outside the normal chain of command. In such cases, it is the employee's responsibility to notify his or her Department Head about the direction, its purpose, and the relevant facts of the situation. Failure to do so in a timely manner may result in disciplinary action.

In the event that an employee is given conflicting instructions from more than one person who occupies a position which is higher than the employee's position in the City's hierarchy, the employee is required to notify his or her supervisor and the Mayor of the conflicting instructions.

An employee may request that a matter be considered by the City Council by submitting the item in writing to the Mayor. The Mayor will determine whether if, and in what form, an item suggested by an employee may be submitted to the City Council.

Communication with the public and with the news media about City issues or problems is the responsibility of the Mayor and the City Council. Employees are to refer members of the public or the news media to a departmental public information officer or the Mayor.

## **2.11 OFFICE DONATIONS ARE VOLUNTARY**

No employee will be forced to contribute or make donations to any fund or collection. Any voluntary office collection must be approved by the Department Head.

## **2.12 COMPUTERS AND ELECTRONIC COMMUNICATION DEVICES ARE FOR CITY BUSINESS**

### **2.12.1 CITY EQUIPMENT FOR CITY BUSINESS USES**

City computers and electronic communication devices, including telephones, voice mail, cellular telephones, e-mail and messaging, internet connections, and fax machines, are to be used for City business. There is no expectation of privacy for an employee using these systems.

Any form of electronic communication creates a written business record that can be subpoenaed and used as evidence in litigation or regulatory investigations, or can be subject to an Open Records Request from the public.

## 2.12.2 NO OR LIMITED PERSONAL USE

Occasional use of local telephone service for personal communications is permissible if the length and number of such communications are kept to a minimum and if there is no charge to the City for a metered service. Employees in some departments may be allowed to carry and use personal cell phones, provided that the employee does not use the personal cell phone for excessive personal calls. Excessive personal use of telephones, whether City lines or personal cell phones, will not be tolerated, and is subject to disciplinary action.

Use of City communications systems, including telephones, computers, internet, and fax machines, for sending or receiving offensive or harassing statements, sexually oriented materials, illegal transactions, or private business transactions is strictly prohibited.

City employees and officials may not place personal long distance telephone calls on City telephone equipment unless a serious emergency exists and there is no other alternative available to the employee. If personal calls are made which result in a charge to the City, the employee must reimburse the City within 10 days after notification from the City Secretary or her designee. Abuse of City telephones can result in disciplinary actions, up to and including termination.

## 2.12.3 CITY ISSUED CELLULAR PHONES

Where job needs demand immediate access to an employee, the City may issue a City-owned cellular telephone to an employee for work-related communications. These phones are intended to be used for business purposes and incidental personal calls should be as brief as possible. It is recognized that employees will use City issued cellular phones for personal use. Abuse of City issued cellular phones can result in disciplinary actions, up to and including termination.

The City of Bay City desires to provide its citizens with the highest level of governmental service. Employees are expected to maintain the same degree of etiquette, responsibility and professionalism in the use their cellular phones as is expected of them in the course of their normal job functions. Employees assigned a City issued cellular phone will be required to answer any calls, emails, and/or text messages in a timely manner.

**Eligibility and Acquisition.** The assignment of a cellular phone is based on an employee's need and level of urgency for two-way communication with his/her office, other City departments, and is intended to increase productivity, increase service to the public, or for use in situations in which necessary communication cannot be provided by any other means. The issuance of a City cellular phone must be fully justifiable prior to an employee receiving it. The type of authorized phone will depend upon the degree and methods of communications required for the employee's position. Cellular phones allowing internet, email, texting, video, and picture capability are limited.

A cellular phone may be issued to an employee who fits the following criteria:

- 1.) City employees who are frequently in a vehicle and must conduct City business while in the field where it can be shown that cost savings and customer service efficiency will be realized with cellular communication.

- 2.) City employees who are on call or part of a 24/7 shift operation and require a means of two-way communication after regular business hours.
- 3.) City employees who have a critical need to maintain accessibility to other department employees or public officials in order to ensure uninterrupted customer service.
- 4.) City employees who need to provide immediate and direct communications with citizens, outside agencies, or other resource entities outside City government.
- 5.) City employees who are involved in emergency response activities.

The Information Technology Department will maintain an inventory of all cellular phones and usage by authorized users. This inventory will include account numbers, telephone numbers, and names of employees who have been assigned telephones. All cell phone purchases and repairs are handled through the I.T. Department.

It is the responsibility of the department director to verify that sufficient funds are budgeted for the monthly operational cost associated with cellular equipment in the department. Cell phone expenditures will be charged to each department's communication line item unless otherwise directed. The purchase of cellular phones is subject to approval by the Department Head. The Department Head shall assign each cellular phone to one specific individual, and ensure appropriate controls are in place for checkout, return, security, and maintenance of the equipment. An employee may obtain accessories for a City phone, other than what is provided, but the accessories shall be paid for by the employee.

**Cell Phone Usage.** The City recognizes there are occasions in which personal calls need to be made or received on a cellular phone. However, City cell phones are intended to be used for City business. Personal calls must be minimized. The City reserves the right to monitor the use of all City cell phones and has the authority to withhold any unreimbursed amount from an employee's wages.

**Prohibited Uses.** The following acts will prompt the removal of cell phone usage and/or disciplinary action, up to and including discharge from employment:

- 1.) Any use which violates, local, state, or federal law or City policy or procedures.
- 2.) Utilizing the cell phone while operating a vehicle. Employees are responsible for, and will be held accountable for, safe-driving conditions at all times.
- 3.) Any call which could suitably be made from a standard City telephone or by a less costly communications device.
- 4.) Out-of-country and out of network or roaming calls, except when necessary for business purposes and approved in advance by the employee's direct supervisor.
- 5.) Any calls that are not included within the City's service plan.
- 6.) Any call made in relation to an employee's business enterprise.
- 7.) Sending or choosing to receive a communication that could reasonably be considered offensive, illegal, sexually explicit, threatening, or otherwise inappropriate for the workplace.
- 8.) Any texting while driving.

A conversation held on a cellular phone is not secure; therefore, employees must use discretion and practice reasonable caution in relaying confidential information.

**Level of Service.** Employees with City paid cell phones may have different levels of service depending upon their position. The City will offer limited and full service cell phone usage to its employees. Limited service will consist of the push to talk feature, while a full service phone will be allowed a wider range of features.

**Maintenance.** Each employee who is assigned a City cell phone is responsible for good care and maintenance of the assigned device. Reasonable precautions should be made to prevent theft of or damage to the cell phone and related equipment. City owned cell phones should not be taken into environments where the equipment is likely to be damaged or destroyed, unless the possession of the telephone within such an environment is necessary for the performance of an employee's official duties.

Phone equipment that is damaged in the course of business should be brought to the I.T Department, which will make arrangements for the replacement or repair. Lost or stolen equipment must be reported immediately to the employee's supervisor or Department Head, so the service can be canceled. All costs incurred for replacement or repair will be the responsibility of the user's department, unless the Department Head and I.T determine that the employee abused the equipment or was negligent, in which case the cost will be the employee's responsibility.

**Replacement.** Any person who loses or causes a cellular phone to be disabled or non-repairable may request a replacement phone, if the event that caused the damage can be justified as work related. If an employee requires a replacement phone due to employee negligence, the employee will be required to pay for the replacement phone. Multiple replacements may lead to disciplinary action.

## **2.12.4 CITY COMPUTER SYSTEMS**

Electronic mail and messaging and internet access systems, made available by the City to City employees are efficient and valuable business tools. They are also property of the City. City computer systems, including internet access and electronic mail and messaging systems, are to be used for City business. Because all electronic communications systems are City property, there is no expectation of privacy for an employee using these systems. Employees who have excessive computer or internet usage for personal communication will be subject to disciplinary action, up to and including termination.

Any form of electronic communication creates a written business record that can be subpoenaed and used as evidence in litigation or regulatory investigations, or can be subject to an Open Records Request from the public.

Flash drives or other portable storage devices may be used in the workplace only if purchased by the City and issued to the employee. The Mayor or his or her designee may view, without notice, what is on an employee's flash drive or other storage device.

City computer systems, Internet access, voice mail, e-mail, and electronic storage devices may not be used for transmitting, retrieving, or storing any communications, images, or other content of a discriminatory or harassing nature or any materials that are obscene, X-rated, or otherwise

inappropriate (except as required in the Police Department for required investigations by the Chief of Police). Harassment using these devices is strictly prohibited. (See Policy on Sexual Harassment). No messages with derogatory or inflammatory remarks about an individual's race, color, age, disability, religion, national origin, sex, physical attributes, or sexual orientation may be transmitted or forwarded using the City systems. No abusive, profane, or offensive language may be transmitted through the City's electronic communications systems. The City's harassment policy applies in full to electronic communications systems. Employees have no expectation of personal privacy regarding any matter created, received, retrieved, stored, or sent from or on the City's computers or electronic communications systems.

The City's computers and electronic communications systems may not be used for a purpose that is illegal, against City policy, or contrary to the City's best interest. Solicitation of non-City business or any use of the City's computers or electronic communications systems for personal gain is prohibited. Employees are prohibited from opening spam messages received on City electronic communications systems and should consider carefully the source before opening e-mail attachments.

The City's guidance is that employees should not use City electronic communications systems to say or write anything that they would not want someone other than the intended receiver to hear or read. Employees should keep in mind that even when an e-mail, instant message, or voice mail message has been deleted from a location, it is still possible to retrieve that message. In addition, the City may identify and monitor the content of internet sites accessed from any City computer.

## **2.12.5 EMPLOYEES RESPONSIBLE FOR CONTENT OF MESSAGES**

Each employee is responsible for the content of all text, audio, or images that he or she accesses, places, or sends over the City's voice mail, e-mail or internet systems (including bulletin boards, online services, or internet sites). Employees must include their name in all messages communicated on the City's voice mail, e-mail, or internet system.

If an employee receives unsolicited voice mail or e-mail messages that appear to violate this policy, the employee should notify his or her supervisor immediately. Similarly, if an employee accidentally accesses an inappropriate web site in the normal course of business, the employee should notify his or her supervisor immediately.

If an employee receives or has access to a message that is not addressed to him or her, the employee is not authorized to read or use information contained in that message.

## **2.13 SOCIAL MEDIA**

The purpose of the city's social media presence is to establish a greater level of transparency of city government and services. Build a one-on-one connection that creates an open dialogue with residents and other interested parties, to be able to publish time sensitive information to residents and media quickly. This policy is to establish procedures for the City's participation in various social media venues and to establish the standards for posting, allowing, or forbidding certain content and commentary on social media sites which include but not limited to Facebook, YouTube, and Twitter. The City encourages the

use of social media to convey information from the City to its citizens, to facilitate a sense of community and for residents and to allow businesses to communicate with and obtain information about the City of Bay City online. The City's website will remain the primary avenue for release of information to reach a broader audience and encourage citizen participation. Nothing contained in any social media site constitutes a binding representation, view, position, opinion, agreement or endorsement on behalf of the City of Bay City, Texas.

All Department Heads are responsible for their subordinates' compliance with the provisions of this policy and for investigating non-compliance.

## 2.13.1 DEFINITIONS

**“Social Media”** are third-party websites containing information that is intended to facilitate communications, influence interaction with peers and with public audiences about some topic, typically via the Internet and mobile communication networks. Types of social media include but are not limited to, Facebook, Twitter, Instagram, and any other social media outlet that serves the purpose of sharing information.

**“City Social Media Sites”** are pages, sections or postings in Social Media websites that are established or maintained by an employee of the City who is authorized to do so as part of the employee's job. City Social Media Sites are intended to be used for City business, to communicate with office holders or City staff, and/or communicate or gather feedback from residents and other interested parties.

**“City Social Media Content”** is information posted or provided to a City Social Media Site by a City employee or authorized agent when such activity is a part of the employee or agent's duties.

**“Social Networking”** is the practice of engaging in business and/or social contacts by making connections via interactive Web-based applications.

**“Blog”** is a web site that contains an online personal journal with reflections, comments, and often hyperlinks provided by the writer.

**“Post”** is to display an announcement in a place for public view on a social media.

**“Comment”** means a response to a City article or social media content submitted by any person or entity.

**“Link”** is short for “hyperlink” which connects a hypertext file to another location or file typically activated by clicking on a highlighted word or icon at a particular location on the screen.

**“Public Information”** is any information collected, assembled, or maintained by the City in the transaction of official business pursuant to Chapter 552 of the Texas Government Code.

**“Facebook”** Facebook is a free-access social networking website that is operated and privately owned by Facebook, Inc. <http://www.facebook.com/BayCityTX>

**“Twitter”** Twitter is a free social networking and micro-blogging service that enables its users to send and read other users' updates known as “tweets” which answer the question “what are you doing?” <http://www.twitter.com/CityofBayCityTX>

**“Instagram”** is an online mobile photo-sharing, video-sharing and social networking service that enables its users to take pictures and videos, apply digital filters to them, and share them on a variety of social networking services, such as Facebook and Twitter.

## 2.13.2 GUIDELINES

### General Regulation of City Social Media Sites

1. All official City presences on social media sites or services are considered an extension of the City's computer information network and are governed by and subject to Section 2.12, City's Computer and Electronic Communication Devices contained in the City's Personnel Guidelines.
2. Respect copyrights and fair use. All postings must comply with applicable federal, state, and local laws, and regulations and retention schedules according to the Texas Local Government Code, Chapters 201 and 205. Records required to be maintained pursuant to the Texas State Library and Archives Commission records retention schedule shall be maintained for the required retention period in a format that preserves the integrity of the original record and is easily accessible using the usual or approved City platforms or tools.
3. Information collected at this site becomes public record that may be subject to inspection and copying by members of the public, unless an exemption in law exists according to the Texas Public Information Act.
4. When possible, links to more information should direct users back to the City's official website for more information, forms, documents, or online services necessary to conduct business with the City.
5. It is preferred that only one social media account per platform exists for the City. This is to create a singular source of free flowing information that City residents will be able to access easily at all times. The City is already established on Facebook at [www.facebook.com/BayCityTX](http://www.facebook.com/BayCityTX) and Twitter at [www.twitter.com/CityofBayCityTX](http://www.twitter.com/CityofBayCityTX).
6. Those wishing to launch new City Social Media sites, add site pages, or add content to the City's site should make their request in writing or via e-mail to the Mayor. If the request is approved, any login and passwords to the information must be shared with the Mayor's Office.
7. Employees creating or posting information to a City Social Media Site must conduct themselves professional at all times as representatives of the City in accordance with all other City policies.
8. The Mayor may disable a City Social Media site or prohibit posting of City social media content to a site at any time or for any reason, including but not limited to violation of this policy, improper content, lack of use or disinterest by the public, or a department's failure to properly maintain the site. The City reserves the right to remove any content that is not within these guidelines, while retaining said content for the appropriate records retention according to state law.

### Content of City Social Media Sites

1. Employees using social media sites, whether as an administrator or as a responder to a posting, will follow these principles:
  - a. Keep post factual and accurate. If a mistake is made, admit to it and post a correction as soon as possible.
  - b. Reply to comments in a timely manners, when a response is appropriate. Never get in an argument with a citizen on a City maintained social media site. Do not respond with opinion or conjecture – only respond with complete facts.

- c. Understand that postings are widely accessible, not retractable, and will be around for a long time, so consider content carefully.
  - d. Ensure your comments do not violate City’s privacy, confidentiality, and applicable legal guidelines for external communication.
  - e. Ensure you have the legal right to publish others’ material, including photos and articles pulled from other sites.
  - f. Remember that your postings are ultimately your responsibility.
2. Social Media Terms of Use for Employees/General Public:
- a. Persons may be permanently excluded from City social media pages if acting contrary to these rules. Persons who repeatedly break rules will receive a warning prior to removal.
  - b. Persons writing more than 250 characters may be asked to rewrite.
  - c. Anyone using profane language or posting any information that could be considered disrespectful dialogue will be asked to reword their post and it will be deleted.
  - d. Content that is confidential according to the Texas Public Information Act;
  - e. Comments must not be in support of or opposition to political campaigns or ballot measures; Postings for electoral campaign purposes will not be published.
  - f. Content will be removed that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability or sexual orientation;
  - g. Sexual content or links to sexual content is not permitted.
  - h. Conduct or encouragement of illegal activity is not permitted.
  - i. Posted content must be relevant to Bay City.
  - j. Information or references to the personal addresses, personal telephone numbers, personal e-mail addresses, family members, or other personal information of City officials or City employees;
  - k. No attacks on individual character will be permitted.
  - l. Commercial promotions or spam;
  - m. Links to websites or “pages” of outside vendors that are not related to the purpose of the media site.
  - n. You are legally responsible for what you write, and it must not breach any law, confidentiality or copyright. Because you are responsible for your statements, be careful about exaggeration, innuendo, etc.
  - o. Comments must contribute and be relevant to the dialogue that is being discussed.
  - p. The City reserves the right to restrict or remove any content deemed in violation of the terms outlined in this policy. Any content removed based on these guidelines will be retained, including the time, date and identity of the poster when available. The City of Bay City reserves the right to update these terms of use.

**2.13.3 WRITTEN ELECTRONIC COMMUNICATIONS ACCESSIBLE TO THE PUBLIC – SB 1297**

**SECTION 1. Subchapter A, Chapter 551, Government Code, is amended by adding Section 551.006 to read as follows:**

- a. A communication or exchange of information between members of a governmental body about public business or public policy over which the governmental body has supervision or control does not constitute a meeting or deliberation for purposes of this chapter if:
  - i. The communication is in writing;
  - ii. The writing is posted to an online message board or similar Internet application that is viewable and searchable by the public; and
  - iii. The communication is displayed in real time and displayed on the online message board or similar Internet application for no less than 30 days after the communication is first posted.
- b. A governmental body may have no more than one online message board or similar Internet application to be used for the purposes described in Subsection (a). The online message board or similar Internet application must be owned or controlled by the governmental body, prominently displayed on the governmental body's primary Internet web page, and no more than one click away from the governmental body's primary Internet web page.
- c. The online message board or similar Internet application described in Subsection (a) may only be used by members of the governmental body or staff members of the governmental body who have received specific authorization from a member of the governmental body. In the event that a staff member posts a communication to the online message board or similar Internet application, the name and title of the staff member must be posted along with the communication.
- d. If a governmental body removes from the online message board or similar Internet application a communication that has been posted for at least 30 days, the governmental body shall maintain the posting for a period of six years. This communication is public information and must be disclosed in accordance with Chapter 552.
- e. The governmental body may not vote or take any action that is required to be taken at a meeting under this chapter of the governmental body by posting a communication to the online message board or similar Internet application. In no event shall a communication or posting to the online message board or similar Internet application be construed to be an action of the governmental body.

#### **Use of Electronic Communications for Un-Elected Officials**

- a. In compliance with the Texas Open Meetings Act, un-elected officials will no longer be able to publish City business through any electronic media that could involve quorum, this includes but is not limited to Facebook, Twitter, YouTube, E-mail, Text Messaging, and any other forms of electronic media. Less than a quorum can also violate the Act by having secret deliberations to circumvent the Act's requirements. Thus, City un-elected officials should always use caution with social media.
  - i. If an un-elected official so chooses to publish City business on social media, in order to prevent a quorum in a social media setting, un-elected officials should have each other "un-friended" and blocked to prevent the quorum from happening.
- b. Furthermore, if an un-elected official publishes any City business through any personal electronic media account the account is then subject to the Texas Public Information Act.
- c. SB 1297 as an added provision to the Texas Open Meetings Act gives un-elected officials an avenue to discuss city business in an online message board without violating Texas Open Meetings Act.

## 2.13.4 EMPLOYEE SOCIAL MEDIA

While the City of Bay City encourages its employees to enjoy and make good use of their off-duty time, certain activities on the part of its employees may become a problem if they have the effect of impairing the work of any employee; harassing, demeaning, or creating a hostile working environment for any employee; disrupting the smooth and orderly flow of work within the City; or harming the goodwill and reputation of the City of Bay City among its citizens or in the community at large. In the area of social media (print, broadcast, digital, and online), employees may use such media in any way they choose as long as such use does not produce the adverse consequences noted above or violates the Texas Public Information Act. For this reason, the City of Bay City reminds its employees that the following guidelines apply in their use of social media, both on and off duty:

1. Blogging or posting information of a personal nature on the Internet is strictly prohibited during work hours. Your online presence during work hours can reflect negatively on the City of Bay City. Be aware that your comments, posts, or actions captured via digital or film images also affect the image of the City of Bay City.
2. If the employee's social networking includes any information related to the City, the employee must make it clear to the readers that the views expressed are the employee's alone and not reflective of the views of the City.
3. Employees must abide by all federal law, state law, policies of the City with regard to information sent through the internet. Never disclose any confidential information concerning another employee, vendor, official of the City in a blog or other posting. Posting of confidential information may violate state law and subject the user to criminal penalty. All requests for City documents must be processed through the Public Information Act.
4. When posting, be respectful to the City of Bay City's co-workers, citizens, vendors, and partners, and be mindful of your physical safety when posting information about yourself or others on any forum. Do not discuss City employees, vendors, issues, or business without express consent.
5. An employee may be disciplined if an employee publishes any personal or confidential information about themselves, another employee, or vendor in any public medium that:
  - a. Has the potential or effect of involving the employee, their co-workers, or the City of Bay City in any kind of dispute or conflict with other employees or third parties;
  - b. Creates a harassing, demeaning, or hostile working environment for any employee;
  - c. Disrupts the smooth and orderly flow of work within the City, or the delivery of services to the City's citizens; or
  - d. Harms the good will and reputation of the City of Bay City among its citizens or in the community at large.
6. Do not ignore copyright laws or cite and/or reference sources inaccurately. Remember that plagiarism applies online.
7. Do not use City of Bay City logos or trademarks without written consent. Do not post pictures of yourself or others containing images of City uniforms, insignia, logos, equipment or work sites, unless they are being posted on City Social Media.
8. Do not post anything on your blog or sites that may constitute a violation of the City's Harassment policy.
9. Content will be monitored to ensure adherence to the Social Media Policy.
10. Employees found in violation of any provision of this policy may be subject to disciplinary action, up to and including termination of employment.

## **2.14 REQUESTS FOR JOB CLARIFICATION ENCOURAGED**

Employees are encouraged to ask supervisors and Department Heads for clarifications of their job duties. In the absence of any request for clarification, the city will assume that each employee understands and accepts the responsibilities assigned to the position which he or she occupies, as set out in the City's job description for that job.

## **2.15 RETALIATION PROHIBITED**

An employee of the City who reports a violation of the law to his or her supervisor or to a law enforcement authority will not be retaliated against by the City for making the report.

## **2.16 SECRET RECORDINGS**

With the exception of law enforcement recordings properly authorized, the City discourages audio or video tape recordings by employees. If an employee elects in the course of City business to tape record any conversation with an outside party, between the employee and any other City employee, or among two or more other City employees, the employee wishing to make the recording must first notify the other person(s) of his or her intent to record the conversation and must obtain the other person(s)' verbal authorization to make the recording. Unauthorized recording of any conversation may result in immediate disciplinary action, up to and including termination.

## **2.17 RETURN OF CITY PROPERTY AND EQUIPMENT**

When an employee terminates or is terminated from City employment, any city property (tools, equipment, badge, keys, etc.) that has been issued to the employee must be returned before the employee leaves City property. Employees will be asked to sign a statement to the effect that if they fail to return City property or equipment, their final paycheck will be deducted the amount of the property, until the property has been properly returned to the City in good working order.

## **2.18 RESPONSIBILITY FOR CITY FUNDS**

Being given responsibility for City funds in any form is a public trust, and the City takes this responsibility very seriously. If a part of your job responsibilities includes any kind of handling or processing of City funds, you are personally and professionally responsible for those funds and will be held accountable for properly accounting for and recordkeeping related to those funds. If City funds for which you are responsible are missing or not properly accounted for, disciplinary action up to and

including discharge will be taken. In addition, the City may file charges in the appropriate court of law against any employee who is found to be responsible for missing City funds.

## **2.19 CONFIDENTIALITY AGREEMENT**

All City of Bay City employees understand that they may from time to time have access to highly sensitive and confidential information. This agreement is to be used as an acknowledgement that all employee's job duties include the obligation to maintain the confidentiality of all highly sensitive and confidential information possessed by the City. All employees have a duty to maintain Local Government Records in a secure and professional manner. No information held by the City should be released to a third party unless it is done so in accordance with City policy and the Texas Public Information Act.

All employees of the City understand and agree that the following obligations or conditions of employment with the City:

1. In the course of employment, an employee may have access to Local Government Records as defined by Texas Local Government Code §201.003(8) some or all of which may be considered sensitive or confidential, whether or not it is labeled or identified as such. Information considered sensitive or confidential by the City of Bay City and covered by this agreement may include but is not limited to:
  - Personal information (such as family, health, marital or financial status, home address, phone number, age, social security number, salary or compensation) about City employees, elected officials, associates, etc.;
  - Computer network operations and security;
  - Construction and building plans of facilities;
  - Protected Electronic Health Information;
  - Current or projected financial particulars of the City, including its payroll systems;
  - Public Safety CAD and/or incident information;
  - Critical Infrastructure or Operational Information as defined by the Electric Reliability Council of Texas (ERCOT) or the Homeland Security Department; or
  - Criminal Justice Information System (CJIS) data.
2. An employee of the City of Bay City will treat with the same degree of confidentiality information proprietary to other parties to which he or she may also have access through their employment with the City of Bay City. Such information may include but is not limited to:
  - Private employee documents or communications; or
  - Proprietary vendor information revealed under non-disclosure.
3. Having access to City's sensitive or confidential information through privileged administrator's rights does not grant an employee permission to actively seek, examine, use, transmit, share, copy, or change such information, and an employee will only actively seek, examine, use, transmit, share, copy, or change such information if it is in the exercise of their designated duties or permission to do so has been granted to them either by his or her supervisor or his designee, or by the Department that is considered the keeper of such information, for a stated specific purpose and timeframe.

4. Data should be kept secured both while it is in use by authorized users and when it is stored or archived. No unauthorized user should see or use such data without permission from the data owning Department Director or other appropriate personnel with the authority to grant such access.
5. If an employee is uncertain whether a particular piece of information or data is considered sensitive or confidential, he or she will resolve all uncertainties in favor of preserving the confidentiality of that item, and will promptly seek clarification from their supervisor or his designee before engaging in any conduct that might jeopardize the confidentiality of that item.
6. If, at any time, security or confidentiality of the City's data is thought to be compromised, an employee will promptly notify their department director or if unavailable seek assistance from the City Secretary's Office.

Violation of these confidentiality policies may result in disciplinary measures up to and including termination, or other civil and/or criminal legal action to preserve the confidential nature of the information.

## **3. EMPLOYMENT PRACTICES**

### **3.1 PROCESS FOR RECRUITMENT**

#### **3.1.1 METHODS OF RECRUITMENT**

The city has four methods of recruiting and selecting persons to fill vacancies:

- 1.) Promotion or transfer from within;
- 2.) Public announcement (including media announcement and posting of notice for City employees) and competitive consideration of applications for employment;
- 3.) Referral from a job training program or the Texas Workforce Commission; and/or
- 4.) Selection from a valid current eligibility list. A valid current eligibility list is a list of applicants for the same or a similar position for which applications were sought by the City within the last six months.

The City Secretary, in consultation with the Department Head, determines the method(s) of selection to be used in filling each vacancy. It is the City's policy to promote qualified employees whenever possible.

If two or more applicants have substantially equal qualifications and one is a current City employee, the current employee will be given preference over the other applicant(s).

The City **does not** accept applications for employment unless a specific vacancy exists. Persons wishing to apply for a job with the City when a specific vacancy does not exist are informed of the manner of advertising City job announcements and that they may file an application at any time an advertised vacancy exists for which they consider themselves to be qualified.

Applications, interview notes, test results and other interview-related materials must be returned to the City Secretary for proper filing after interviews are complete.

#### **3.1.2 ANNOUNCEMENT OF POSITION OPENINGS**

Public announcements of position openings at the City for which there will be competitive consideration are disseminated by the City Secretary in the manner most appropriate for the particular position being filled. Current employees are permitted to apply for positions for which they believe themselves to be qualified. Current employees that apply for open positions shall submit a letter of interest that outlines their years of service, positions held with the City, as well as their qualifications for the position in which they are applying. The length of time during which applications will be accepted will be determined by the City Secretary, with consultation of the Department Head, in accordance with the circumstances that exist at the time.

Depending on the method of posting, current employees are permitted to apply for positions in which they believe to be qualified.

### **3.1.3 QUALIFICATIONS FOR CITY JOBS**

The City maintains a job description which establishes the required knowledge, skills, and abilities for each type of City job along with the acceptable levels of experience and training for each job. The job description sets forth the minimum acceptable qualifications required to fill the position.

If the job description requires that the employee obtain a particular license within a specific period of time, the employee must meet those requirements within the specified time frame or be subject to termination.

The minimum education requirement for any person considered for full-time or part-time employment with the City of Bay City is a high school diploma or GED. The City may require additional educational standards for any position.

The City job description will be reviewed, and updated if necessary, prior to posting a job opening.

## **3.2 PROCESS AND REQUIREMENTS FOR SELECTION**

### **3.2.1 SELECTION OF CITY EMPLOYEES**

In accordance with state law and the City Charter, the following City Officials may be appointed or removed: City Attorney, City Secretary, Police Chief, City Treasurer, and Municipal Judges.

It is the policy of the City to be an equal opportunity employer, and vacancies in the City workforce are filled, by promotion or by initial appointment, on the basis of merit as demonstrated by education, experience, and personal interview. Selections of the best qualified persons are made on the basis of occupational qualifications and job-related factors such as skill, knowledge, education, experience, and ability to perform the specific job.

The Department Head is responsible for determining whether an applicant is technically qualified for the position and if the applicant is compatible with the work environment. The Department Head shall establish selection methods and/or processes used, but the selected methods must be approved prior to their use by the City Secretary.

The City Secretary's Office is responsible for orientation of new employees and for processing their employment forms. The supervisor is responsible for any necessary on-the-job training.

### **3.2.2 NO UNDERAGE EMPLOYMENT IN HAZARDOUS POSITIONS**

Persons under 18 years of age will not be employed by the City in any hazardous position. Persons under age 18 will be required to file with the City Secretary a properly executed minor's release form.

Other age limitations will be applied only as required by state or federal law applicable to the City.

*(Legal reference: Child Labor Regulations, Subpart C, issued pursuant to authority conferred by Section 3 (1) of the U.S. Fair Labor Standards Act of 1938, as amended; V.T.C.A. Labor Code, Chapter 51; U.S. Age Discrimination in Employment Act of 1967, as amended.)*

### **3.2.3 APPLICATION FOR EMPLOYMENT REQUIRED**

Each person desiring employment with the City must, before employment, fill out the City's official application form and submit other pertinent information regarding his or her education, training and experience. The City will make appropriate inquiries to verify education, experience, character, and required certificates and skills of an applicant prior to employment. In the case of applicants for positions which require driving a vehicle, the City will check the prospective employee's driving record prior to offering the applicant employment. All job applicants must sign a release form permitting the employment history and reference check. The release form is a part of the City's job application form.

Any willful misrepresentation of facts or failure to report pertinent data on the application form or any official employment record may result in dismissal from City employment.

The City will retain each unsuccessful applicant's employment application and related documents for a minimum of two years after receipt of the application in the City Secretary's office. *(Legal reference: 29 Code of Federal Regulations 1602; V.T.C.A. Government Code, Section 441.158; State Library and Archive Commission Local Schedule GR, as amended.)*

### **3.2.4 BACKGROUND CHECKS**

It is the policy of the City of Bay City to perform background checks on all employees, and those applicants that have been extended a bona-fide job offer. The City of Bay City has divided its positions in three (3) different classifications: Safety Sensitive, Financial, and Non-Safety Sensitive.

Safety Sensitive positions are those positions that where the employee holding the position has the responsibility for his/her own safety or other people's safety. It is also an employee that has to be with clear mind and diligent while occupying such positions. Safety sensitive positions will include those employees that possess a Commercial Driver License (CDL); plant operators at the Water/Wastewater Treatment Plant; Law Enforcement personnel; IT personnel; Utility Maintenance Tech II; Aquatic Personnel; and Utility Crew Leader. Applicants applying for a Safety sensitive position cannot be finally convicted of any felonies or Class A or B misdemeanors.

Applicants applying for a financial position handle, will handle, and/or have handled monies and/or a City credit card. Financial positions will include Billing Clerks; Non-commissioned PD personnel; Administrative Assistants; Personnel Generalist; Finance personnel; Custodians; Municipal Court personnel; and Library personnel. Applicants applying for a financial position cannot have been finally convicted of a Class C misdemeanor within the last 7 years, Class B or A misdemeanor within the last 10 years, and cannot have any felonies.

The last classification of positions relating to background checks are Non-Safety Sensitive positions. These positions are those that do not fall within the above two categories. Non-Safety sensitive positions include Maintenance Tech I; Maintenance Tech II; Crew Leader; and Parks and Recreation Specialists. Applicants applying for a Non-Safety sensitive position cannot have been finally convicted of a Class C misdemeanor within the last 5 years, Class B or A misdemeanor within the last 7 years, and cannot have had any felony within the last 15 years.

In the event an applicant does not meet the minimum background standards established by this section but in the opinion of the Mayor, City Secretary or Department Head supervising the position possesses special circumstances warranting reconsideration, the Mayor, City Secretary or Department head may request the applicant to present facts in writing that warrant the city to allow for employment. In such a case, the City Secretary; the Mayor; and the Department Director supervising the position will consider the facts and render a decision by majority vote on whether to extend a job offer to a qualified applicant. The final decision shall be documented and placed with the applicant's paperwork.

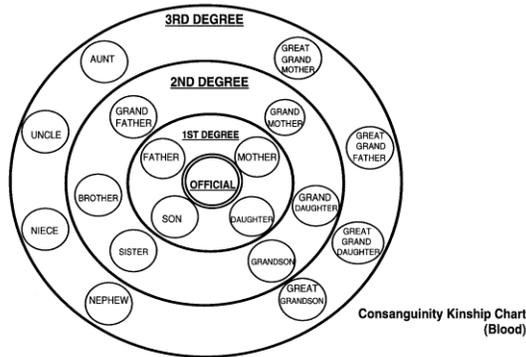
### **3.2.5 NEPOTISM (EMPLOYMENT OF RELATIVES)**

Nepotism is the showing of favoritism toward a relative. The practice of nepotism in hiring personnel or awarding contracts is forbidden by the city. For the purposes of this policy, family member also includes former spouse and significant others (e.g. engaged couples or relationships between individuals of which the substance reflects a marital arrangement).

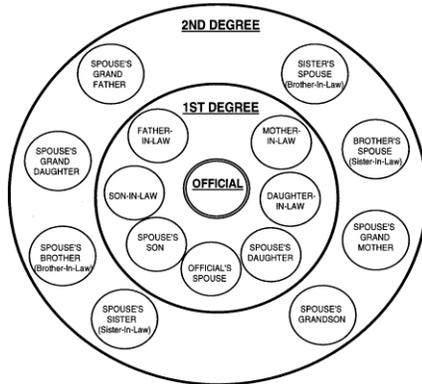
No person may be hired who is related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood) to any member of the City Council, the Mayor, or any other officer of the City. No person may continue in City employment who is related in one of the prohibited degrees to the Mayor or to a member of the City Council unless the employee has been employed continuously by the City for a period of:

1. At least 30 days, if the officer, council member, or manager is appointed; or
2. At least six months, if the council member is elected.

Prohibited degrees of relationship are defined in the Nepotism Charts below:



Consanguinity Kinship Chart (Blood)



Affinity Kinship Chart (Marriage)

### NEPOTISM CHARTS

**NOTE:** Spouses of relatives within the first or second degree of consanguinity (e.g., son-in-law, mother-in-law, brother-in-law, sister-in-law, etc.) are also included in the prohibition; and adopted relatives also are considered to be related by consanguinity. (Legal Reference: V.T.C.A., Government Code, Chapter 573.)

In addition, no personnel action will be taken that would result in an employee supervising another employee who is related within the second degree of affinity or the third degree of consanguinity to the supervisory employee. Prohibited degrees of relationship are defined in the charts above.

The City of Bay City prohibits the hiring, within the same department, individuals within the first and second degree of consanguinity and the first and second degree of affinity. Please refer to the consanguinity and affinity kinship charts in this subsection. The hiring prohibition stated in this paragraph shall not apply to a temporary hire provided the individual who is hired temporary is neither supervised or supervises a relative within the first and second degree of consanguinity and the first and second degree of affinity.

### 3.2.6 GRANDFATHER CLAUSE

The City is aware that, as of the revision date of this policy, a number of City employees are related, by blood or by marriage, to other City employees. These employees will be “grandfathered” under this policy, meaning they will be permitted to continue their employment

with the City as long as the requirements set out in this policy are met. Please be informed that the above "grandfathered" provision is for family relationships as they exist as of the revision date of this policy. Any future changes to the family relationship and/or the employment status of the affected employee(s) will be governed by the requirements of this policy.

### **3.2.7 RESIDENCY REQUIREMENT/RESPONSE TIME**

Employees who are designated in "on call" status must be able to respond quickly and to arrive at the City's designated response site within 30 minutes of receiving the page or call. (*Legal reference: V.C.T.A. Local Government Code, Section 150.021 and U.S. Fair Labor Standards Act of 1938, as amended.*)

### **3.2.8 RELOCATION EXPENSES**

When recruiting processes require regional recruiting efforts, applicants may be reimbursed for certain direct, out-of-pocket relocation expenses, particularly those relating to relocation from out-of-the-region. The reimbursement relocation expenses will be limited to exempt level positions. The maximum allowable amount of reimbursement for relocation expenses is \$5,000. The Mayor must approve any additional amount. The amount agreed upon will be included in the final offer letter to be signed by the applicant.

Qualified expenses will be reimbursed if they are the expenses of moving the employee's household and travel to the new home. Examples of qualified expenses are as follows:

- Cost of packing, crating, and transporting household goods and personal effects.
- Cost of connecting and disconnecting utilities.
- Cost of shipping the employees car and pets.
- Cost of storing and insuring household goods and personal effects within any period of 30 consecutive days between the old home and the new home.
- Actual expenses for cost of transportation and lodging for the employee and family while traveling from the old home to the new home.

The applicant must provide all receipts, canceled checks, bills, etc. These must be submitted to the City Secretary's Office within 30 days after incurred.

Relocation assistance is conditional upon the employee's continued employment with the City for a minimum of 1 year from the employee's hire date. In the event the employee resigns employment prior to the fulfillment of the 1-year of employment requirement, the employee will be responsible for the full reimbursement of the relocation assistance amount provided. The amount will be deducted from the employee's final paycheck.

### **3.2.9 PHYSICAL STANDARDS FOR CITY JOBS**

The City may offer conditional employment to an individual subject to provision of certain medical history and/or successful completion of a medical examination. The City Secretary

designates those positions requiring medical history and/or a physical examination. Typically, prospective employees who will be placed in physically demanding positions are required to undergo a pre-employment medical examination. The medical exam will be conducted only after an applicant has been conditionally offered the position. The purpose of this examination is to determine if the applicant is physically able to perform the essential functions of the job for which he/she is being considered, with or without a reasonable accommodation.

This examination will typically consist of a personal health history and a physical examination. The physician will be provided with a current job description for the position that lists the job's essential functions.

### **3.2.10 TESTING**

Except for drug/alcohol tests, physical examinations, psychological tests for law enforcement officers, and any other tests that may be required by state law, the only performance tests administered for employment or promotion will be specifically job related ("piece-of-the-job") tests (e.g., typing, operating a computer, operating a piece of equipment, lifting something heavy which is specifically required to be lifted in the job, tabulating columns of numbers, providing writing samples, etc.).

### **3.2.11 DRUG AND ALCOHOL TESTING**

In addition to the physical examination required by the City for all prospective employees, all prospective employees are required to be tested to show no trace of drug dependency, illegal drug usage, or alcohol abuse. All prospective employees are required to pass a drug/alcohol test after a conditional offer of employment has been extended, but prior to their first day of work. The offer of employment is contingent upon the prospective employee passing a drug/alcohol test. After employment, any employee may be required to submit to a test for drug dependency or illegal drug use and alcohol abuse. For more information on drug testing or drug usage, see the chapter of these policies on **Substance Abuse and Alcohol Misuse**.

### **3.2.12 VERIFICATION OF ELIGIBILITY TO WORK**

In order to comply with the Immigration Reform and Control Act of 1986, each new employee will be required to complete and sign an INS Form I-9 within three days of his or her first day of employment to provide proof of his or her identity and employment eligibility. In the event the employee has not provided evidence of eligibility to work within the first three days of employment, the employee will not be allowed to continue working and is subject to immediate termination. (*Legal reference:; Federal Immigration Reform and Control Act of 1986, P.L. Number 99-603.*)

### **3.2.13 DRIVING RECORD**

Each City employee who is required to drive a vehicle or operate a piece of equipment which requires a valid driver's license must hold the required license type (e.g., Commercial Driver's License) and must maintain a safe driving record. For this reason, the City will check a

prospective employee's driving record prior to offering the applicant employment in a capacity which requires operating a vehicle or piece of equipment that requires a valid driver's license. The City makes periodic checks of an employee's driving record.

Applicants and employees are required to provide the City with any authorizations necessary for the City to perform such a check. An employee who is required to drive as an essential function of his or her job must maintain a driving record satisfactory to the City's general liability insurance carrier. An unsatisfactory driving record, or suspension or revocation of the driver's license of an employee who must operate a motor vehicle as a work requirement will result in reassignment of the employee or dismissal.

### **3.2.14 DISQUALIFICATION**

An applicant or employee is disqualified from employment if the City finds that he or she:

- 1.) Does not meet the minimum qualifications for performance of the duties of the position involved;
- 2.) Knowingly has made a false statement on the application form;
- 3.) Has committed fraud during the selection process;
- 4.) Is not legally permitted to hold the position;
- 5.) Has offered or attempted to offer money, service, or any other thing of value to secure an advantage in the selection process;
- 6.) Does not meet physical requirements as a result of the required physical examination; or
- 7.) Has not provided proof of citizenship or legal work status in the United States within the first three days of employment.

*(Legal reference: V.T.C.A., Government Code, Title 4, Section 415.057; Federal Immigration Reform and Control Act of 1986.)*

### **3.2.15 PRIOR SERVICE WITH THE CITY**

An employee previously employed by the City of Bay City will be deemed eligible or ineligible for future employment with the City. A committee of the City Secretary or designee, past employee's Department Director, and the Mayor will determine rehire eligibility.

Employees entering service with the City who have had prior service with the city may be considered for appointment above the customary entry salary level. A break in continuous service with the city, however, forfeits vacation and sick leave benefits accrued prior to the break. All hires, new and rehired, will be placed on a 3-month introductory period.

### **3.2.16 ORIENTATION AND TRAINING**

Before a regular employee begins performing his or her actual duties, he or she will be given a brief orientation by the City Secretary or her designee. The purpose of the session is to enable a new employee to understand better his or her job and its relationship to the overall operation of the city. Prospective new hires will be provided a copy of the personnel guidelines, prior to completing their new hire paperwork. The employee must read and understand the policies. On the first day of orientation the guidelines will be reviewed by the City Secretary or his or her designee.

Training an employee is the responsibility of his or her Department Head or his or her designee. Whenever possible, employees receive on-the-job training under close supervision.

### **3.2.17 MEDICAL RECORDS**

All records relating to the medical condition, medical testing, or drug testing of an employee or prospective employee are maintained separately from employee personnel files. These medical files are confidential and are not released to anyone unless a “need to know” has been clearly established. Only the City Secretary has routine access to employee medical records, and any other access is on a “need-to-know” basis. (*Legal reference: U.S. Americans with Disabilities Act of 1990 and ADA Amendments Act of 2008; and 45 CFR Parts 160 and 164, Standards for Privacy of Individually Identified Health Information.*)

### **3.2.18 NOTICE OF PRIVACY PRACTICES**

This Notice of Privacy Practices is provided as a requirement of the Health Insurance Portability and Accountability Act (HIPAA). It describes how the City may use or disclose an employee’s protected health information, with whom that information may be shared, and the safeguards the City has in place to protect it. This notice also describes an employee’s rights to access and amend his/her protected health information. The employee has the right to approve or refuse the release of specific information outside of the City’s system except when the release is required or authorized by law or regulation.

“Protected health information” is individually identifiable health information. This information includes demographics, for example, age, address, e-mail address, and relates to the employee’s past, present, or future physical or mental health or condition and related health care services. The City of Bay City is required by law to do the following:

- 1.) Make sure that an employee’s protected health information is kept private;
- 2.) Give each employee this notice of the city’s legal duties and privacy practices related to the use and disclosure of an employee’s protected health information;
- 3.) Follow the terms of the notice currently in effect;
- 4.) Communicate any changes in the notice to each employee.

By law, the City must disclose the employee’s health information to that employee unless it has been determined by a competent medical authority that it would be harmful to the employee. The City must also disclose health information to the Secretary of the Department of

Health and Human Services (DHHS) for investigations or determinations of City compliance with laws on the protection of the employee's health information.

The City will share the employee's protected health information with third-party "business associates" who perform various activities for the City of Bay City (for example, the City's health insurance carrier, the drug testing administrator). The business associates will also be required to protect the employee's health information.

The City may disclose protected health information during any judicial or administrative proceeding, in response to a court order or administrative tribunal (if such a disclosure is expressly authorized) and in certain conditions in response to a subpoena, discovery request, or other lawful process.

The City may disclose the employee's protected health information to comply with workers' compensation laws and other similar legally established programs.

The employee may exercise the following rights by submitting a written request (depending on the request, the employee may also have rights under the Privacy Act of 1974):

- 1.) The employee may inspect and obtain a copy of his/her protected health information that is contained in a "designated record set" for as long as the City maintains the protected health information;
- 2.) The employee may request the City to provide him/her with an accounting of the disclosures the City has made of the employee's protected health information;
- 3.) The employee may obtain a paper copy of the notice.

This Notice of Privacy Practices is provided to each employee as a requirement of the Health Insurance Portability and Accountability Act (HIPAA). There are several other privacy laws that also apply, including the Freedom of Information Act, the Privacy Act and the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act. These laws have not been superseded and have been taken into consideration in developing City policies and this Notice of how the City will use and disclose the employee's protected health information.

*(Legal reference: Health Insurance Portability and Accountability Act (HIPAA), as amended.)*

## **4. TYPES OF EMPLOYMENT**

### **4.1 CATEGORIES OF EMPLOYMENT**

It is the intent of this section to clarify the definitions of categories of employment so that employees can understand their employment status and benefit eligibility. These categories do not guarantee employment for any specified period of time. Accordingly, the right to terminate the employment relationship at will at any time is retained by both the employee and the City of Bay City.

There are four categories of employment in the City of Bay City:

- 1.) **REGULAR FULL-TIME** employees are those who are not in a temporary or seasonal status and are regularly scheduled to work forty (40) hours per week. **REGULAR FULL-TIME** employees are eligible for all of the City's other benefit programs.
- 2.) **REGULAR PART-TIME** employees are those who are not assigned a temporary or seasonal status and are regularly scheduled to work at least 20 hours a week but fewer than 40 hours a week. While they do receive all legally mandated benefits (such as Social Security and worker's compensation insurance), they are ineligible for all of the City's other benefit programs.
- 3.) **TEMPORARY** employees are those who are hired as interim replacements, to temporarily supplement the work force, or to assist in the completion of a specific project. These employees may either be classified as **TEMPORARY** full-time or **TEMPORARY** part-time. Employment assignments in this category are for a limited duration. Employment beyond any initially stated period does not in any way imply a change in employment status. **TEMPORARY** employees retain that status unless until notified of a change. While temporary employees receive all legally mandated benefits (such as workers' compensation insurance and Social Security), they are ineligible for all of the City's other benefit programs.
- 4.) **SEASONAL** employees are those who have established an employment relationship with the City of Bay City but who are assigned to work on an intermittent and/or unpredictable basis. While they receive all legally mandated benefits (such as worker's compensation insurance and Social Security), they are ineligible for all of the City's other benefits programs.

## **4.2 INTRODUCTORY PERIOD**

All new regular employees serve a ninety (90) day introductory period.

The introductory period gives a new employee the opportunity to learn fully the requirements of his or her new job. It gives the city an opportunity to provide on-the-job training and formal training; to evaluate closely the new employee's work; and to make any adjustment to the job or the employee's status necessary to meet the needs of the City.

At the end of the introductory period, an employee's performance is reviewed by his or her supervisor. The employee will receive a mid-point review. If the employee's performance is satisfactory, he or she has successfully completed the introductory period.

Upon satisfactory completion of the introductory period, the employee may receive (if budgeted and recommended) a salary increase with the approval of the City Secretary or the Mayor.

If an employee is transferred, promoted, or demoted, he or she will serve a six (6) month introductory period in the new position beginning with the date of the position change.

Temporary employees do not serve an introductory period upon employment with the City. However, if a temporary employee is later placed in a regular budgeted position, he or she must serve the six (6) month introductory period.

## **5. EMPLOYEE COMPENSATION AND ADVANCEMENT**

### **5.1 PAY STRUCTURE**

Each City employee is paid a salary or wage in accordance with job responsibilities and performance in the position. Periodic surveys of the labor market and comparative analysis with similar size cities are made by the City Secretary's Office to maintain competitive pay scales. The City Secretary is responsible for recommending to the City Council any changes in the Classification and Pay Plan to keep the plan current, uniform, and equitable. Recommended changes in pay policy become effective only after City Council approval.

#### **5.1.1 PAYCHECKS**

- 1.) Generally new employees are hired at the minimum of the approved salary range. In exceptional circumstances, based on unique qualifications or recruiting difficulties, the Department Head or the City Secretary, with the Mayor's approval, may offer a higher hiring rate within the salary range appropriate to competitive conditions.
- 2.) City employees are paid on a bi-weekly basis. Payday is every other Friday. Attendance records and other payroll information must be forwarded to payroll no later than 10:00 a.m. (12:00 p.m. for the Warehouse) on the Monday following the reporting period. If you are absent from work on payday and want to designate someone to pick up your check for you, a signed Payroll Authorization Pick-Up Form must be completed prior to the absence. Please see The City Secretary's for the Payroll Authorization Pick-Up Form. No paychecks will be distributed in advance. If a payday falls on a holiday, employees will be paid on the preceding workday.
- 3.) Checks will be ready for pick up on scheduled paydays, within each department. All checks shall be signed for before they are released from the City Secretary's Office.
- 4.) Direct Deposit is currently available for all employees except seasonal employees. If you would like to take advantage of this convenience, please see the City Secretary's Office for a form. A voided check or deposit slip will be required. Upon termination an employee's direct deposit will stop and a manual check will be mailed.
- 5.) No salary advances or loans against future salaries will be made by the city to any employee for any reason.
- 6.) If there is a change in the employee's family status, address, or other factor affecting his or her payroll withholding or benefits status, the employee must obtain, complete, and return to the City Secretary office the appropriate forms for communicating these changes.

#### **5.1.2 DEDUCTIONS**

- 1.) With your paycheck, you will receive an earnings statement which itemizes the deductions from your paycheck. These deductions fall into two groups: those required by law and those authorized by you in writing.
  - a.) Deductions will be made from each employee's pay for the following:
    1. Federal Social Security;
    2. Federal income taxes;
    3. Retirement program (Texas Municipal Retirement System) – participation is mandatory;
    4. Court ordered child support; and
    5. Any other deductions required by law.
  - b.) An employee may authorize deductions from his or her paycheck for:
    1. The portion not paid by the City for group health/medical, life insurance, and dental insurance for the employee or dependents;
    2. Deferred Comp 457 Plan;
    3. Supplemental Insurance; and
    4. Such other deductions as may be authorized by the City Council.
- 2.) No deduction will be made from your paycheck unless it is authorized in writing by you or required by law or court order.
- 3.) Under Texas law, the City is not required to take action in the event of garnishment, attachment, or judgments against an employee's earnings. The only exceptions are the collection of overdue income taxes, court-ordered child support payments, and overdue student loan payments. We expect you to deal responsibly with your creditors. It is against City policy for employees to assign their wages to any other person.
- 4.) Your paycheck is payment from the City to you for services you have rendered, less any applicable deductions. When you get your payroll check, make sure the hours, pay rate, and deductions are correct. It is your responsibility to notify your immediate supervisor if you detect errors in a paycheck. This includes over and under payments, errors in deductions, and other information that would cause a discrepancy in your net or gross income.
  - a. If an error occurs, which results in an overpayment to an employee, the employee will be required to reimburse the overpayment to the City. This reimbursement will be deducted in full from the employee's next paycheck. If the error occurs on the employee's final check, corrections must be made in cash or by cashier's check. If the error results in underpayment, the Finance Department will rectify the problem on the next regularly scheduled payday.
  - b. If there is anything incorrect on your paycheck, take it to your supervisor so that he or she may see that any errors are corrected. If you must cash your paycheck before the error can be corrected, save the check stub, which is your earnings statement. Present the check stub to you supervisor immediately. If you do not

report paycheck errors within 30 days, we will treat your silence as proof of your agreement that all calculations are correct.

- 5.) **Employees Covered by FLSA.** Employees whose positions are covered by (non-exempt from) the federal Fair Labor Standards Act will be paid only for actual hours worked unless they are eligible for and authorized to receive benefits under one of the City's paid leave benefits policies.
- 6.) **Employees Exempt from FLSA.** Employees whose positions are exempt from the federal Fair Labor Standards Act are paid on a salary basis and, in general, must be paid their full salary for any week in which they perform work. Their pay may be reduced only in the following circumstances:
  - a. Unless they are eligible for and authorized to receive benefits under one of the City's paid leave policies, employees who are absent for at least a full day because of sickness, disability, or personal reasons will not be paid for that day. If an exempt employee has exhausted his or her earned leave, the employee's pay will not be reduced if the employee is absent for less than a full day because of sickness or disability.
  - b. If an exempt employee violates a safety rule of major significance, his or her pay may be reduced in an amount to be determined by the City as a penalty for that violation. (See also the section in these policies titled "Disciplinary Suspensions for Violating Serious Workplace Conduct or Safety Rules," which also includes non-exempt employees.) When this occurs, the employee's paycheck will be reduced in an amount that is proportionate to the number of days suspended as compared to the full pay period.
  - c. Employees who work fewer than 40 hours during their first or last week of employment with the city will be paid a proportionate part of their full salary for the time actually worked.
  - d. Improper Deductions from Pay. The City will reimburse any exempt employee whose pay is reduced in violation of this policy. Improper deductions from pay are grievable actions under the City's grievance policy.

*(Legal reference: Fair Labor Standards Act of 1938, as amended.)*

## **5.2 PROMOTIONS**

A promotion is a change in the duty assignment of an employee which results in advancement to a higher position requiring higher qualifications and involving greater responsibility. A promoted employee will always receive a pay increase.

Upon promotion, an employee serves an introductory period of three (3) months in the new position and may be returned to a lower position at any time during the introductory period if performance is inadequate as documented by the Department Head and approved by the Mayor or his or her designee.

## **5.3 DEMOTIONS**

A demotion is a change in duty assignment of an employee to a lower paid position. Demotions may be made for the purpose of voluntary assumption of a less responsible position; as a result of a reclassification of the employee's position; or as a disciplinary measure, because of unsatisfactory performance in a higher position. Disciplinary demotions may involve a decrease in pay.

## **5.4 DISCIPLINARY SUSPENSIONS FOR VIOLATING SERIOUS WORKPLACE CONDUCT OR SAFETY RULES**

### **5.4.1 EXEMPT EMPLOYEES**

If an exempt employee is found to have violated one of the city's policies regarding proper workplace conduct or safety, he or she will be subject to discipline in the form of an unpaid suspension, up to and including termination. Unpaid suspensions for exempt employees will not be used as disciplinary action in cases involving job performance or attendance issues. Both exempt and non-exempt employees may be suspended without pay for one or more full days when they violate any of the following policies:

- A safety rule of major significance;
- Workplace harassment;
- Discrimination;
- Dress and grooming (serious violations only);
- Computer policy;
- Substance abuse;
- Weapons brought to work in violation of this policy and workplace violence;
- Confidential and proprietary information;
- Conduct unbecoming of a City employee;
- Other policies that prohibit serious workplace misconduct.

This policy also extends to off-site and after working hours conduct that has a bearing on the employee's employment with, and/or the reputation of, the City.

### **5.4.2 NON-EXEMPT EMPLOYEES**

Non-exempt City employees may be suspended without pay for any of the issues listed above that are applicable to exempt employees, as well as for time and attendance issues, performance issues, or any other reason deemed appropriate by the supervisor or Department Head.

*(Legal reference: U.S. Fair Labor Standards Act (FLSA) of 1938, as amended.)*

## **5.5 ON-CALL PAY**

Employees within certain departments will be subject to being placed on the on-call schedule. Each week the on-call schedule will be made available, and will consist of supervisor, a crew leader and a crew (the number of employees on the crew will be subject to the Department Head or supervisor). Employees will be paid at their regular hourly rate until they exceed the established threshold for overtime pay. Exempt employees are not eligible for on-call pay. See Section 6 on “Work Schedule and Time Reporting” for additional information on on-call status.

## **5.6 CALL-BACK PAY**

Call-back is defined as the time the City requires an employee to return to work on an unscheduled or emergency basis to work outside the employee’s regularly scheduled work hours.

“Responding to a call” is defined as reporting to the office, clocking in, handling the issue in the field or at the office and then clocking out.

Non-exempt employees assigned to call-back duty shall be paid according to the following:

- a.) The crew leader that is on-call will receive a flat rate of \$75 on-call pay for the week, regardless of the number of phone calls he/she receives. If the crew leader responds to a call-out, the employee will be compensated for the actual hours worked, at the regular hourly rate or overtime rate, as appropriate based on the number of hours worked in the work week.
- b.) All crew members that are on-call will receive a flat rate of \$50 on-call pay for the week. All crew members will be compensated for the actual hours worked, at the regular hourly rate or overtime rate as appropriate based on the number of hours worked in the work week, if required to respond to a call.
- c.) Crew leaders and members that respond to a call-out on a holiday shall be compensated in accordance with Section 6.7.

If an employee does not respond to a call-out, he/she will be subject to disciplinary action, up to and including termination. Exempt employees are not eligible for call-back pay. See the chapter on “Work Schedule and Time Reporting” for additional information on call-back status.

## **5.7 INTERIM PAY**

In some instances when a supervisor or other member of management is absent for an extended period of time, interim pay may be activated for the employee temporarily performing those job duties. Interim pay

applies to Division Supervisors up to Department Director status. The employee who is temporarily promoted or assigned to perform the full range of duties of a higher classified position on an extended-term basis will receive an increase. Such interim pay can only be authorized by the Mayor. Interim pay will be 15% greater than the employee's regular wage.

It will be the Mayor's responsibility to return the employee to his or her previous position and rate of pay by the end of the pay period in which the employee is no longer serving in an interim status. The Mayor must complete a Payroll Change Form and submit it to the City Secretary's Office. In no event shall an employee serve in an interim position for more than six (6) months.

## **5.8 LONGEVITY PAY**

It is the intent of the City of Bay City to pay full-time police officers longevity pay at the rate of \$4 per month for each year of service with the City. Longevity pay is in addition to the employee's regular wage. In computing actual continuous service, time spent on authorized absence for military leave to serve in the Armed Forces of the United States shall be included and time spent on any other authorized absence that does not exceed three months shall be included.

## **6. WORK SCHEDULE AND TIME REPORTING**

### **6.1 ADMINISTRATIVE WORKWEEK**

The official work period for employees is a seven (7)-day period beginning at 12:01 a.m. on Sunday and ending seven (7) calendar days thereafter.

Normal working hours for most employees are 8:00 a.m. to 5:00 p.m., Monday through Friday, or such other days as determined by the Mayor and City Council for a total of 40 hours per workweek, with a one hour lunch period every day.

City employees are expected to report punctually for duty at the beginning of their assigned workday or shifts and to work the full workday or shift.

Other hours of work and official work periods for individuals or groups of employees may be set by the Department Head or the Mayor.

*(Legal reference: U.S. F.L.S.A. of 1938, as amended; Garcia v. S.A.M.T.A., U.S. Supreme Court, 1985; U.S. Equal Pay Act of 1963.)*

### **6.2 SMOKING BREAKS**

The City of Bay City recognizes that some of its employees are smokers and/or tobacco users. To assist in the efficiency of all City departments and personnel, smoking breaks will be allowed during pre-established times and designated areas. To ensure all employees receive an equitable amount of time for rest, employees that wish to smoke will be allowed to do so using the following parameters:

- Employees are allowed to smoke only in designated smoking areas.
- There will be two designated smoking periods during the work day.
- Smoking periods will be between 9:30 a.m. - 10:30 a.m. and 2:30 p.m. - 3:30 p.m. Employees will be allowed a fifteen (15) minute break each smoking period.
- Smoking periods will not be eligible for accrual or to be taken at a different time than what has been established by this policy.

Employees that work in the field are encouraged to be cognizant of their surroundings when smoking.

A violation of this section will result in disciplinary action, up to and including termination.

### **6.3 ON-CALL STATUS**

The City of Bay City recognizes that there are times when an employee may be contacted to report back to the job to resolve an issue that has been manifested outside normal work hours. When an employee is

expected to remain available, the employee is considered to be on-call<sup>2</sup>. Department directors and/or supervisors may establish official on-call schedules for non-exempt employees.

During the time an employee is designated to be on-call, he or she is free to pursue personal activities, but is prohibited from consuming alcohol, illegal drugs, or any other substance (legal or illegal) that may impair the employee's ability to perform his or her duties in a safe and capable manner. If the employee who is on-call is impaired and cannot perform his or her duties in a safe and capable manner, the employee will be regarded as absent from a work assignment and subject to disciplinary action, up to and including termination. Employees are expected to be on-call by their supervisor's instructions and will be subject to disciplinary action for failing to respond to the on-call assignment.

Employees on vacation, sick or other approved leave will not be required to be on-call. An employee is considered to be on-call only when approved by the supervisor in accordance with procedures established by the department.

## **6.4 CALL-BACK STATUS**

The time that a non-exempt employee is assigned to be on call-back status will be considered hours worked if during that time the employee is required to:

- 1.) Return to the employee's usual place of work;
- 2.) Remain near a telephone at a fixed location; or
- 3.) Perform the employee's regular duties, whether by telephone or otherwise.

An employee that is required only to leave word at home or with the City as to where he/she may be reached is not engaged in compensable working time. Departments can establish their own policies concerning what positions will be mandated for call-back duty as long as the policies do not interfere with the rules established in these *Employee Guidelines for City of Bay City Employees*. Call-back time must be specified as such on the employee's bi-weekly timesheet.

## **6.5 SCHEDULE ADJUSTMENTS**

Adjustments to the normal hours of operation of city facilities and the work schedules for affected employees may be made by the Department Head or the Mayor in order to serve the public better. Supervisors and Department Heads shall implement work schedules, including work hours and lunch schedules, to meet the general requirements of their departments and divisions. Individual employees may be directed to work special hours or shifts determined by the needs of each department.

## **6.6 EXEMPTIONS FROM FLSA**

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<sup>2</sup> On-call is defined as time that an employee is designated to be available for a defined period of time, to receive emergency service requests during non-scheduled working hours.

All employers must pay overtime to all “nonexempt” employees if they work more than 40 hours in a seven-day work period. However, certain employees are not covered by the Fair Labor Standards Act (“Act”), and some are covered but exempted by a specific provision of the Act. Exempt employees are expected to render necessary and reasonable overtime services with no additional compensation. The salary of an exempt position is established with this assumption in mind. Employees that are not covered by the Act include elected officials and their personal staffs, legal advisors, professionals, and bona fide volunteers.

The City of Bay City exempt positions include: Mayor, City Secretary, Emergency Services Director (Police Chief), Director of Administrative Services (Finance Director), Community Services Director, and Director and Assistant Director of Public Works. *Please note this is not intended to be an all-inclusive list; other exempt employees are designated as exempt on their job descriptions.* (Exempt employees will be eligible for overtime compensation when required to work during Emergency circumstances).

Each city job description designates whether persons hired in that classification are exempt from, or covered by (nonexempt), the overtime provisions of the FLSA.

Extra hours worked by executive, administrative, and professional employees may be used as a factor in granting or denying paid leave other than vacation or sick leave.

In addition, some positions are not covered by the FLSA. These positions are those who are hired and may be discharged directly by an elected official and who work very closely with the elected official on a regular basis.

*(Legal reference: U.S. F.L.S.A. of 1938, as amended.)*

## 6.7 EXPLANATION OF EXEMPTIONS FROM FLSA (OVERTIME COMPENSATION)

“Non-exempt” or “exempt” designations indicate whether an employee is eligible for, or exempt from, overtime compensation. To determine whether an employee’s job is exempt or non-exempt, each employee’s combination of duties and responsibilities; required knowledge, skills, and abilities; and qualifications requirements are reviewed individually.

**Nonexempt.** A nonexempt employee is one whose position is covered under the overtime pay provisions of the Fair Labor Standards Act (FLSA) and will be compensated for overtime as required by law.

**Exempt.** The term exempt employee refers to an employee who is exempt from the overtime pay provisions of the Fair Labor Standards Act (FLSA) and is expected to render necessary and reasonable services beyond 40 hours per week with no additional compensation. Exempt employees’ salaries are set with this consideration in mind. City employees who are in exempt positions most often qualify under the executive, administrative, or professional exemption, or a combination of these exemptions. To qualify for any of the following exemptions, employees must be paid a minimum of \$455 weekly, which annualizes to \$23,660 per year.

**Executive.** The executive exemption is for persons whose primary duty is “management” of the City or a department or subunit within the City’s organizational structure. An employee who has management of a department or a subunit thereof as his or her primary duty, and regularly supervises two or more employees (or several part-time employees equating to two full-time equivalents), qualifies for the executive exemption.

To qualify for the executive employee exemption, all of the following tests must be met:

1. The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week;
2. The employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
3. The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
4. The employee must have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Examples include management, department or section heads, and team leaders or other supervisors in certain circumstances.

### **Administrative**

To qualify for the administrative employee exemption, all of the following tests must be met:

1. The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;

2. The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
3. The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Examples include workers whose primary duties are accounting, budgeting, purchasing, and human resources, as well as those workers whose primary duties include research, public relations, governmental relations, administration, and legal and regulatory compliance. Special provisions relate to jobs in the information technology area.

### **Professional**

To qualify for the **learned professional** employee exemption, all of the following tests must be met:

1. The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
2. The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
3. The advanced knowledge must be in a field of science or learning; and
4. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

1. The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week; and
2. The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

**Computer Employee** To qualify for the computer employee exemption, the following tests must be met:

1. The employee must be compensated **either** on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week **or**, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
2. The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
3. The employee's primary duty must consist of:
  - a. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
  - b. The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  - c. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  - d. A combination of the aforementioned duties, the performance of which requires the same level of skills.

### **Blue Collar Workers**

The exemptions provided by FLSA Section 13(a)(1) apply only to “white collar” employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other “blue collar” workers who perform work involving repetitive operations with their hands, physical skill and energy.

### **Combination Exemptions.**

Some positions may be exempt because they fall into a combination of two or more of the above categories, with most of the criteria holding true for the job.

*(Legal reference: U.S. FLSA of 1938, as amended.)*

## **6.8 HOURS WORKED AND OVERTIME COMPENSATION EARNED**

City Department Heads, with approval of the Mayor, determine the number of hours worked by an employee for the compensation to be received subject to laws governing pay and working hours and to the provisions of the City's budget.

The policy of the City is to keep overtime to a minimum. However, employees may be required to provide services in addition to normal hours or on weekends or holidays. The most efficient and effective to deal with extra hours that an employee is required to work is to grant the employee equivalent, hour-for-hour time off within the same seven (7)-day workweek in which the extra hours are worked.

Overtime is defined as hours worked in excess of the allowable number of hours under the Fair Labor Standards Act (FLSA). For the City, this is 40 hours per seven (7)-day workweek for most personnel. Law enforcement employees' shifts may differ from other City employees.

Exempt employees are paid a salary and are not eligible to receive overtime pay, except when required to work during an Emergency. Exempt employees work at the discretion of Department Heads and/or the Mayor. Recognizing that exempt employees may be required often to work on behalf of the City outside of regular City business hours, they may from time to time be granted work leave during the City's normal business hours as determined appropriate or necessary without using accrued leave, so long as their duties are adequately performed.

Work leave is not intended to be hour-for-hour and is authorized at the discretion of the Department Head and/or Mayor. Work leave may be allowed for an unusual number of hours worked, including night or weekend work hours. An exempt employee may not accrue work leave hours and may not receive additional compensation for any work leave hours granted but not taken. No entitlement is intended to be created by this policy.

Overtime is accumulated at a rate equal to one and one-half (1 ½) times the employee's regular hourly rate. Overtime will be paid:

- 1.) When authorized in advance of overtime worked by the employee's supervisor or Department Head; or
- 2.) When the use of compensatory time would result in the accumulation of compensatory time in excess of the maximum limits provided by these provisions.

Regular and temporary part-time employees who are in non-exempt positions are not entitled to time and one-half overtime compensation until they have worked in excess of 40 hours in a work period (one week).

The City reserves the right to require employees to work "emergency" overtime<sup>3</sup> on a given day or week. Violation of these requirements subjects the employee to disciplinary action, up to and including discharge. An employee who works overtime is required by law to be compensated for the overtime worked. Supervisors or Department Heads are charged with authorizing the use of overtime, and likewise with assuring non-abuse or over accumulation of overtime and the inadvertent use of overtime by non-exempt employees.

- 1.) Hours worked specifically **exclude** time spent on military leave, sick leave, funeral leave, emergency leave, jury duty, or compensatory time.
- 2.) Hours worked specifically **include** time spent actually engaged in work for the City.
- 3.) Overtime shall be calculated in quarter hour increments, i.e., .25, .50, or .75. If an employee works less than one-quarter (.25) of an hour, he or she will be credited with a quarter hour of overtime worked; if less than one-half hour but more than a quarter hour is worked, the employee will be credited with a half hour of overtime worked; etc.
- 4.) For purposes of overtime calculation, "hours worked" will include vacation leave **if** the leave has been pre-approved at least two (2) weeks in advance, and the employee is specifically called into work. "Hours worked" will also include holiday leave and floating holiday leave **if** the employee was specifically called in to work and actually worked on the City observed holiday.

**For example:** If an employee is on pre-approved vacation leave or is on an approved holiday and is called into work, the time the employee is actually engaged in City business will be counted as overtime.

**For example:** If during a week an employee uses comp time and accumulates more than 40 hours it will count as Regular Time. No overtime will be given if the employee has not **physically** worked every day.

- 5.) Since Compensatory Time is paid in lieu of overtime, an employee must have physically worked more than 40 hours to receive overtime or earn compensatory time.

**For example:** Compensatory time cannot be used and earned in the same workweek.

## **6.9 COMPENSATORY TIME (IF USED BY A CITY DEPARTMENT)**

All of City of Bay City employees, other than exempt and seasonal employees, shall, in accordance with FLSA, have an option of receiving compensatory time off in lieu of cash, at the rate of one and one-half (1 ½) times the each hour of approved overtime worked in excess of 40 hours in a week. Compensatory

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<sup>3</sup> "Emergency" Overtime can be defined as non-scheduled work time of an emergency nature that falls outside an employee's routine work schedule. An emergency is defined as an unanticipated combination of circumstances that call for immediate action.

time is rarely used by the City of Bay City except by the Police Department. However, Department Heads may use compensatory time sparingly to better manage their departments. If compensatory leave is granted:

- Non-exempt employees may accrue compensatory time off at one and one-half times the number of overtime hours worked up to a maximum of 40 hours. Compensatory time balances are carried over from year to year. Certified peace officers in the Police Department may accumulate a greater number of hours of compensatory time, up to the 480 hour maximum allowable under FLSA for law enforcement employees.
- As a general rule, any compensatory time earned should be used within six (6) months of the date on which it is earned.
- Any employee whose compensatory time balance reaches the cap will no longer be able to accrue compensatory time until the balance falls below the caps. Any overtime worked after an employee has reached the cap for compensatory time will be compensated with cash.
- Non-exempt employees requesting to use their compensatory time off shall be permitted to use the time within a reasonable period after making the request if the employee's absence does not unduly disrupt the operations of the department affected.
- If an employee has substantial compensatory time on the books and has not requested time off, the Department Head may require the employee to take time off to reduce the balance in the employee's compensatory time account, provided that the City's work can be accomplished without the employee during that time.

There are three situations in which the City of Bay City will pay for compensatory time hours that have accumulated:

- 1.) Upon termination of the employment relationship;
- 2.) When an employee is promoted from a non-exempt position to an exempt position he/she will be paid in full for any comp time accrued before the promotion becomes effective at the rate prior to the promotion (exempt employees are not eligible to accrue comp time);  
or
- 3.) If the City requires a non-exempt employee to decrease the number of comp time hours to below the maximum allowable (40 hours for non-exempt, non-law enforcement employees).

*(Legal reference: U.S. FLSA of 1938, as amended; and Christensen v. Harris County, U.S.S.Ct., May 1, 2000.)*

## **6.10 TIMESHEETS**

Timesheets are to be completed and submitted to your supervisor or Department Head for approval. They are to be submitted to the Finance Department no later than the Monday before payroll by 10 a.m., with the exception of the Warehouse (submittal time is 12 p.m.). When a City Holiday falls within a payroll week, departments will be notified by the Finance Department of submission date and time.

All non-exempt employees are required to record their exact hours of work by completing a time sheet or by punching a time clock. After you have completed your time sheet for the work period, check it carefully to assure it is accurate. Then, sign your name to the sheet if the total hours shown is correct and accurate to your understanding. If you feel the hours recorded are incorrect, do not sign your sheet until it has been corrected by your supervisor. **Never complete anyone else's timesheet and never allow anyone else to complete yours. Likewise, never clock in for anyone else and never allow anyone else to clock in for you. Either of these is grounds for disciplinary action up to and including discharge.** All timesheets must be signed by both the employee and his or her supervisor. If an employee is not available to sign his or her timesheet, the employee will not be allowed to receive his or her paycheck until the timesheet is signed.

It is imperative that all employees verify their timesheets to help avoid future corrections. It is the responsibility of the supervisor or Department Head to verify that the timesheet is in compliance with the overtime and compensatory time guidelines. If there are any corrections to be made, they will be taken care of during the following pay period.

Exempt employees are required to complete a timesheet as well. Although exempt employees may work more than their regular forty (40)-hour workweek, the completion of the timesheet aids in the tracking of employee leave and can be the basis for allowing work leave.

## **6.11 EMERGENCY POLICY**

### **6.11.1 PURPOSE**

Protecting the health and safety of everyone in our community as well as the surrounding community is a key priority during an emergency. The citizens of Bay City depend on City employees before, during and after an emergency or disaster to provide or restore essential public services for the health, safety, and quality of life for our community. This policy applies to all non-exempt and exempt employees, and is intended to clarify the procedures for emergency and the compensation policy for employees when a state of emergency is imminent or has been declared by the Mayor. This policy recognizes that some emergencies provide no advance warning.

### **6.11.2 CITY FACILITIES ASSUMED OPEN**

In the case of a weather emergency, (e.g. snow, ice, or other weather event), a disaster, or other emergency on a workday, and unless a closing is announced in advance of reporting time, City personnel are required to report to work as usual unless the emergency conditions make it impossible to report safely to duty.

If City facilities are not closed and if weather or other emergency conditions make it impossible for an employee to report to work, the employee must notify his or her supervisor as soon as possible that the employee finds it impossible to report to duty safely. Time absent may be charged to available vacation, compensatory time, personal time, or leave without pay.

### **6.11.3 CLOSING OF CITY FACILITIES**

In the case of a weather emergency (e.g., snow, ice, or other weather event), disaster, or other emergency on a workday, the Mayor is authorized to designate the closing of City facilities. The Mayor or designee is responsible for initiating the process of contacting employees. If City facilities are closed, City personnel who are not required to work that day will be paid for the actual time or day(s) that the City was officially closed.

- If an official City facility closing for weather or other emergencies occurs during an employee's scheduled vacation or personal day, that day will not count against the employee's vacation or personal leave balance.
- If an employee reports to work and the Mayor or Department Head sends the employee home because of inclement weather or other emergency, the employee will be given credit for a full workday.

### **6.11.4 REQUIRED WORK DURING AN EMERGENCY**

The Mayor may require employees to work during an emergency or disaster regardless of whether City facilities are open or closed and regardless of the extent or duration of the emergency. Employees may be required to provide services to protect the public's health and safety and to assure the continuation of, or recovery of, normal City business processes. An employee who refuses a directive from the Mayor or a Department Head to report to work for all or part of an emergency period is subject to discipline by the City, up to and including termination.

Each employee is responsible for providing the City with updated contact information (address, telephone numbers, e-mail addresses) each time this information changes, but no less often than annually.

### **6.11.5 COMPENSATION DURING EMERGENCY**

In the event of a Disaster Declaration, declaration of a State of Emergency, and/or a long-term emergency, certain non-exempt and exempt employees will be declared "First Responders" and are required to work the duration of the event. Even exempt employees will be eligible for overtime at the rate of 1 ½ times their regular hourly rate of pay for actual hours worked. In order to provide payment of overtime for exempt personnel during a declared emergency, the City will waive the FLSA "exempt" status of those employees. Exempt employees will be eligible for overtime or compensatory time off in the same manner as non-exempt employees.

When City offices are declared closed by the Mayor, employees who are determined not to be "First Responders" will be paid as authorized leave for those day(s); meaning an employee will receive his or her regular pay for the day(s) out on authorized leave.

### **6.11.6 PROVISIONS**

In the event of a wide scale emergency that could impact our community, the following employees will be considered First Responders:

- 1.) Mayor
- 2.) Police Chief and Officers
- 3.) Public Works Director
- 4.) Assistant Director of Public Works
- 5.) Finance Director
- 6.) Public Works Foremen
- 7.) Equipment Operators
- 8.) Truck Drivers
- 9.) Wastewater Treatment Plant Operators
- 10.) Laborers (to be determined by Department Head)
- 11.) Bay City Volunteer Fire Department

Department Heads and/or supervisors will determine the number of employees needed for each category. Once a State of Emergency is declared, employees who are absent, employees who leave early, and employees who do not report to work after the Mayor determines it is safe to return to work may encounter disciplinary action, up to and including termination, in addition to loss of pay. Employees who are absent without the appropriate authorization are subject to the appropriate disciplinary action, up to and including termination.

## **7. BENEFITS**

The City Secretary is responsible for the administration of the City's employee benefits program. Employees should consult with the City Secretary's Office for any additional questions not answered in this manual.

### **7.1 MEDICAL, DENTAL, LIFE, AND ACCIDENTAL DEATH AND DISMEMBERMENT (AD&D) INSURANCE**

Regular full-time employees and regular part-time employees who work at least 30 hours per week are eligible for group hospitalization, medical, life, accidental death and dismemberment (AD&D), and dental insurance coverage after 90 days of employment with the City, as allowed by the City's current insurance plan(s). A portion of the premiums for eligible employees are paid by the City for the employee.

After 90 days' service, regular, full-time employees and regular part-time employees who work at least 30 hours per week, are enrolled in the City's group medical, life, AD&D, and dental plan. The city contributes 60% toward dependent premiums, while the employee contributes 40% toward dependent premium, as approved by the City Council.

Eligible employees may add additional dependent coverage at the employee's expense as allowed by the medical plan. An eligible dependent is an employee's spouse or natural or legally adopted child or stepchild, provided the child or stepchild is 26 years of age and under.

Upon employment, each employee who is expected to become eligible for insurance coverage is given an insurance booklet containing detailed information about the City's insurance programs and amendments as provided by the city's insurance carrier(s). See the section on Continuation of Group Insurance for information on continued coverage after certain status changes.

All insurance forms and informational packets can be obtained from the City Secretary's Office.

### **7.2 SOCIAL SECURITY**

Employees of the City are covered by Social Security. The city also contributes to the Social Security system for each employee.

### **7.3 RETIREMENT**

The City provides a retirement program for its employees through the Texas Municipal Retirement System (TMRS). Membership is mandatory for full-time paid employees. The TMRS defines a full-time

employee as one who works in a job that normally requires at least 1,000 hours per year, as determined by the City.

Membership in the retirement system begins on the date of employment. Information about the retirement program is provided to each City employee at the time of employment and is available at any time from the City Secretary's Office.

Both the employee and the City contribute to the employee's retirement account. Employee contributions are deducted from employees' paychecks at the rate of five (5) percent. The City matches employee contributions and interest on a 2 to 1 basis (two City dollars for every one employee dollar), with money transferred at the time of retirement.

An employee who terminates employment with the City prior to retirement, may exercise one or more of the following options:

- 1.) If an employee is not-vested<sup>4</sup> and separates from the City, he or she may leave the funds on deposit with the system for a period not to exceed five (5) years, during which the money on deposit will continue to draw interest.
  - a.) If the member, either immediately or during the five (5)-year period described above, is employed by another Texas City that is a member of TMRS, and the employee has not received a refund of deposits, then the accumulated service will be combined with any later service and applied toward ultimate retirement.

**For example:** If an employee leaves the City of Bay City to work for another TMRS City, the employee may leave his or her retirement contributions deposited at TMRS; and upon retirement, the employee may receive payments from both entities.
  - b.) Upon termination, a TMRS member may file an application for a refund of deposits and accrued interest. Under this option, the member's account is closed, and the member forfeits further benefits under the plan. The City's matching portion is also forfeited.
- 2.) If a vested<sup>5</sup> employee terminates employment with the City, deposits may be left in the system until the employee reaches retirement eligibility.

Employees are eligible to retire when:

- 1.) The employee has reached at least 60 years of age and has at least five (5) years of credited service; or
- 2.) The employee has at least 25 years of credited service regardless of age.

If an employee dies before retirement, the supplemental death beneficiary receives the retirement benefit equivalent to one year of the employee's salary.

Occupational Disability Retirement Benefits (ODR) are provided if an employee becomes disabled to the extent the employee can no longer perform the duties of the position he or she occupies, and if the

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<sup>4</sup> Not-Vested is defined as an employee that has continuous credited service with the City of less than five (5) years.

<sup>5</sup> Vested is defined as an employee that has continuous credited service within the City for at least five (5) years.

disability is likely to be permanent. There is no minimum length of service or age required to be eligible for. In this instance, the employee also receives the City matched portion of retirement benefits.

## **7.4 SECTION 457 DEFERRED COMPENSATION PLAN**

The purpose of this policy is to outline procedures for enrollment and eligibility in the City's deferred compensation program. The City provides an option to any regular full-time employee to invest a portion of his or her present earnings in a deferred compensation plan. This is an arrangement where a certain dollar amount can be designated by the employee to be withheld from his or her paycheck and invested for payment at a later date, usually at retirement. Under this arrangement, neither the deferred amount nor earnings on the investments are subject to current federal income taxes until such time as the employee receives payment from the plan.

The City approved program includes various investment options and is currently administered by Nationwide Retirement Solutions. Enrollment occurs after the 90-day waiting period for regular full-time employees. Contributions are made through payroll deductions. Employees may increase, decrease, or stop the withholding amount at any time during the year.

Benefits received through this program are in addition to any Social Security or Texas Municipal Retirement System (TMRS) benefits for which the participating employee would be eligible.

## **7.5 WORKERS' COMPENSATION**

Employees of the City are covered by the workers' compensation insurance program, and the City pays the premium. This coverage provides medical and salary continuation payments to employees who receive bona fide, on-the-job, work-related injuries. Detailed information about workers' compensation benefits is found in Section 9 of this manual under the main heading Health and Safety. (*Legal reference: V.T.C.A., Labor Code, Chapter 504.*)

## **7.6 UNEMPLOYMENT INSURANCE**

Employees of the City are covered under the Texas Unemployment Compensation Insurance program, and the City pays for this benefit. This program provides payments for unemployed workers in certain circumstances. (*Legal reference: V.T.C.A., Labor Code, Chapter 201.*)

## **7.7 LEAVE TIME**

Regular full-time City employees are eligible for holidays, vacation leave, sick leave, and other types of released time under certain circumstances. Detailed information about leave and other types of released time is found in Section 8 of this manual under the main heading Leave Time.

## 8. LEAVE TIME

### 8.1 DEFINITIONS

**Leave Time.** Leave time is time during normal working hours in which an employee does not engage in the performance of job duties. Leave time may be either paid or unpaid. The types of leave authorized for use by City of Bay City employees are as follows:

- Vacation leave;
- Sick leave;
- Family and medical leave;
- Military leave;
- Jury duty;
- Leave of absence without pay;
- Bereavement leave;
- Injury leave (Workers' Compensation);
- Administrative leave; and
- Holidays.

**Holidays.** Holidays are days designated by the City Council when the City government is closed or on a limited work schedule on what otherwise would be regular business days.

**Unauthorized Absence.** An unauthorized absence is one in which the employee is absent from regular duty without permission. Employees are not paid for unauthorized absences and such absences may result in disciplinary action.

### 8.2 APPROVAL OF LEAVE

**Notification of Unplanned Absences.** If an employee finds that he or she is unable to report to work as scheduled, the employee must notify his or her supervisor or, if the supervisor is not available, the City Secretary's Office before the time he or she is scheduled to begin work. In the case of an injury, hospitalization, or other serious emergency that prevents early notification to the City, the employee, or his or her designee, if the employee is not physically able to make the call, must notify the City as soon as possible.

Leave taken by City employees must be submitted in writing and approved by the employee's Department Head or by the Mayor or his or her designee. Notification does not automatically excuse the absence or guarantee that the time off will be paid.

The City Secretary is responsible for determining what leave has been earned and is available for use in the amounts requested by an employee. The Department Head or his or her designee is responsible for ensuring that all leave usage is recorded on the timesheet for payroll purposes. If an employee's absence

after the cut-off date of the time reports would affect the amount of salary due, the payroll office will make proper adjustments prior to the last day of the pay period or at least in the next pay period.

## 8.3 VACATION LEAVE

The City of Bay City is happy to provide a program that gives employees the flexibility to earn and use paid time off. Vacation leave is an earned benefit and is made available to eligible employees in order to provide personal leave, personal business leave and family leave away from work without loss of compensation.

Subject to the terms and conditions set forth below, regular full-time employees earn paid vacation leave according to the following schedule:

<u>YEARS OF SERVICE</u>	<u>ALLOTTED HOURS</u>	<u>NO. OF WEEKS</u>
Year: 1	40 Hours	1 Week
Year: 2 - 4	80 Hours	2 Weeks
Year: 5 - 9	120 Hours	3 Weeks
Year: 10 - 14	160 Hours	4 Weeks
Year: 15 - 19	200 Hours	5 Weeks
Year: 20+	240 Hours	6 Weeks

Regular part-time employees earn paid vacation leave in proportion to the number of hours worked. For example, a regular part-time employee regularly scheduled to work 20 hours per week (1/2 of the full-time 40 hours) will earn 20 hours of vacation leave (1/2 of the full-time earning rate of 40 hours) after their first twelve (12) months of employment. Temporary and seasonal employees do not earn vacation leave.

The following provisions relate to vacation time:

- 1) The "anniversary date" of regular, full-time employees is the date falling one year after their initial day of employment. After completion of one year of continuous service, forty (40) hours are credited to the employee's vacation leave account. Vacation leave is not earned until the completion of one year's continuous service. Employees who separate from city employment prior to the completion of one year of continuous service do not receive payment for vacation leave.
- 2) In succeeding years, the appropriate number of hours is credited to the employee's vacation leave account on the employee's anniversary date. Upon termination, any vacation hours accrued and unused will be paid provided the employee had served at least twelve (12) continuous months with the City.
- 3) Employees will be allowed to take only those leave hours that are reflected in the records maintained by the City. Hours are also shown on each paycheck stub.
- 4) If an employee requests leave and does not have adequate accrued leave available, the leave request will be denied. Vacation leave requests will only be approved for time that is accrued and available.

- 5) It is the employee's responsibility to review leave hours as reported on each paycheck stub for errors. Failure to notify the payroll office of any errors in accrued leave within thirty (30) days of issuance of a paycheck stub will result in a waiver of any omitted leave days that were not included on the paycheck stub.
- 6) Request for vacation of more than five (5) days will be subject to the approval of the Department Head or supervisor who will evaluate the request, including an evaluation of current staffing considerations. Naturally, the efficiency of your department and the needs of the public come first, and the City reserves the right to set the times when vacations may be taken.
- 7) If more than one employee in a department requests vacation leave for the same period of time and the department cannot function efficiently with more than one employee absent, the leave requests will be granted in the order in which they were received. If the vacation leave requests are received on the same day, seniority will determine which leave request is granted.
- 8) A maximum of 80 hours may be carried forward past the anniversary date on which it was earned. Vacation leave is taken in minimum increments of one (1) hour.
- 9) Effective May 23, 2013, in the event that an individual who has at least 20 years of continuous service with the City, is out on a bon-a-fide medical condition for extended leave for a 6-month period, retires without returning to service, is entitled to all vacation hours accrued in the previous year.
- 10) An employee with at least 20 years of service may be paid for one (1) week of accrued vacation leave, which has the potential of being lost. Such payment is conditioned upon the following:
  - a. The employee must have used at least three (3) weeks (120 hours) of vacation leave from the date of the last accrual deposit; and
  - b. The vacation leave paid to the employee will be only that amount in excess of the three weeks used and the 80 hours permissible to be carried forward.
- 11) Official City of Bay City holidays occurring while an employee is on approved leave are considered as paid holidays and are not deducted from the employee's vacation leave balance. Employees who are confined to bed during their vacation time due to illness or injury may request that the number of hours during which they were confined due to illness or injury be charged to sick leave. The request must be approved by the immediate supervisor and must be supported by a doctor's certification that the employee was confined to bed during that period of time.
- 12) Employees must have vacation leave requests pre-approved prior to the beginning of the scheduled leave.
- 12.) In the event an employee depletes their accrued Sick Leave, the department must notify the employee of the depletion, and receive permission to use any accrued Vacation and/or compensatory time.

## **8.4 HOLIDAYS**

It is the policy of the City to designate and observe certain days each year as holidays. Regular part-time employees will be paid for the hours normally worked on such days. For example, if an employee is not normally scheduled to work the day on which a paid holiday falls, the employee does not receive pay for that day. The City Secretary's Office will publish the schedule of holidays the City will observe after it has been approved by the City Council.

The following holidays are declared official holidays for City employees:

- New Year's Eve
- New Year's Day
- Martin Luther King, Jr.'s Birthday
- President's Day
- Good Friday
- Memorial Day
- Independence Day
- Labor Day
- Veterans Day
- Thanksgiving Day
- Christmas Day
- Floating Holiday Day

The following rules apply to holiday leave:

- 1) An employee who has to work on a holiday will be paid the hours worked, in addition to their holiday pay. Overtime will be determined in accordance with Section 6.7
- 2) If an employee is absent the day before or the day after a holiday without advance approved leave, the employee will **not** be paid for the extra day **unless** he or she submits a doctor's certification that the employee was sick that day **and** the employee has accrued sick leave to cover the extra day.
- 3) When an employee's regular day off falls on a holiday, the employee will be provided an alternate day off for the holiday, which shall be taken within the same month the holiday falls in. Some departments may schedule alternate holidays at the beginning of the year for their round-the-clock shift employees.
- 4) Holidays falling within an employee's approved vacation leave, or within any other approved paid period of absence, will be paid as a holiday and will not be counted against that leave.
- 5) Effective January 1, 2009, City of Bay City employees will be granted one floating holiday per calendar year. The floating holiday will be in addition to the twelve (12) Council approved holidays. If not taken during the year, the floating holiday will not be carried over, nor will it be paid at the time of termination. In order to receive this holiday, an employee must:
  - a.) Be a regular full-time employee;
  - b.) Be employed by the City of Bay City for at least one year; and
  - c.) Complete a Floating Holiday Request form and submit the completed form to his or her supervisor or Department Head prior to the leave request date.

## 8.5 SICK LEAVE

### 8.5.1 ELIGIBILITY AND ACCRUAL

Regular full-time employees earn 96 hours of sick leave per calendar year, or a total of 12 days. Each regular part-time employee accrues sick leave proportionately based on the hours worked per pay period. Seasonal and temporary employees do not earn sick leave.

Sick leave is accrued each pay period. For full-time employees, sick leave accrues as shown below:

**Calculation:** (25 pay periods at 3.69 hours per pay period)  
+ (1 pay period at 3.75 hours)  
= 92.25 hours + 3.75 hours = 96 hours per year

### 8.5.2 USES OF SICK LEAVE

Eligible employees with earned sick leave may use it if the employee is absent from work due to:

- 1) Personal illness or physical or mental incapacity;
- 2) Medical, dental, or optical examinations or treatments;
- 3) Medical quarantine resulting from exposure to a contagious disease; or
- 4) Illness of a member of the employee's immediate family who requires the employee's personal care and attention. For this purpose, immediate family is defined as the employee's spouse, child, or any other relative who resides in the employee's household or who is dependent on the employee for care.

Sick leave may be used during the introductory period; however, sick leave may not be used in advance of being earned.

Sick leave may be taken in as little as quarter (.25) hour increments.

### 8.5.3 CARRYOVER

Sick leave has no maximum accrual and can be carried over every year, but unused accrued sick leave will not be paid upon termination.

### 8.5.4 MEDICAL STATEMENT

After an employee has used three or more consecutive days of sick leave, the employee must furnish written verification by a physician of medical disability precluding availability for duty

and releasing the employee to return to work. The City retains the right to request a physician's verification for any absence due to illness.

### **8.5.5 SICK LEAVE POOL**

The City maintains a sick leave pool to provide for the alleviation of hardships incurred by an employee and the employee's immediate family if a life-threatening illness or injury forces the employee to exhaust all available sick leave, vacation leave, and compensatory leave. The sick leave pool is intended to lessen financial hardship caused to sick leave pool members by providing a source of additional paid sick leave. Routine pregnancy/maternity is not considered a catastrophic illness or injury. However, severe pregnancy-related illness or complications afflicting mother or child may be considered.

Definitions for the purpose of the sick leave pool are as follows:

1. Catastrophic illness or injury is defined as a life-threatening illness or injury, incurred by a Sick Leave Pool member or the member's immediate family member, that forces the member to exhaust all accrued paid leave time and for this policy would result in the member being placed into an unpaid leave status.
2. Employee is defined as a regular full-time employee who has been employed by the City for one continuous year.
3. Immediate Family Member is defined as an employee's spouse, child, or any other relative who resides in the employee's household or who is dependent on the employee for care.
4. Life-threatening is defined as a disease or condition from which the likelihood of death is probable unless the course of the disease or condition is interrupted. Life-threatening illnesses and injuries include, but are not limited to: serious or terminal illness such as cancer, and serious or life-threatening accidents or injuries. Chronic illnesses or injuries which result in intermittent absences from work, such as HIV or kidney disease requiring dialysis, may also be considered life-threatening. Life-threatening illness or injury does not include: non-emergency elective surgery; injuries covered by workers' compensation claims; disabilities from drug or alcohol abuse; and self-inflicted injuries.
5. Sick Leave Pool is defined as the accumulated sick leave hours donated by employees for use in accordance with this policy.
6. Sick Leave Pool Administrator is defined as committee made up of the City Secretary or designee, affected employee's Department Director, and the Mayor designated in this policy to administer the Sick Leave Pool Policy.

In order for an employee to be considered eligible for the Sick Leave Pool, an employee is required to complete an enrollment form; one has to be employed by the City of Bay City for one consecutive year; and an employee has to donate at least one hour from their own personal Sick Leave bank. Employees may contribute a maximum of ninety-six (96) hours of their earned sick leave to the pool. Contributions to the pool are strictly voluntary. The contributor may not designate the recipient of his or her donated sick leave.

An employee may donate any unused accrued sick leave to the Sick Leave Pool upon separation, with the completion of the Donation form.

Sick leave pool hours may not be used in conjunction with a workers' compensation claim by an employee.

An employee must be enrolled in the Sick Leave Pool in order to request leave. A request to withdraw form must be submitted, prior to the exhaustion of your personal leave bank. The employee must provide the Sick Leave Pool Administrator with a physician's statement as to the nature of the illness, surgery, or temporary disability, including the expected duration of the employee's absence.

The City Secretary is responsible for developing and implementing the procedures for contributing sick leave hours to, or withdrawing sick leave hours from the pool. However, the City Secretary, the employee's Department Director, and the Mayor determine the approval or denial to withdraw from the pool. The City Secretary is also responsible for communicating and interpreting the procedures of this policy to the employees.

The Sick Leave Pool Administrator shall consider the information contained in the request form, the number of pending request forms, and the number of hours available in the Sick Leave Pool. The Sick Leave Pool Administrator shall not award more than one-third ( $\frac{1}{3}$ ) of the hours in the Sick Leave Pool based upon any single request for withdrawal of hours.

Employees on extended leave must report by telephone to the City Secretary's Office at least once a week, as well as immediately following any doctor's appointment, with an update as to the expected duration of the employee's absence.

Employee utilizing Sick Leave Pool hours do not qualify for the accrual of benefits (sick, vacation, holiday, etc).

## **8.5.6 ILLNESS WHILE ON VACATION LEAVE**

When an illness or physical incapacity occurs during the time an employee is on vacation leave, accrued sick leave may be granted to cover the period of illness or incapacity and the charge against vacation leave reduced accordingly. Application for such substitution must be supported by a medical certificate or other acceptable evidence, and application must be made immediately upon the employee's return to duty.

## **8.5.7 CANCELLATION UPON TERMINATION**

Unused sick leave is canceled upon termination of employment, without compensation to the employee. The employee can voluntarily donate this unused sick leave to the sick leave pool.

## **8.5.8 OUTSIDE EMPLOYMENT**

Employees who are on approved sick leave may not work a second job while on sick leave, even if they have written authorization from the Mayor to work a second job. Any exception to this policy must be obtained in writing from the Mayor.

## 8.6 FAMILY AND MEDICAL LEAVE (FMLA)

All governmental employers are covered under the Family and Medical Leave Act (FMLA). City of Bay City employees are eligible for FMLA leave. Under the FMLA, eligible employees may take up to twelve (12) weeks of unpaid leave for specified family and medical reasons within a 12-month period or 26 weeks for military FMLA leave.

### 8.6.1 DEFINITIONS

A **“12-Month Period”** means a rolling 12-month period measured backward from the date leave is taken. The twelve (12)-month period during which an employee may use a maximum of twelve (12) workweeks of this type of leave (or a maximum of twenty-six (26) workweeks for military FMLA leave) is measured forward from the date on which the employee’s first Family and Medical Leave Act (FMLA) leave begins. A **“serious health condition”** means an illness, injury, impairment, or physical or mental condition that involves any period of incapacity or treatment connected with in-patient (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such in-patient care or continuing treatment by a health care provider, which includes any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities).

**“Child”** A biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis, who is standing in the place of a parent, who is either under age 18, or age 18 or older and requires active assistance or supervision to provide daily self-care. A biological or legal relationship is not necessary.

**“Parent”** A biological parent or an individual who stands or stood in the place of a parent to an employee when the employee was a child. This term does not include parents-in-law.

**“Spouse”** A husband or wife as defined or recognized under State law for purposes of marriage, including common law marriage.

**“Family Member”** is defined only to include parent, spouse, son and daughter.

A **“Health care provider”** who may provide certification of a serious health condition includes:

1. Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices; Podiatrist, dentists, clinical psychologists, optometrists, and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice and perform within the scope of their practices under state law;
2. Nurse practitioners, nurse mid-wives, and clinical social workers authorized to practice and perform within the scope of their practice, as defined under state law;
3. Any health care provider recognized by the employer or the employer’s group health plan benefits director;
4. A health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

**“Covered Active Duty”** means (1) in the case of a member of a regular component of the Armed Forces, duty during the deployment with the Armed Forces to a foreign country; and (2) in the

case of a member of a reserve component of the Armed Forces, duty during the deployment with the Armed Forces, duty during the deployment with the Armed Forces to a foreign country where they may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.

**“Covered Service Member”** means (A) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

**“Outpatient Status”**, with respect to a covered service member, means the status of a member of the Armed Forces assigned to--

- a. a military medical treatment facility as an outpatient; or
- b. a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

**“Next of Kin”** means the nearest blood relative of a Covered Service member.

A **“12-Month Service member Period”** means a single 12-month period measured forward from the first day Service member Family Leave is taken.

**“Serious injury or illness”--**

- a. in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and
- b. in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period described in paragraph (15)(B), means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

**Veteran** means a person who served in the active military, naval, or air service, and who was discharged or released under conditions that were not dishonorable.

**“Qualifying Exigency”** includes: 1) notification of a call to covered active duty seven or fewer days from date of deployment; 2) military events and related activities, including post-deployment activities (e.g. official ceremonies, support programs, counseling, etc. related to covered active duty or a call to such); 3) attending to childcare and school activities; 4) attending to financial and legal matters; 5) to spend up to five days with a military member who is on short-term, temporary rest and recuperation leave during the period of deployment; and, 6) any additional activities related to the call to covered active duty otherwise agreed to by the employer and employee.

## 8.6.2 COVERAGE AND ELIGIBILITY

To be eligible for family/medical leave an employee must have worked for the City for at least 12 months total and have worked at least 1250 hours over the previous 12-month period.

1. An eligible employee is entitled to twelve (12) unpaid workweeks of leave during any twelve (12) month period for the following purposes or up to twenty-six unpaid workweeks of leave during any twelve (12)-month period for military caregiver circumstances. To care for a child following birth or placement for adoption or foster care of the child (only within twelve (12) months of the birth or placement); or
2. To care for a spouse, child (including step-child), or parent with a serious health condition; or
3. The employee's own serious health condition that makes the employee unable to perform the essential functions of his or her job; or
4. Qualification as the spouse, son, daughter, parent, or nearest blood relative of a wounded military service member who suffered an injury or illness while on active duty that rendered the service member unable to perform the duties of his or her military grade (this leave may be for up to twenty-six (26) weeks during one twelve (12)-month period and a husband and wife can use no more than twenty-six (26) weeks combined); or
5. Qualification as the spouse, son, daughter, or parent of a person eligible for qualifying exigency military leave. A “qualifying exigency” under military family leave is a non-medical activity that is directly related to the covered military member’s active duty or call to active duty status. Exigency leave applies only under a federal call or order to active duty (not a state call to active duty unless by order of the President of the United States). Such active duty or call/order to active duty is only made to members of the National Guard or Reserve components or a retired member of the Regular Armed Forces or Reserve. An employee may not take exigency leave if the service member is a member of the Regular Armed Forces. For an activity to qualify as an exigency, it must fall within one (1) of seven (7) categories of activities or be mutually agreed to by the employer and employee. The seven (7) categories of qualifying exigencies are as follows:
  - a. Short-notice deployment (leave permitted up to seven (7) days if the military member receives seven (7) or fewer days’ notice of a call to active duty);
  - b. Attending certain military events and related activities;
  - c. Arranging for alternative childcare;
  - d. Addressing certain financial and legal arrangements;
  - e. Attending counseling by a non-medical counselor (such as a member of the clergy);
  - f. Rest and recuperation (leave permitted up to five (5) days when the military member is on temporary rest and recuperation leave); and
  - g. Attending post-deployment military activities.

## 8.6.3 INTERMITTENT OR REDUCED LEAVE

“**Intermittent/Reduced Schedule Leave**” means taking leave in blocks of time or by reducing the employee’s weekly or daily work schedule. An employee may take intermittent leave in

increments as low as 30 minutes. If the leave is unpaid the City will reduce the employee's salary based on the amount of time actually worked.

- a. If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent/reduced schedule leave is subject to the employer's approval.
- b. FMLA leave may be taken intermittently/reduced schedule whenever medically necessary to care for a seriously ill family member or because the employee is seriously ill and unable to work.
- c. Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the employee's health care provider.
- d. An employee taking intermittent leave or leave on a reduced schedule may be temporarily assigned to an alternative position with equivalent pay and benefits if it better accommodates the needs of the department.

#### **8.6.4 SERIOUS HEALTH CONDITION**

A serious health condition is one that (a) requires visits for treatment by a health care provider at least twice a year; (b) continues over an extended period of time (including recurring episodes of a condition); and (c) may cause episodic incapacity rather than a continuing period of incapacity.

#### **8.6.5 CALCULATION OF 12-MONTH PERIOD**

The City of Bay City calculates FMLA leave on a rolling basis. The twelve (12)-month period during which an employee may use a maximum of twelve (12) workweeks of this type of leave (or a maximum of twenty-six (26) workweeks for military FMLA leave) is measured forward from the date on which the employee's first Family and Medical Leave Act (FMLA) leave begins.

#### **8.6.6 DEFINITION OF FAMILY MEMBERS**

"Son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in the place of a parent. The child must be under eighteen (18) years of age or an individual eighteen (18) years of age or older who is incapable of self-care because of a mental or physical disability. "Spouse" means a husband or wife as defined or recognized under state law for purposes of marriage, including common law marriage. Military family leave also includes the parent of a covered service member, son or daughter of a covered service member, next of kin of a covered service member, and son or daughter on active duty or called to active duty status.

### **8.6.7 LIMITATIONS/RESTRICTIONS**

Leave may be taken on an intermittent or reduced basis for the birth or adoption of a child only if the arrangement is agreed to by the Department Head. An employee may take intermittent leave in increments as low as 30 minutes. However, leave for serious health conditions – either of an eligible family member of the employee or the employee himself or herself – may be taken intermittently or on a reduced schedule if medically necessary, provided that the other conditions of these policies are met.

### **8.6.8 TEMPORARY TRANSFER**

If the employee's request for intermittent leave is foreseeable, based on planned medical treatment, the city may require the employee to transfer temporarily to an alternative position, with equivalent pay and benefits, that better accommodates recurring periods of leave.

### **8.6.9 MAXIMUM DURATION**

The total cumulative maximum period of time which an employee may be absent from work on family leave during any twelve (12)-month period is twelve (12) weeks, regardless of whether all or a portion of the leave period is paid or unpaid. (There is an exception for up to twenty-six (26) weeks of military caregiver leave in a twelve (12)-month period on a per-covered-service-member, per-injury basis.) If an employee has accrued sick, vacation, compensatory, or any other type of qualifying leave on the books at the time that the family leave commences, the employee must exhaust those leave balances, if applicable to the circumstance, before being eligible for unpaid family leave. Once the employee's applicable leave balances have been exhausted, the city will then provide enough unpaid family leave to total twelve (12) weeks (or twenty-six (26) weeks for military caregivers) of combined paid and unpaid leave. During the unpaid portion of an employee's family leave period, the employee accrues no additional vacation leave, sick leave, or any other type of leave. Other employee benefits remain in place.

### **8.6.10 PART-TIME/VARIABLE HOUR EMPLOYEES**

If an employee works a part-time schedule, the amount of leave to which the employee is entitled is determined on a pro rata or proportional basis, provided that the other requirements for eligibility are met.

### **8.6.11 NOTICE**

When an eligible FMLA circumstance occurs for an employee, the employee must contact the City Secretary and complete a request for family leave, with the leave request specifying the first date of absence or expected absence. In the case of leave for the birth or placement of a child, an employee must provide at least thirty (30) days' advance notice before the date on which the leave is expected to begin. If the employee is unable to provide thirty (30) days' notice, he or she must provide as much notice as is practicable, usually within one or two business days of the date on

which the employee is aware of the need to request leave. In the case of leave for a serious medical condition, if the leave is foreseeable, based on planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to disrupt the city's operations unduly. The same advance notice requirements apply. In the case of exigency leave, whether foreseeable or unforeseeable, the employee must notify the City Secretary and provide appropriate paperwork as soon as practicable and definitely within fifteen (15) days unless unusual circumstances exist.

### **8.6.12 CITY DESIGNATION OF FMLA LEAVE**

The city will provide an employee with a designation notice stating whether the employee's leave has been designated as FMLA leave or not. This notice will be provided whether or not the employee has requested FMLA leave. If the employee does not request family leave, yet requests the use of accrued leave, and a condition of FMLA eligibility exists, then the city may designate the leave as family leave. A city employee must respond to the city's questions in order to determine if the absence is FMLA-qualifying. Failure to respond to the city's inquiries may result in denial of FMLA protection if the city is unable to determine whether the leave is FMLA qualifying. Employees must also follow the city's usual notice and procedural requirements for requesting leave and calling in absences.

If the city designates an employee's leave as FMLA leave, without a request by the employee, then the city will notify the employee of the FMLA designation, normally within five (5) business days of the city's determination regarding the leave. The city's notification to the employee of FMLA designation may be communicated orally, but must be confirmed in writing no later than the next regular payday (unless less than a week remains until the next payday).

The designation notice will specify the amount of leave that will be counted as FMLA leave if known, and if not known at that time, the designation notice will be provided upon the employee's request, but no more often than every thirty (30) days (if leave was taken during the prior thirty (30) days). This notice will also state whether a fitness-for-duty certification will be required for the employee to return to work.

### **8.6.13 CERTIFICATION REQUIREMENTS**

An employee must submit a complete and sufficient medical certification within fifteen (15) days (or longer if the employee has made diligent, good faith efforts to obtain it without success). Family and medical leave may be denied by the city if complete and sufficient medical certification is not submitted within the fifteen (15) days. If the employee submits certification in a timely manner, but the documentation is not complete or sufficient, the city will provide the employee with a list of what information is still needed and will allow the employee seven (7) calendar days to cure the deficiencies. If the employee does not correct the deficiencies within the seven (7) calendar days, the leave may be denied.

The city may also contact the employee's health care provider directly for verification or clarification if the employee does not cure the deficiencies within the required seven (7) calendar days. If such contact with the health care provider would involve individually-identifiable health information, the city will obtain the employee's permission before requesting the information. *(Legal reference: U.S. Americans with Disabilities Act of 1990 and the ADA Amendments Act of*

2008; Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended; and *Ragsdale v. Wolverine Worldwide Inc.*)

Certification requirements differ for the various types of family and medical leave:

1. **Extended Illness or Temporary Disability.** An employee requesting a paid or unpaid family leave of absence for extended illness or temporary disability must submit to the City Secretary (1) a health care provider's statement as to the date upon which the employee is no longer able to perform his or her duties, or (2) a statement that the employee is needed to care for a spouse, parent, or child, with the expected length of the recuperation period, or an estimate of the time required to care for the family member, and appropriate medical facts regarding the condition. In addition, the employee must also provide the City Secretary with a written statement from the employee concerning his or her intentions about returning to work.

An employee on family leave must contact his or her supervisor at least once each workweek unless another schedule satisfactory to the city has been established in writing and signed by the Department Head and the employee. The city may also require subsequent re-certifications as reasonably needed. Failure to provide required medical status reports or to contact the office on the schedule required by the Department Head will result in disciplinary action.

2. **Military Caregiver Leave – Automatic Emergency Certification.** If a Department of Defense health care provider has determined that the injury or illness of a service member is serious enough to warrant the immediate presence of a family member at a service member's bedside, an invitational travel order (ITO) or invitational travel authorization (ITA) is issued, which constitutes automatic certification of the serious injury or illness for the period specified on the ITO or ITA. If the employee does not submit an ITO or ITA, the employee must submit a medical certification as specified above.
3. **Military Caregiver Leave – General.** An employee requesting a paid or unpaid family leave of absence for military caregiver leave must submit to the Department Head (1) a health care provider's statement as to the date upon which the service member needs the employee's care and expected duration of the care, and (2) a statement from the employee or the service member that the employee is needed to care for a spouse, son or daughter, parent, or next of kin.
4. **Military Exigency Leave.** An employee requesting a paid or unpaid family leave of absence for military exigency leave must provide two types of certification to the City Secretary: (1) a certification that the covered military member is a member of the National Guard or Reserves who is on active federal duty or called to active federal duty (typically a copy of the military member's active duty orders); and (2) a statement from the employee (including available written support documentation) about the nature and details of the specific exigency, the amount of leave needed, and the employee's relationship to the military member.

#### **8.6.14 SECOND, THIRD OPINIONS**

The city may require a second opinion, and, if conflicting, a third opinion from a health care provider as to the need for and scheduling of family leave. The second and third opinions, if sought and obtained by the city, will be paid for by the city and will be obtained from independent health care providers who are not employed by the city. If a third opinion is necessary, the third opinion obtained is final.

### **8.6.15 HOLIDAYS FALLING DURING FMLA LEAVE PERIOD**

If an employee is on paid or unpaid family and medical leave, and the employee is absent for an entire week that includes a holiday, the holiday time will count as FMLA leave toward the maximum allowable FMLA leave period.

### **8.6.16 RECERTIFICATION**

The city requires an employee using FMLA leave to provide recertification as to the need for such leave every six (6) months in connection with an absence. In addition, the city requires recertification at any time during FMLA leave if the employee seeks an extension of the FMLA leave. The recertification requirements are the same as the initial certification requirements. Except for the military leave provisions of FMLA, the city may provide the employee's health care provider with the employee's attendance records and ask whether the leave taken has been consistent with the employee's serious health condition.

### **8.6.17 RETURN TO WORK/ASSURANCES**

After completion of an approved family and medical leave period, an employee will be returned either to the same position he or she held before the leave began or to a position equivalent to the previously held position in pay, benefits, and other terms and conditions of employment. This policy may be modified for "key employees," defined as those salaried employees in the top 10 percent of the city's workforce. Key employees will be notified in advance of their status.

If the reason for family leave was an employee's own personal health condition, the employee must provide the following before being allowed to return to work: a written statement from the appropriate physician and/or other licensed health care provider certifying that the employee has been released to return to work and that the employee can perform the essential functions of the job, as well as listing any limitation(s) on the employee's ability to perform the essential functions of the job.

An employee must return to work as soon as the reason for the family and medical leave has ended. Failure to return to work when the reason for the leave has ended may result in disciplinary action, up to and including termination of employment. If an employee on family and medical leave returns to work in the department to which he or she is assigned, the supervisor must notify the City Secretary immediately before allowing the employee to resume work, to ensure that the appropriate documentation has been filed.

### **8.6.18 FITNESS FOR DUTY CERTIFICATION**

If the city requires a fitness for duty certification prior to the employee's return to work, that requirement will be stated in the city's designation of the FMLA leave. The employee must participate and cooperate in the fitness for duty process, including providing complete and sufficient certification and/or providing sufficient authorization to the employee's health care

provider to provide information directly to the city. If the employee does not participate and cooperate fully in this process, he or she will lose his or her rights to reinstatement under the law unless the employee has requested and is eligible for additional FMLA leave. If the employee has used intermittent FMLA leave during the previous thirty (30)-day period, and reasonable safety concerns exist regarding the employee's ability to perform his or her duties, the city may require fitness for duty testing every thirty (30) days.

### **8.6.19 HEALTH INSURANCE COVERAGE WHILE ON FMLA LEAVE**

Regardless of whether the family leave period is paid, unpaid, or a combination of paid and unpaid, the employee's health insurance coverage will be continued in the same manner and at the same level as it would have been had the employee continued in employment for the duration of the family leave period.

If the employee wishes to continue dependent insurance, the employee must pay the premium for that coverage to the city no later than the last working day of each month the employee is on leave without pay (deductions will be made as usual while the employee is in pay status, using approved leave time). However, should the employee decide, at any time after family and medical leave begins, that he or she will not return to work at the city, the employee must reimburse the city for health coverage premiums paid by the city that normally would have been paid by the employee during the family leave period, unless the reason for not returning to work is the continuation, recurrence, or onset of a serious health condition, or other circumstances beyond the employee's control. This is subject to certification at the request of the city to be provided by the employee's physician and/or other licensed health care provider.

### **8.6.20 RETENTION OF BENEFITS**

An employee on family leave does not lose any previously accrued seniority or employment benefits, but does not earn any leave credits or other benefits during the unpaid portion of the leave.

### **8.6.21 POSTING OF SUMMARY OF ACT**

The city has posted a summary of the Family and Medical Leave Act on a central bulletin board for employees' information, within each City department building.

*(Legal references: Family and Medical Leave Act of 1993 (Pub. L. 103-3), as amended; and National Defense Authorization Act of 2008 (Pub. L. 110-181); and related U. S. Department of Labor regulations).*

### **8.6.22 REQUEST FOR LEAVE IMMEDIATELY FOLLOWING FAMILY AND MEDICAL LEAVE**

If an employee requests additional leave beyond the twelve (12)-week maximum allowable under the family and medical leave provisions of these policies, any extension granted will be under the terms set out in Section 8.7, **Other Leaves of Absence**. Employees should read the referenced section carefully and understand the differences between these two types of leaves before requesting an extension.

### **8.6.23 DOCUMENTATION**

All documentation regarding family leave will be filed in the employee's medical file, which is maintained separate from the personnel files, and is accessible to a limited number of persons, and only on a "need-to-know" basis. (*Legal reference: U.S. Americans with Disabilities Act of 1990 and ADA Amendments Act of 2008; Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended; and Ragsdale v. Wolverine Worldwide Inc.*)

## **8.7 OTHER LEAVES OF ABSENCE**

The approval of a leave of absence from duty maybe in the form of a pay or non-pay status. Granting a leave of absence is at the discretion of the Department Head, in consultation with the City Secretary. This type of leave is not authorized unless there is a reasonable expectation that the employee will return to employment with the city at the end of the approved period.

Employees on leave of absence in a pay status, may receive compensation, but will not accrue benefits. Employees on leave of absence in a non-pay status, receive no compensation and accrue no benefits. However, previously accrued leave balances, benefits, and seniority are retained during leaves of absence unless otherwise prohibited by the terms or provisions of the benefit programs or by these policies. Medical insurance can be continued if the employee pays the employee and/or the dependent premiums in full and in a timely manner.

### **8.7.1 REVOCATION OF LEAVE OF ABSENCE**

A leave of absence may be revoked upon receipt of evidence submitted that the cause for granting such leave was misrepresented or has ceased to exist.

### **8.7.2 AUTHORIZED REASONS FOR A LEAVE OF ABSENCE**

A leave of absence may be appropriate for the following reasons:

1. Recovery from extended illness or temporary disability, including using leave without pay to add to the allowable 12-week period of family leave; pregnancy is treated in the same manner as any other extended illness or temporary disability (see also the Section 8.6, **Family and Medical Leave**);
2. Educational purposes when successful completion will benefit the city;

3. Public service assignments;
4. Seeking public office;
5. Personnel exchange programs which emphasize intergovernmental relations; or
6. Any other reason which, in the judgment of the Department Head and City Secretary, merits a leave of absence.

### **8.7.3 APPROVAL OF LEAVE OF ABSENCE**

An approval of a request for a leave of absence is at the discretion of the Department Head, in consultation with the City Secretary, and is based upon the employee's length of service with the city and past attendance record; the department's needs; and prospect for temporary replacement of the employee or reassignment of the employee's duties. A leave of absence will be limited to one hundred eighty days (180) days. The above timeframe shall include time spent on FMLA.

### **8.7.4 RETURN TO WORK AFTER A LEAVE OF ABSENCE**

At the expiration of an authorized leave of absence, every effort will be made to reinstate the employee in the same, or a comparable, position. However, if no vacancy exists and a reasonable effort to place the employee in another position has been unsuccessful, the employee will be separated and paid any applicable accrued benefits. See also Section 8.6, **Family and Medical Leave** and Section 8.9, **Military Leave** for specific provisions relating to leaves of absence for those purposes.

### **8.7.5 SEPARATION OF EMPLOYMENT**

If an employee has met the maximum of 180 days, and is not medically able to return to perform the duties in which he or she was hired to perform, with reasonable accommodations, the employee will be separated from employment, and paid any applicable accrued benefits.

## **8.8 BEREAVEMENT LEAVE**

Regular full-time and part-time employees may receive paid bereavement leave for the purpose of attending funerals, making funeral arrangements or attending to the affairs of a deceased relative. For the purposes of this section a relative will be described and allotted bereavement leave as follows: relatives within the first (1<sup>st</sup>) degree of consanguinity and affinity kinship will receive five (5) days; and relatives within the second (2<sup>nd</sup>) degree of consanguinity and affinity kinship will receive three (3) days of bereavement leave. Bereavement leave may be offered in increments as low as two (2) hours, up to the maximum, depending on the type of kinship.

Leave taken to attend funerals for any other family member or friend must be taken as vacation, compensatory leave, floating holiday or a leave of absence. The supervisor and/or Department Head may require the employee to provide proof of death such as an obituary notice.

## 8.9 MILITARY LEAVE AND YOUR RIGHTS UNDER USERRA

Regular employees who are members of the State Military Forces or members of any of the Reserve Components of the Armed Forces of the United States are entitled to a temporary leave of absence from their duties, without loss of time or efficiency rating, vacation time, or salary on all days during which they are engaged in authorized training or duty ordered by proper authority, normally not to exceed fifteen (15) days in any one (1) federal fiscal year. Employees will continue to receive pay from the city during this authorized training.

Requests for approval of military leave must have copies of the relevant military orders attached. Confirmation that military duty was performed must be provided by the employee. Unused military leave does not carry over to the next year.

Regular employees who are ordered to extended active duty with the state or federal military forces are entitled to all of the reemployment rights and benefits provided by law upon their release from active duty. Before returning to duty, the employee must provide the city with the appropriate notice and documents specified in the state and federal statutes in effect at the time. *(Also, see the section of these policies headed “Family and Medical Leave.”)*

The city will abide by the provisions of the Uniformed Services Employment and Re-Employment Rights Act (USERRA) and will grant military leave to all eligible full-time and part-time employees. Military leave will be granted to full-time and part-time employees for a period of four years plus a one-year voluntary extension of active duty (five years total) if this is at the request and for the convenience of the United States government.

As with any leave of absence, employees must provide advance notice to the Department Head and City Secretary of the employee’s intent to take a military leave and must provide appropriate documentation unless giving such notice is impossible, unreasonable, or precluded by military necessity.

An employee’s salary will not continue during an extended military leave unless required by law. However, an employee may request to use any accrued vacation, compensatory time, or personal leave time during military leave. Benefit coverage will continue for 31 days as long as the employee pays the normal portion of the cost of benefits. For leaves lasting longer than 31 days, an employee will be eligible to continue health benefits under COBRA and will be required to pay 102 percent of the total cost of health benefits if he or she wishes to continue benefits.

Upon return from military leave, an employee will be reinstated with the same seniority, pay, status, and benefit rights that he or she would have had if the employee had worked continuously. Employees must apply for employment within 90 days of discharge from the military (shorter periods are required for shorter periods of duty). Employees who fail to report for work within the prescribed time after completion of military service will be considered to have voluntarily terminated their employment.

If the employee’s military service was for less than 90 days, the city will restore the employee to the same job the employee held at the time the leave commenced. If military service was longer than 90 days, the employee will be restored to the same job or a similar job. There are special extensions of time for returning

employees who are hospitalized for or convalescing from injuries that incurred during or were aggravated by military service.

If the employee participated in the city's TMRS retirement plan at the time the military leave commenced, the employee will be permitted to make additional contributions to the plan. Employees may initiate these additional payments as of their reemployment date and continue them for the period of time permitted by law.

If a city employee requests extended military leave, the City Secretary will seek the advice of the city's legal counsel to ensure the city's compliance with both the state and federal laws regarding employees called to military service. Likewise, when an employee returns from military service, the City Secretary will consult the city's legal counsel to ensure that all rights and privileges of re-employment are provided to the employee.

Upon return from a military leave, the city may require a period of retraining and may require the returning employee to complete physical and psychological examinations with medical professionals of the city's choice and paid for by the city.

*(Legal reference: V.T.C.A., Government Code, Section 431.005 and Section 613.001-613.005; Fed. 38, U.S. Code Ann., Chapter 43; Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994, as amended; FMLA, as amended.)*

## **8.10 JURY/CITIZENSHIP LEAVE**

Employees are granted citizenship leave with pay for jury duty, for serving as a subpoenaed witness in an official proceeding, and for the purpose of voting. In the case of jury duty and witness duty, the employee must present evidence of the requirement to attend and must notify his or her supervisor at the earliest opportunity of the upcoming absence and expected date and time of return, so that replacement personnel can be arranged if required.

When an employee has completed citizenship leave, he or she must report to the city for duty for the remainder of the workday. If the employee will be absent from work for more than one workday on citizenship leave, he or she must notify his or her department daily at the beginning of each workday.

The employee shall be granted jury leave and will receive his or her regular salary from the City during such service. In order to receive pay, however, an employee must present to the supervisor a statement from the court clerk attesting to the days of jury or subpoena service. Acceptable documentation includes a subpoena, jury notice, and/or a letter of request from an attorney of record or prosecuting attorney on request of a hearing officer. The employee retains any fees paid by the courts.

Court appearances for testimony, investigation, and court preparation as a result of official duties as a City of Bay employee are compensated as actual hours worked and are not classified as paid leave, except in cases in which the employee is a plaintiff against the City. In cases where an employee is a plaintiff against the City of Bay City, the employee may utilize accrued paid leave. Otherwise all time off required will be considered leave without pay.

## **8.11 LEAVE OF ABSENCE WITHOUT PAY**

No employee, with accrued vacation or accrued sick leave may request leave without pay. Unpaid leave of absence will be granted only after all other paid leaves (vacation, compensatory, time, sick leave, and floating holiday) and/or leave authorized under the Family Medical Leave Act (FMLA) are exhausted. A leave of absence without pay for a reason acceptable to the City may be granted to regular full-time and regular part-time employees, provided the request by the employee is in writing and is made at least ten (10) days prior to the beginning date of the leave of absence except in an emergency situation. The granting of leave without pay must be pre-approved by the Department Head or Supervisor.

## **8.12 INJURY LEAVE**

For information on occupational disability or injury leave for bona fide, on-the-job, work-related injuries, please see the sections in this manual under the main heading Section 9, Health and Safety.

## **8.13 USING LEAVE IN COMBINATION**

When an employee who is on sick leave has exhausted his or her earned sick leave, the employee will automatically be placed on vacation leave if (1) the employee has accrued vacation leave available, and (2) the employee has not requested a temporary leave of absence without pay.

Sick leave cannot be used for vacation purposes when vacation leave is exhausted.

With the approval of the employee's Department Head, other types of leave may be used in combination or coupled with holidays if the combination is determined to be in the best interests of the city and the employee.

## **8.14 DURATION OF LEAVE**

With the exception of leaves of absence for military duty, no leave of absence, by itself or in combination with other periods of leave, may last longer than six months (180 days). Any employee who for any reason or combination of reasons misses a total of six months of work in a twelve-month period, or a total of nine months of work in an eighteen-month period, will be separated from employment due to unavailability for work, subject to any reasonable accommodation duties the City may have under the ADA or similar law. Any employee so separated will be eligible for rehire and will be able to apply for any vacancies that may exist at any given time, depending upon qualifications and availability of job openings.

## **9. HEALTH AND SAFETY/WORKERS' COMPENSATION**

### **9.1 SAFETY POLICY**

It is the policy of the city to make every effort to provide healthful and safe working conditions for all of its employees.

### **9.2 EMPLOYEE RESPONSIBILITIES AND REPORTS**

Employees are responsible for conducting their work activities in a manner that is protective of their own health and safety, as well as the health and safety of other employees and the customers served by the city.

An employee must report every on-the-job accident, no matter how minor, to his or her supervisor immediately following such an occurrence. The supervisor is responsible for notifying the City Secretary and for filing a written accident report with the City Secretary's office within twenty-four (24) hours of being made aware of an accident.

Failure to report an on-the-job injury, no matter how minor, is grounds for disciplinary action.

*(Legal reference: Workers' Compensation Act, V.T.C.A., Labor Code, Chapter 401, et. seq.)*

### **9.3 EMPLOYEE SAFETY SUGGESTIONS**

Employees are to report immediately to their Department Head any conditions that in their judgment threaten the health and safety of employees and visitors.

Employees are encouraged to make suggestions to their Department Head or to the City Secretary for improvements that would make the city workplace safer or more healthful.

## **9.4 FITNESS REQUIREMENTS**

It is the responsibility of each employee to maintain the standards of fitness required for performing their job. The immediate supervisor may require an employee to submit to an examination by a City-approved physician when it appears that the physical or mental condition of an employee either (1) may prohibit him or her from adequately performing the duties of the job or (2) constitutes a hazard to persons or property.

The employee will be required, as a condition of continued employment, to authorize the physician to disclose the results of the examination to the City Secretary. The employee will be granted administrative leave for the time required for such an examination, which shall be conducted without expense to the employee and shall be for the sole purpose of determining the employee's condition relative to the requirements of the job. The examining physician shall make a recommendation as to whether the employee can perform the essential functions of the job.

## **9.5 ON-THE-JOB INJURIES AND WORKERS' COMPENSATION**

### **9.5.1 INSURANCE**

The city provides workers' compensation insurance for its employees. This insurance provides medical expenses and a weekly payment if an employee is absent from work because of a bona fide, on-the-job, work-related injury for more than one week. All workers' compensation insurance claim forms must be submitted to the City Secretary immediately for appropriate action to be taken.

The Texas Municipal League contracts the City's Worker's compensation physician services through the Political Subdivision Workers' Compensation Alliance (Alliance). Injured employees must choose a treating doctor from the Alliance's list of doctors designated as treating doctors. You must go to a treating doctor for all health care for an on-the-job injury. If you need a specialist, your treating doctor must refer you. If you need emergency care, you may seek emergency treatment. Please be aware that you may have to pay the bill if you receive health care from a doctor other than an Alliance doctor without approval from the Texas Municipal League. Alliance contracting services areas are subject to change and you should confirm that your treating doctor is within the Alliance before receiving services. To locate an approved Alliance treating doctor in your area, visit [www.pswca.org](http://www.pswca.org) or contact the Alliance at 1-866-997-7922.

*(Legal reference: Workers' Compensation Act, V.T.C.A., Labor Code, Chapter 401, et. seq.)*

### **9.5.2 MEDICAL ATTENTION**

If an on-the-job injury occurs, which requires medical treatment, the employee should go to a physician that has been previously approved by the Alliance, for initial evaluation. If the injury is life threatening the employee should be taken to the nearest hospital emergency room immediately. If an employee is injured outside the regular business hours and immediate medical attention is needed, the employee should be taken to the nearest hospital emergency room or urgent care center for treatment. Advise the hospital personnel that the injury occurred on the job and should be charged as workers' compensation.

The treating physician should indicate length of time that an employee needs to be off work for an on-the-job injury or a personal injury. This information should be given to the employee's Supervisor and City Secretary's Office immediately. Medical documentation from a treating physician is required for time missed in excess of 3 consecutive days due to illness, job related injuries or personal injuries. Any restrictions indicated by the physician must be outlined in the work release form after review of the employee's job description. An injured employee DOES NOT PAY for treatment received under workers' compensation. Employees should never use his/her personal insurance card for a work related injury.

*(Legal reference: Workers' Compensation Act, V.T.C.A., Labor Code, Chapter 401, et. seq.)*

### **9.5.3 INITIATION OF INJURY LEAVE**

The employee is responsible for notification to his or her supervisor the first day of absence due to illness or injury. An employee with a personal injury, illness, or a workers' compensation injury must report their status at least once a week and after all scheduled appointments. Employees must provide the City Secretary's Office with their work status reports after the doctor's appointments. The City must be aware of the employee's status in order to plan and assign work duties and responsibilities in an efficient manner. The employee must advise the supervisor of any changes that may occur. These could be appointment changes, treatment changes, etc. An employee who fails to contact his/her supervisor in accordance with these requirements will be subject to disciplinary action in accordance with the City's disciplinary policy.

### **9.5.4 COMPENSATION**

If a full-time employee sustains a bona fide, on-the-job, work-related injury which renders him or her unfit for performing the duties of the job, and if accrued sick leave is available, the employee is placed on sick leave status and receives full pay minus normal deductions for up to one week.

After the one-week waiting period, the employee is taken off of the city's payroll and receives only the workers' compensation payment. The employee may not use accrued sick leave to supplement workers' compensation payments.

An employee receiving workers' compensation payments does not accrue vacation or sick leave and is not entitled to receive holiday pay.

## **9.5.6 TERMINATION OF INJURY LEAVE**

Injury leave may be terminated at any time without prior notice. The City Secretary will terminate the injury leave upon receipt of evidence that the employee, while able to return to work, has not done so.

## **9.5.7 CONTINUATION OF SUPPLEMENTAL AND/OR DEPENDENT'S INSURANCE**

To continue dependent's insurance when the employee is on injury leave and no longer receiving a regular city paycheck, the city will continue to pay both the employee's and dependent's insurance. However, the employee must reimburse the city on a monthly basis for any supplemental insurance and/or dependent coverage throughout the leave period.

## **9.5.8 EXCLUSIONS**

An injury is not covered for workers' compensation benefits if the injury:

1. Occurred while the employee was in a state of intoxication;
2. Was caused by the employee's willful attempt to injure himself or herself or to unlawfully injure another person;
3. Arose out of an act of a third person intended to injure the employee because of a personal reason and not directed at the employee as an employee or because of the employment;
4. Arose out of voluntary participation in an off-duty recreational, social, or athletic activity that did not constitute part of the employee's work-related duties, unless the activity is a reasonable expectancy of or is expressly or impliedly required by the employment; or
5. Arose out of an act of God, unless the employment exposes the employee to a greater risk of injury from an act of God than ordinarily applies to the general public;
6. If the employee's horseplay was a producing cause of the injury; or
7. Arose while an employee performed a secondary job.

*(Legal reference: Workers' Compensation Act, V.T.C.A., Labor Code, Chapter 401, et. Seq)*

## **9.5.9 REPORTING REQUIREMENTS**

Employees who are injured in the course and scope of employment with the City must immediately notify their supervisor. All injuries need to be reported immediately to the City Secretary's office. If the employee is unable to complete the report due to the injury or fails to complete the report, the supervisor must complete it on the employee's behalf.

An injured employee must report all injuries that occur in the course and scope of employment, even minor ones. All injuries must be reported at the time they occur. While an injury may seem minor and can be treated with first aid on the job, complications may arise at a later time. Minor injuries are to be recorded in an incident log maintained by the department or division. If an injury is reported promptly, usually the facts are clearer. Prompt reporting will avoid the problem of employees and supervisors trying to recall what happened at a later date. An employee cannot be terminated, disciplined or otherwise retaliated against for filing a workers' compensation claim in good faith.

When an employee suffers injury on the job, and is unable to return to full duty work after six (6) months the City Secretary may conclude that the employee be terminated.

### **9.5.10 RETURN TO SERVICE**

An employee on injury leave who wishes to return to work must provide the City Secretary with a written statement from the attending physician, certifying that the employee has been released to return to work and specifying the type(s) of work he or she is capable of performing, as well as any limitation(s), before the employee may return to work. An employee on injury leave must report to work after approval of either the employee's attending physician or an independent physician paid by the city. Failure to return to work when directed will result in appropriate disciplinary action.

### **9.5.11 LIGHT DUTY STATUS**

Light duty is considered to be a rehabilitative tool in assisting an employee to regain or maintain his or her work tolerance. Working can give the injured worker a feeling of worth as well as help to prevent post-injury illness or emotional problems. Light duty assignments must be for a defined period of time or special project. The City does not create light duty work, it must be meaningful work needed to be completed for the City's business. Light duty assignments are not intended to be permanent.

The concept of light duty applies to employees who sustain an injury on the job or job related illness at work, which temporarily prevents them from performing their normal duties, but nonetheless leaves them with some restrictions from performing their regular work temporarily. Light duty may also be available when an employee is released from personal injury with restrictions. The Mayor may require an employee to accept a light duty assignment within the employee's own department or in another department if such work is available. Work related injuries take precedence over personal injuries for available light duty assignments.

Guidelines for light duty are as follows:

1. If an employee is released for light duty by the treating physician, the City Secretary's Office will verify whether there are duties available within the employee's department that meet the restrictions imposed by the treating physician. If there is not a light duty position in an employee's current department, light duty may be available in another department. In that event, the employee's department will continue to carry the employee on their payroll and the employee will report to the other department for light duty.

2. Employees entering this program must have the expectation from their doctor that they will be able to return to full duty status within a period of ninety (90) calendar days (three months).
3. The length of the employee's light duty status will be determined by the appropriate documentation of the employee's condition by his or her doctor. On request by the Department Head, the City Secretary may recommend an extension beyond the ninety (90) days if modified duty work is available. The City will not create light duty work. The extension will only be considered on the prognosis from the doctor that the employee will be able to return to full duty within thirty (30) additional days.
4. The employee must report to the supervisor in the department or division in which he or she is assigned to work, follow all of the department's policies and procedures, any policies and procedures applicable to the light duty assignment area, and all City policies and procedures. If behavior in the department or division is unacceptable to the supervisor, the light duty employee will be removed and may be subject to disciplinary action.
5. Employees participating in the light duty program may not normally work any overtime or compensatory time, except in emergency situations as approved by the Department Head. Employees must have any previously approved second jobs re-approved to ensure it is within the doctor's restrictions. Employees are prohibited from any work, conduct, or behavior that would inhibit the healing process of the work related injury and/or the employee's healthy return to work. This will be in effect until his or her doctor releases the employee for full duty.
6. Light duty workers will be assigned where the work to be completed matches the restrictions placed on the employee by the treating physician. Supervisors are responsible for supervising the work of the injured employee so that the performance standards of the assigned position are met and notifying the City Secretary if they are not met.

Light duty assignments are temporary and will be discontinued if or when any of the following occur:

1. The treating physician returns the injured employee to full duty with no restrictions;
2. The treating physician temporarily prohibits the injured employee from continuing with a light duty assignment;
3. If there is no longer any task available within the City which can be performed by the injured employee, given their current restrictions;
4. The injured employee fails to meet the performance measures of the assigned position;
5. The treating physician indicates that the injured employee has reached maximum improvement or will not ever be able to return to the prior position;
6. An injured employee has been on a light duty assignment for the maximum period provided by this policy; or
7. The injured employee fails to comply with all rules, regulations, or stipulations of the light duty program and/or policies of the City of Bay City.

## **9.5.12 FINAL RELEASE OR SETTLEMENT**

At the time of final release or settlement of a workers' compensation claim, the employee must furnish the city with a certificate from the employee's physician stating that the employee is able to return to work. The certificate must also specify any limitation(s) on the employee's physical condition and the estimated duration of the limitation(s). The city will then evaluate the employee's physical condition and determine whether he or she can perform the duties of the job previously held. If:

1. The employee cannot perform his or her previous duties, or
2. No vacancy exists, or
3. No other suitable position is available, and
4. A reasonable effort has been made to place the employee in a suitable position, then
5. He or she will be separated and paid accrued and earned benefits.

If the employee is separated from city employment at this point, the City Secretary or his or her designee will:

1. Send the employee a certified, return receipt requested, letter;
2. Explain the circumstances, outlining the reasonable effort made to place the employee in a suitable position;
3. Inform the employee that he or she has been separated from city employment and that he or she will be mailed a final paycheck, if applicable, for any accrued and payable leave benefits; and
4. Inform the employee that he or she may apply for any future vacancy for which the employee considers himself or herself to be qualified. A copy of this correspondence will be placed in the employee's personnel file.

### **9.5.13 CLAIMS REVIEW**

As an additional means of evaluating injuries and attempting to correct the causes of those injuries, the City Secretary will review serious injuries to determine their causes, and to recommend corrective actions to be taken in the future.

### **9.5.14 PRIVACY PROTECTION**

The privacy of individuals' medical records and personal health information will be protected in all transmittals to and from insurance carriers and health care providers. In addition, city personnel who receive personal health information about employees will protect the privacy of individuals' personal health information: any conversations regarding an employee's personal health condition or status will be held only with city personnel with a need to know the information, and only in locations where the conversation may not be overheard. The only exception is when the employee has released the information to others himself or herself. (*Legal reference: Health Insurance Portability and Accountability Act of 1996, as amended.*)

### **9.5.15 FRAUD**

Workers' compensation benefits are intended for employees with legitimate on-the-job injuries or illnesses and are intended for employees with serious injuries who are unable to work in any capacity at the City of Bay City or elsewhere due their injury or illness. A workers' compensation claim that is not due to a legitimate injury sustained in the course and scope of employment at the City of Bay City is considered fraud. A current or former employee who has filed a workers' compensation claim that is determined to be fraudulent is responsible for reimbursing the workers' compensation carrier for all medical and income benefits received. In addition, the employee is subject to disciplinary action up to and including termination of employment and punishment under Texas state law. Administrative fines may be incurred by an employee who misrepresents facts relating to a worker's compensation claim.

An employee or former employee who has filed a workers' compensation claim reporting lost time due to the injury/illness is responsible for reporting any employment or income earned during lost time from the City of Bay City. Also, an employee who is a candidate or participant in a light duty or alternative duty temporary job assignment under the city's return to work program is responsible for reporting any employment or income earned while performing modified or alternative duty to the city's workers' compensation carrier. Failure to do so may be considered fraud and is punishable in accordance with Texas state law as described in this policy.

Under the Texas Labor Code, an individual commits criminal fraud, punishable as a Class A misdemeanor or state jail felony, depending upon the amount of money involved, and can be criminally prosecuted if he or she has the intent to obtain or deny payment of benefits for himself or herself or another and knowingly or intentionally does one or more of the following:

- Makes a false or misleading statement;
- Misrepresents or conceals a material fact; or
- Fabricates, alters, conceals, or destroys a document other than a governmental record.

Under the Texas Labor Code, an individual commits administrative fraud, which can result in an administrative penalty of up to \$5,000, and can be prosecuted if he or she has the intent to obtain or deny payment of benefits for himself or herself or another and knowingly or intentionally does one or more of the following:

- Makes a false or misleading statement;
- Misrepresents or conceals a material fact;
- Fabricates, alters, conceals, or destroys a document other than a governmental record; or
- Conspires to commit an act described by one of the three listed above.

Employees are encouraged to report suspected workers' compensation fraud by another employee or former employee to the City Secretary, the City Council, and/or to the Texas Workers' Compensation Commission as soon as possible. A report may be made anonymously over the telephone phone or in writing, provided the employee provides adequate details of the circumstances surrounding the alleged fraud.

*(Legal reference: Workers' Compensation Act, V.T.C.A., Labor Code, Chapter 401, et. seq.)*

## 10. SUBSTANCE ABUSE AND ALCOHOL MISUSE

### 10.1 SCOPE AND INTENT

The following policy has been adopted to implement the City of Bay City's desire to establish itself as a drug-free workplace. In all instances where reference is made to alcohol, drugs, or other controlled substances, the references include inhalants.

All employees and candidates for employment are subject to the provisions of this policy.

The primary objective of the City of Bay City in adopting this policy is to contribute to the maintenance of the safe and productive work environment for its employees. Management believes that it is in the best interest of the City and its employees to maintain a work environment in which the health and safety of employees and guests are protected and City business is conducted efficiently. This requires the maintenance of a work environment free from drugs, alcohol, and inhalants.

The intent of the policy is as follows:

1. To provide clear guidelines and consistent procedures for handling incidents of employees' use of alcohol, drugs, or controlled substances that affect job performance, and to make every effort to institute and maintain a drug-free workplace;
2. To ensure that employees conform to all state and federal laws and regulations regarding alcohol, drugs, or controlled substances; and
3. To provide substance abuse prevention education for all employees.

### 10.2 DRUG-FREE WORKPLACE

It is the policy of the City of Bay City to maintain a drug-free workplace.

The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance, alcohol, or inhalants is prohibited in the workplace of the city. In addition, the city prohibits employees from being under the influence of alcohol, drugs, or inhalants in the workplace or while on duty for the city. Employees who violate this policy will be subject to disciplinary action up to and including termination as provided for under Section 12, **Discipline** section of these policies.

An employee who violates this policy is subject to discipline up to and including termination. The city has a drug-free awareness program providing information about the dangers of drug abuse in the workplace, the city's policy of maintaining a drug-free workplace, available drug counseling and rehabilitation, and the penalties that may be imposed on employees for drug abuse violations occurring in the workplace. Employees of the city are furnished a copy of this policy.

An employee of the city is to abide by the terms of the city's drug-free workplace policy and must notify the City Secretary if he or she is convicted of a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction. The city will notify any funding agency providing federal funds to the city of a conviction by a covered employee for violation of this policy within ten (10) days after receiving notice under the above paragraph from an employee, or otherwise receiving actual notice of such conviction. An employee convicted of violation of a criminal drug statute for a violation occurring in the work place is subject to discipline including termination. The city will make a good faith effort to continue to maintain a drug-free and alcohol-free workplace through the implementation of this policy.

*(Legal reference: U.S. Drug-Free Workplace Act of 1988, as amended, and Texas Workers' Compensation Act, V.T.C.A., Labor Code, Chapter 41i.)*

## **10.3 GENERAL POLICY**

The following information is general in nature and is not intended to represent the City's drug and alcohol policy in its entirety.

City employees shall not take any narcotic or dangerous substance unless prescribed by a person licensed to practice medicine. Employees who are required to take prescription medicine must notify the City Secretary of the medication prescribed and the nature of the illness or injury if the medication could affect the employee's safety or the safety of others in his or her job. The City Secretary will notify the supervisor and Department Head that the employee cannot perform the part of the job would be impacted negatively by the medication, while keeping confidential the employee's personal health information. If this makes it impossible for the employee to perform his or her job temporarily, and no other job is available which would not pose a risk, then the employee will be sent home and the situation will be evaluated as to the likelihood of the employee being able to return to the job in a reasonable period of time. *(Legal reference: Health Insurance Portability and Accountability Act (HIPAA), as amended.)*

Any statutory-defined illegal use of drugs by an employee, whether during or outside city employment hours, will not be tolerated.

City employees who have a reasonable basis to believe that another employee is illegally using drugs or narcotics or is abusing alcohol must report the facts and circumstances immediately to their supervisor.

Failure to comply with the intent or provisions of this policy may be used as grounds for disciplinary action. Refusal by an employee to take the required drug test or follow this general policy will result in immediate relief from City duties pending disposition of any administrative personnel action.

If a covered employee fails a drug or alcohol test, the City may terminate the employee immediately, in which case the City will inform the employee where he or she can get help.

## **10.4 SUPERVISORY RESPONSIBILITIES**

Supervisory responsibilities include participating in communicating this policy to the employees, identifying any employee behavior which may indicate a violation of this policy, and reporting to management when the supervisor has reason to believe this policy may have been violated.

Every supervisor covered by this policy will receive training that will assist in identifying performance indicators of probable drug use or alcohol misuse.

## **10.5 REHABILITATION**

The City of Bay City recognizes drug dependence as an illness and a major health problem. The City also recognizes drug abuse as a potential health, safety, and security problem. We encourage employees that need help in dealing with such problems to use our health insurance plan as appropriate. Conscientious efforts to seek such help will not be used as a basis for disciplinary action. Once an employee is found to have violated this policy, however, his or her offer to seek rehabilitation on a voluntary basis will not necessarily limit disciplinary action, and may have no bearing whatsoever.

An employee with an alcohol or substance abuse problem may be referred to a rehabilitation facility. Some types of rehabilitation may be covered by the City medical plan. In such instances, the employee is responsible for any required deductibles and co-payments. Otherwise, the employee is responsible for all charges associated with rehabilitation. Upon acceptance of the offer for rehabilitation, the employee must adhere to the requirements of the rehabilitation program. Any failure to adhere will result in discipline up to and including dismissal.

## **10.6 RETURN TO WORK**

An employee with an alcohol or substance abuse problem may be returned to his or her position after having successfully completed a City-approved rehabilitation program. Any violation of this policy subsequent to completion of rehabilitation will result in immediate dismissal.

## **10.7 DRUG AND ALCOHOL TESTS**

Employees who operate vehicles or equipment that require possession of a commercial driver's license (CDL) are subject to five (5) types of testing for both drugs and alcohol: pre-employment, post-accident, random, reasonable suspicion, and return to duty. Drug testing is for five (5) types of narcotics: marijuana, opiates, amphetamines, PCP, and cocaine.

An employee who tests positive for drugs or for whom a breathalyzer/intoxilyzer test shows an alcohol content of over .04 percent must and will be taken off the road immediately and referred to a Substance Abuse Professional (SAP). An employee who is shown to have an alcohol content between .02 and .039 percent must and will be taken off the road immediately for a period of twenty-four (24) hours.

### **10.7.1 PRE-EMPLOYMENT TESTING**

In addition to performing pre-employment tests after extending an offer of employment to each potential employee, the City must and will request the results of U.S. Department of Transportation drug tests from previous employers for all new employees in safety-sensitive positions. Failure to submit to the required testing, or a positive test result, will result in disqualification from employment.

### **10.7.2 POST-ACCIDENT TESTING**

Drug and alcohol testing must and will be performed on any City employee involved in an accident, if the accident results in either: 1) damages to City property that are considered reportable; 2) third-party property damage; 3) damages to third-party property, that are caused by City employees; 4) the employee or another person having to seek medical attention; 5) the loss of human life; or 6) the City driver being given a citation for a moving violation as a result of an accident. If the above criteria are not met, drug testing is not required. Drug testing must and will be performed within thirty-two (32) hours of an accident; alcohol testing should be performed within two (2) hours of an accident, or as soon as reasonably possible thereafter. Failure to submit to the required testing will result in disciplinary action up to and including discharge.

### **10.7.3 REASONABLE SUSPICION TESTING**

All supervisors of covered employees must have undergone a minimum of two (2) hours of U.S. Department of Transportation-approved training in how to identify the symptoms of drug and alcohol abuse before the supervisor may decide to test an employee based on reasonable suspicion. Reasonable suspicion is a decision that a supervisor needs to make based on objective factors such as appearance or actions of the employee. If a supervisor believes a reasonable suspicion exists that an employee under his or her supervision is abusing alcohol or drugs, the supervisor must obtain the concurrence of the Department Head and the City Secretary before sending the employee for drug and alcohol screening. If either the Department Head or the City Secretary is not available, the supervisor must obtain the concurrence of another Department Head and/or the Mayor before proceeding.

If an employee fails to submit to the required testing, the employee will be subject to disciplinary action up to and including discharge.

### **10.7.4 RANDOM TESTING**

For vehicle operator positions which require a commercial driver's license (CDL), the City is required to perform unscheduled, random tests of covered employees at a rate of 50 percent of the total number of covered positions per year. The City may also randomly test other positions designated by the City as safety sensitive positions. Employees in safety sensitive positions will be notified by the City that they are subject to the random drug and alcohol testing procedures of the City well in advance of being sent for drug and alcohol screening.

If an employee fails to submit to the required testing, the employee will be subject to disciplinary action up to and including discharge.

### **10.7.5 RETURN-TO-DUTY TESTING**

Test results of return-to-duty testing for alcohol abuse must show a content of less than .02 percent. Test results for drug use must be negative. Failing a second drug or alcohol test will result automatically in immediate discharge.

If a covered employee fails a drug or alcohol test, the City is required to and will ensure that the employee is evaluated by a substance abuse professional (SAP) unless the employee is immediately terminated, in which case the City will inform the employee where he or she can get help.

After returning to work following treatment, an employee will be required to submit to periodic testing as specified in the U.S. Department of Transportation rules. Failure of another drug or alcohol test will result in immediate discharge.

### **10.7.6 FAILING A DRUG OR ALCOHOL TEST**

An employee who is shown to have an alcohol content between .02 and .039 percent must and will be taken off the road immediately for the remainder of the employee's shift or a period of twenty-four (24) hours, whichever is appropriate. An employee who tests positive for drugs or for whom a breathalyzer/intoxilyzer test shows an alcohol content of over .04 percent or higher must and will be taken off the road immediately and, if not terminated, must be referred to a Substance Abuse Professional (SAP) for evaluation. If the employee refuses to be evaluated by a SAP, the employee will be terminated immediately. If the employee is terminated, the City will inform the employee where he or she can get help. An employee who is not terminated will be in an unpaid status for the specific time for which he or she is suspended. The employee must successfully pass a drug and alcohol test before being returned to work.

*(Legal reference: Omnibus Transportation Employee Testing Act of 1991, U.S. Department of Transportation S9 FR 7302-7625; effective date: January 1, 1996).*

# **11. USE OF AND ACCOUNTABILITY FOR CITY EQUIPMENT AND PROPERTY**

## **11.1 USE OF CITY PROPERTY – GENERAL**

Within the limits of budgets and available technology, the City’s policy is to provide each employee with the equipment and tools to conduct his or her City business in a safe and effective manner. For some employees, this includes use of vehicles and motorized equipment.

## **11.2 USE OF TOOLS, EQUIPMENT, PROPERTY, AND VEHICLES**

Each employee is responsible for the proper use and maintenance of equipment, tools, vehicles, or motorized equipment, and other City property assigned to the employee for use in City operations.

Use of City equipment, tools, vehicles, motorized equipment, or supplies for private or political purposes is strictly prohibited.

City computers, electronic equipment, and software are to be used for City business. No software other than software approved by the City or an employee’s Department Head may be installed, kept, or used on a City computer or other electronic hardware. This limitation on software is to avoid software that may interfere with the operation of the City’s computer systems and other electronic hardware or may contain computer viruses that could cause operational problems or the loss of City data. Access to the internet, e-mail and messaging, and voice mail through City computers and other electronic hardware is for City business only. See also the sections of these policies relating to Section 2.10, **Communications** and Section 2 **Employee Responsibilities**.

City property, including but not limited to facilities, desks, files, vehicles, motorized equipment, telephones, and computers, is subject to City inspection and removal of illegal or unauthorized items. There is no expectation of privacy. See also the Section 1.16 of these policies relating to “**Searches**.”

## **11.3 VALID DRIVER’S LICENSE**

Operators of vehicles and motorized equipment used in City business are required to have the valid State of Texas driver’s license necessary for legal operation of that vehicle or equipment and to notify their Department Head of any changes of status or suspensions in licenses. A Department Head or the City Secretary will conduct annual periodic checks of the driving records of employees who operate City vehicles or are required to use their personal vehicle to conduct City business. Failure to maintain a safe driving record may be grounds for disciplinary action including dismissal.

Suspension, revocation, or lapse in the validity of the required driver's license of an employee who operates vehicles or motorized equipment in the conduct of City business may result in termination or re-assignment of the employee.

## **11.4 ACCIDENT REPORTING**

Any accident on City property, at a City worksite, or involving a City vehicle or motorized equipment must be reported immediately to the Police Department and Department Head. The employee will notify their immediate supervisor after contacting the Police Department.

An employee observing or involved in a motor vehicle accident must immediately notify the Police Department dispatch office.

An employee witnessing or involved in an accident must stay on the accident scene until released by his or her Department Head or the Chief of Police or a designee of one of these persons.

## 11.5 CITY-OWNED VEHICLE AND EQUIPMENT USE

### 11.5.1 PURPOSE

The purpose of this policy is to define and describe the usage parameters related to the operation of City of Bay City vehicles and motor-driven equipment by City employees:

- a.) Ensure the safety and well-being of City employees;
- b.) Facilitate the efficient and effective usage of City vehicle and motor-driven equipment use;
- c.) Minimize liability to the City and set standardized disciplinary procedures;
- d.) Establish standard requirements and procedures for all City of Bay City employees who drive a City-owned motor vehicle or motor-driven equipment in the course of City business.

City-owned vehicles and equipment must meet certain standards and following the requirements outlined in this policy. Some departments have additional vehicle use policies, and in the case of conflict, the most restrictive provision shall apply unless specifically stated herein.

Supervisors and Department Heads are responsible for implementing and enforcing this policy. All employees who operate City vehicles and equipment shall be briefed by their immediate supervisor on this policy, and shall be informed that violation of this policy can result in suspension, demotion, or termination.

## 11.6 DEFINITIONS

The items defined within this section of this policy shall apply only to this section of the policy.

**“City-owned Vehicle or Piece of Equipment”** A vehicle or piece of equipment owned or leased by the City of Bay City.

**“City Motor-Driven Equipment”** does not include (a) equipment used in connection with the operation of floodgates or water release equipment by river authorities (b) medical equipment, such as iron lungs located in hospitals.

**“Driving record check”** A driver’s license status check and driving record history check requested through the City’s designated company.

**“De Minimis”** Latin for “of minimum importance.” Essentially refers to something that is so little, small, miniscule or tiny that the law does not refer to it and will not consider it.

**“Driver”** Operator of a motor vehicle, motor driven equipment or equipment attached to vehicle or motor driven equipment.

**“Preventable”** The employee failed to exercise every reasonable precaution to prevent the accident.

**“Chargeable”** The employee violated a State traffic law; violated an established department safety policy or practice, or both. The employee was at fault or contributed to the cause of the accident.

**“Employee”** means a person, including an officer or agent, who is paid by the City of Bay City, but does not include an independent contractor, an agent or employee of an independent contractor, or a person who performs tasks the details of which the City of Bay City does not have the legal right to control.

**“Take home vehicle”** A City-owned vehicle which may be stored at an assigned employee’s residence, if the employee resides within the City of Bay City city limits, or has received approval from their Department Head if the employee resides outside the city limits.

**“Scope of Employment”** means the performance for City of Bay City of the duties of an employee’s office or employment and includes being in or about performance of a task lawfully assigned to an employee by competent authority.

**“Vehicle accident”** Includes all accidents or incidents involving personal injury or property damage to, or caused by, a City vehicle, motor driven equipment, or equipment attached to a vehicle or motor driven equipment.

## 11.7 UTILIZATION OF VEHICLES AND EQUIPMENT

City-owned vehicles and motor-driven equipment shall not be used for ~~purely~~ personal reasons or personal business. This prohibits the hauling of personal property from one place to another, personal shopping trips, and non-business related transportation of family members.

Only City employees and City Council member are authorized to travel in a City vehicle and equipment unless authorized by supervisors or Department Heads.

### 11.7.1 TAKE HOME VEHICLES

In accordance with IRS requirements, personal use of vehicles is not allowed other than commuting to and from work and de minimis personal use. The IRS regulations consider use of City vehicles for commuting as income. This will be accounted for on an employee’s timesheet, and to the IRS as required on the employee’s W-2 form. Employees driving a City owned vehicle home (excluding Police Department vehicles) must document daily usage of the vehicle on their timesheet. Each employee should log the usage in the "City Vehicle Driven Home" column. The number one (1) should be entered each day the vehicle is driven home, including weekends. The column will automatically provide a grand total.

**For example:** If an employee drives a City owned vehicle home Monday through Friday for both weeks during a pay period, the employee would enter the number one (1) for each day and the column grand total would be 10.

**Calculation:** Usage will be recorded in the payroll system by multiplying the daily dollar amount times the days driven home. **Example:** \$3.00/day x 10 days = \$30.00 entered in the employee record.

Department Heads and/or supervisors are responsible for ensuring that employees properly log the correct days when vehicles were taken home on the timesheets.

Vehicles assignments shall be evaluated based on department provided services, special/critical needs, special skills, emergency status, and frequency of recall after hours. The Department Head will consider the following criteria in approving an exempt employee to be permitted to take a City vehicle home after normal work hours:

- The employee is the primary operator of the vehicle;
- The employee meets the City of Bay City's driving requirements;
- The employee has not had his or her driving privileges revoked or suspended within the last five (5) years;
- The vehicle is to be used to respond to emergencies or as a part of on-call responsibilities;
- The vehicle is used to contribute to the efficiency and/or effectiveness of City operations; or
- The employee does not receive a car allowance.

Take home authorization may be revoked:

- The employee uses the vehicle for personal reasons;
- The employee violates any federal or state law;
- The employee allows any non-employee or City official to travel in the vehicle or motor-driven equipment without authority;
- The employee fails to comply with the provisions of this policy;
- The employee has a change in job assignment, duties or responsibilities such as that a take home vehicle is no longer justified; or
- When it is in the best interest of the City of Bay City.

**NOTE:** Employees operating take-home City-owned vehicles who submit leave notices for three (3) or more consecutive workdays must make arrangements with their supervisors to leave the vehicle and keys for use by other City personnel during such period.

## **11.7.2 ELIGIBILITY FOR OPERATING CITY-OWNED VEHICLES AND EQUIPMENT**

No employee shall operate a City vehicle or a piece of equipment without first being trained, instructed, licensed, or certified, as may be applicable in its proper operation and use. An employee that knowingly operates a City vehicle or a piece of equipment without the proper license, or does not notify their supervisor of their suspended or expired license, will be subject to disciplinary action, up to and including termination.

To be eligible to operate a City-owned vehicle or piece of equipment, employees shall:

- Be a minimum of 18 years of age;
- Maintain a valid Texas driver's license of the type that is required for the vehicle/equipment being operated;
- Have an acceptable driving record. An acceptable driving record shall mean that the employee or applicant has:
  - No more than three (3) moving violations within the preceding two years;
  - No more than two (2) moving violations within the preceding twelve (12) month period resulting in conviction. (Evidence of traffic violations includes, but is not limited to: convictions, "no contest" pleas, dismissal for

defensive driving purposes, receiving deferred adjudication and current charges;

- Not have been convicted of driving while intoxicated within the preceding three (3) years.

By applying for, or continuing employment, in a position that may involve driving a City vehicle or operating City-owned equipment, an employee thereby consents to checks of his or her driving record.

Employees who drive City-owned vehicles on City business must notify their supervisor immediately of any change in driver's license status, including any State suspension, revocation, or restriction. These violations may result in the immediate suspension of the employee's privilege to operate a City-owned vehicle or equipment. Additionally, the employee may be subject to disciplinary action, up to and including termination.

If an employee is charged with DWI/DUI, City driving privileges shall be immediately suspended pending the final disposition of the charge. If convicted, the employee may be subject to termination. Additionally, an employee who usually drives a City vehicle for business purposes, who has his driving privileges suspended, may not drive his or her personal vehicle to conduct City business, unless such personal use is approved by the employee's Department Head, and he or she obtains a State Occupational license as necessary. Occupational licenses are not granted to operate commercial vehicles including the City of Bay City's vehicles. The employee is required to provide a copy of his or her occupational license to his or her Department Head, and the City Secretary's Office. The employee must comply with all of the restrictions of the occupational license. If an employee's occupational license restrictions are determined to prevent the employee from accomplishing his or her work, then the employee may be terminated.

### **11.7.3 GENERAL MAINTENANCE AND CONDITION OF VEHICLES**

Supervisors and Department Heads are responsible for the overall condition of the vehicles assigned to their departments. Supervisors and Department Heads shall ensure that all vehicles are maintained in optimum running condition for maximum fuel economy and life span. Vehicles will be kept clean at all times, inside and out.

Employees shall not:

- Smoke or utilize any tobacco products inside City owned vehicles or motor-driven equipment;
- Employees shall not possess, purchase or be under the influence of drugs or alcoholic beverages while operating City vehicles or motor-driven equipment;
- Alter the body, design, appearance, or markings of the vehicle;
- Use fuel, oil, or other substances not approved by the Equipment Division; or
- Perform mechanical repairs, unless authorized by the Equipment Division.

Each day, employees who operate City owned-vehicles or motor-driven equipment shall ensure the vehicle or equipment is in a safe, clean, and operable condition by checking the fuel, fluid levels, tires, and overall condition of the vehicle. Employees shall immediately report deficiencies to a supervisor who will take appropriate action to allow a vehicle or piece of

equipment to remain in service or remove it for repair. Under no circumstances shall a vehicle or piece of equipment be allowed to remain in service that has a serious safety defect, such as slick tires, leaking fuel lines, exhaust entering passenger compartment, or defective brakes.

Vehicles shall be kept sufficiently fueled for emergency responses. City personnel shall only keep authorized City equipment and authorized personal equipment in the assigned vehicle.

#### **11.7.4 VEHICLE AND EQUIPMENT ACCIDENTS**

If an employee is involved in an accident while driving a City vehicle, that individual will be required to follow the specific accident-reporting procedure outlined by the department. The following steps should be followed by all employees:

- Stop his or her vehicle at the scene of the crash, without obstructing traffic more than necessary, and stay at the scene of the accident;
- Activate warning/safety lights;
- Contact the Police Department or Sherriff's Department as applicable;
- Contact his or her supervisor; and
- Give a statement of facts of the sequence of events to the investigating officer.

The employee's supervisor will investigate all accidents involving a City vehicle that is a part of their departmental fleet. The supervisor and employee will complete and submit an Accident Investigation Report within 48 hours of the accident to the City Secretary's Office.

An employee that fails to report an accident or injury within (8) eight hours of the accident, or who falsifies any information pertaining to an accident, will be subject to disciplinary action, up to an including termination.

In the event that an accident occurs outside of Matagorda County while conducting City business, in a City vehicle, the City of Bay City will adhere to the decision of the investigative agency/officer regarding the need for drug testing. Otherwise, if the vehicle is operable from a safety standpoint, and the driver is not injured or impaired, the employee may either continue with his or her City business, or return back to his or her base of operation.

#### **11.7.5 RESPONSIBILITIES OF VEHICLE AND EQUIPMENT OPERATORS**

1. Employees shall operate City vehicles and equipment in a safe and courteous manner at all times. Unsafe, negligent, or reckless driving is prohibited. Drivers must obey all laws.
2. When unattended, City vehicles shall be legally parked and properly locked.
3. Employees who operate City owned vehicles or motor-driven equipment shall keep vehicle doors and trunk locked at all times with the ignition turned off and keys in their possession upon every exit of vehicle or motor-driven equipment. At no time should a vehicle be left unattended with engine operating and/or keys in or on the vehicle.
4. Employees utilizing City owned vehicles or motor-driven equipment are strongly encouraged to find a safe and secure location and stop their vehicles to use cellular phones, lap top

- computers or pagers. Before returning a “pool” vehicle, employees shall ensure that the vehicle has been fueled and that standard maintenance checks have been performed.
5. Employees must immediately report damage or vandalism to their supervisor.
  6. When stopped on any roadway or on the shoulder of a roadway, the driver of a City vehicle shall activate warning/safety lights except when lawfully parked at the curb or street side.
  7. Employees who use City-owned vehicles and motor-driven equipment should be aware that the operation and appearance of such vehicles reflects on the professionalism of the driver, their respective department, and the City. Accordingly, personnel must be constantly aware of their actions and ensure that their behavior, appearance and operation exhibit the highest level of professionalism and courtesy.

### 11.7.6 DISCIPLINARY ACTION

Supervisors will use the following guidelines to make a decision regarding disciplinary action after a thorough review of all circumstances.

The following shall be grounds for disciplinary action. Such disciplinary action may include suspension or revocation of the use of an assigned vehicle, suspension, or termination.

- **Negligence, abuse, or misuse.** Negligence, abuse, or misuse on the part of an employee in the care or operation of City-owned vehicles or equipment.
- **Failure to follow procedures and regulations.** Failure of an employee to follow the procedures and regulations governing the use of the individually assigned vehicle established herein.
- **Traffic law violations.** Violations of any traffic law pertaining to the use and operation of a motor vehicle while operating a City vehicle.
- **Criminal law violations.** Violations of any criminal law in the use of operation of the assigned vehicle pursuant to any law of the State of Texas, City Ordinance, or Federal Law.
- **Operating vehicle while possessing/under the influence of drugs or alcohol.** Operating a City vehicle while possessing or being under the influence of alcohol or drugs, or consuming alcoholic beverages or using drugs in a City vehicle (immediate termination).
- **Excessive accidents.** Employees having a combination of two or more Preventable or Chargeable accidents within 36 months.

The first preventable vehicle or equipment incident will result in written a reprimand. The supervisor will create a corrective action notice, which will outline a corrective action plan to rectify the problem. The supervisor will inform the employee of possible consequences, if the problem is not corrected.

The second preventable vehicle or equipment incident within three (3) years of the first preventable incident will result in suspension and three (3) month probation. The supervisor will create a corrective action notice, which will outline a corrective action plan to rectify the problem. The supervisor will inform the employee of the possible consequences, if the problem is not corrected.

The third preventable vehicle or equipment incident within three (3) years of the first preventable incident will result in immediate termination.

As an additional countermeasure leading to reduced driver-error and ticketed incidents, employees may be required to take a Defensive Driving or a Municipal Vehicle Operations course offered through Texas Municipal League. Employees may also be required to complete additional operator training if it is identified as a contributing factor in the incident.

Employees who fail to report incidents in accordance with department policy may be disciplined, up to and including termination.

## 12. DISCIPLINE

### 12.1 PROGRESSIVE DISCIPLINE

The Department Head may approve or take disciplinary action against an employee at any time. The severity of the discipline depends upon the nature of the infraction. The City may, but not necessarily will, use a progressive discipline system.

While the disciplinary steps may not occur in the following order, the progressive discipline system may include, but is not limited to, any or all of the following steps when appropriate to the circumstances. The level of discipline will vary according to the nature of the infraction.

For those infractions that will be subjected to the progressive disciplinary system, the system will progress as follows:

- **Oral Warnings** with written records of each warning maintained by the Department Head or City Secretary's Office;
- **Written Reprimands** which the supervisor and Department Head must in all cases cause to be placed in the employee's personnel file;
- **Suspension from duty, with pay or without pay.** Suspension without pay is only permissible for serious workplace misconduct infractions, for up to thirty (30) days and renewable after informal review of the circumstances. (*Legal reference U.S. Fair Labor Standards Act of 1938, as amended.*)
- **Demotion;** and/or
- **Separation** by involuntary dismissal.

The progression of disciplinary measures listed above is a general guideline only. The City may deviate from this progressive system, skip or eliminate any step(s), or apply any other form or process of discipline, at its sole and absolute discretion, at any time.

Disciplinary action does not automatically or permanently disqualify an employee from consideration for future promotion, pay increases, commendations, or other beneficial official personnel actions.

For additional information regarding procedures to be followed if the discipline results in separation by involuntary dismissal see the following sections of these policies relating to Separations.

## **12.2 DISCIPLINE – GENERAL**

**At-Will Employment.** Employees of the City serve "at will" and, within the provisions of state and federal law regarding public employment, can be disciplined or may be dismissed at any time, with or without notice, for any reason or no reason. Some of the employee actions that may result in discipline or termination include, but are not limited to, the following:

- **Insubordination;**
- **Absence Without Leave**, including absence without permission, failure to notify the City of sick leave, and repeated tardiness or early departure;
- **Endangering the Safety of the Employee and/or Other Persons**, through negligent or willful acts;
- **Use of Alcohol or Illegal Drugs** while on duty or in a vehicle being used for City business;
- **Alcohol or Drug Abuse** while on or off duty which may affect the performance or safety of the employee or of other persons;
- **Unauthorized Use or Theft of Public Funds or Property;**
- **Unsatisfactory Performance or Conduct;**
- **Violation of any of the Requirements of These Personnel Policies;**
- **Conviction** of a felony;
- **Conviction of Official Misconduct**, oppression, or perjury;
- **Possession of Unauthorized Firearms or Weapons** in the workplace;
- **Falsification of Documents or Records;**
- **Unauthorized Use of Official Information** or unauthorized disclosure of confidential information;
- **Unauthorized or Abusive Use of Official Authority;**
- **Sexual Harassment** by a City employee;
- **Failure to Observe the City's Policies Regarding Communications** with the public (see "Communications" section in **Employee Responsibility** chapter);
- **Incompetence or Neglect of Duty;**
- **Failure to be Considerate of Co-workers;**

- **Violation of tobacco and smoking policies of the City;**
- **Disruptive Behavior**, including profanity or abusive language, which impairs the performance of others; or
- **Driving with a suspended or expired license.**

## **12.3 CRIMINAL HISTORY**

An employee must immediately report to the City Secretary any misdemeanor or felony arrest, charge, indictment, conviction, deferred adjudication or a plea of nolo contendere, whether related to on-duty or off-duty conduct, within 72 hours of the incident. However, employees who do not drive as part of their job duties with the City are not required to report misdemeanor traffic violations. While charges are pending, the City Secretary, in consultation with the City's legal counsel, will determine whether the employee will remain in his or her current position, be placed on administrative leave, transferred, demoted, or released from City service. An employee who fails to timely report any events described herein may be disciplined up to and including termination.

## **12.4 FELONIES AND MISDEMEANORS**

An employee charged or indicted for a felony or misdemeanor, or accused by information of official misconduct or other serious criminal violation, may be placed on administrative leave (with or without pay) until the charge, indictment or information is dismissed or fully adjudicated without trial, and if tried, until the trial and appeal (if any) are completed and all related administrative matters are concluded. In most instances, however, the City will conduct its own investigation and take appropriate action before the matter is fully adjudicated. The City Secretary, in consultation with the City Attorney, will make such a determination. An employee on administrative leave may be reinstated to the position held before being placed on administrative leave (if available) without loss of benefits if the indictment or information is dismissed, the City finds the charges to be without merit, the employee is acquitted, or the conviction is reversed on appeal.

## **12.5 DISCIPLINARY CONFERENCE**

A disciplinary conference will normally be scheduled prior to the imposition of a disciplinary suspension, demotion or termination. The direct supervisor, the affected employee, the City Secretary (or designee) and anyone else deemed necessary by the Department Head or City Secretary typically attend the disciplinary conference. During the conference, the affected employee will be given an opportunity to present an explanation of the conduct leading up to the proposed disciplinary action. Employees will usually be given two (2) days' advance notice prior to the conference. Employees may, in the City's sole discretion, be placed on administrative leave prior to, during, or after a disciplinary conference. The employee will be notified of the City's determination following a disciplinary conference.

## **12.6 ADMINISTRATIVE LEAVE**

During an investigation into alleged offenses or violations of City policies, the City may, in its sole discretion, place the charged employee on administrative leave. The leave may be with or without pay.

## **12.7 IMPROPER DEDUCTIONS**

Improper deductions will not be made from any employee's pay for disciplinary reasons stemming from performance or attendance issues. If an improper deduction is made, the employee will be reimbursed promptly upon the City's learning of the improper deduction. Deductions for full or partial days are permissible in cases of serious workplace misconduct. See the chapter on Employee Compensation and Advancement for additional details.

## **13. RESOLUTION OF DISPUTES/GRIEVANCES**

### **13.1 GRIEVANCE POLICY**

It is the policy of the City, insofar as possible, to prevent the occurrence of grievances and to deal promptly with those which occur. The purpose of the grievance system is to resolve any dispute between the City and an employee as quickly as possible, and at as low an administrative level as possible, to ensure efficient work operations and maintain employee morale. No adverse action will be taken against an employee for reason of his or her exercise of the grievance right.

A grievance may be filed by a regular employee on one (1) or more of the following grounds, within 48 hours of the issue:

- Improper application of rules, regulations, and procedures (but not the rules, regulations, and procedures themselves);
- Unfair treatment;
- Illegal discrimination based on race, religion, color, sex (including sexual harassment), age, disability, or national origin;
- Disciplinary action (excluding suspension, demotion, and/or termination);
- Improper application of pay and fringe benefit rules; or
- Improper working conditions.

The City follows a progressive grievance procedure which ensures regular employees due process in the City's consideration of their work-related grievances: the right to mount a defense and the right to present written response(s) regarding resolution of the grievance.

### **13.2 PROCEDURE**

The following procedures are applicable to regular full-time employees.

#### **13.2.1 INFORMAL GRIEVANCES**

The first step in the grievance procedure is for the employee to attempt to resolve the grievance by informal conference with his or her supervisor. If this informal conference does not result in a resolution of the problem(s) that is satisfactory to the employee, he or she must file a formal, written grievance.

## **13.2.2 FORMAL GRIEVANCES**

Formal grievances must be in writing, signed by the employee, and presented to the employee's Department Head within ten (10) working days after the incident occurred that is the basis of the grievance. A statement of the specific remedial action requested by the employee must be included in the written grievance.

After being presented with a written and signed grievance, the Department Head will:

- Meet with the employee and such other persons as may be necessary to gather the facts within ten (10) working days after the grievance is filed;
- Attempt to resolve the grievance with the employee, and, if requested by the employee, with the employee's representative; and
- Communicate the decision to the employee in writing within ten (10) working days after the meeting with the employee

If the employee either receives no written resolution from the Department Head within ten (10) working days from the date the appeal was filed, or the employee is not satisfied with the proposed resolution, he or she may file a written appeal with the Mayor within ten (10) working days. The Mayor will review the facts and the file, may meet with the parties involved, and will respond in writing to the employee within fifteen (15) working days of the date on which the appeal was received. The decision of the Mayor is final.

## **13.2.3 MAXIMUM TIME PERIODS**

At each stage of the grievance process, the time periods specified are maximums. Grievances should be dealt with promptly and written responses provided as quickly as possible, preferably within five (5) working days in simple grievance matters.

## **13.2.4 GRIEVANCES RELATING TO SEXUAL HARASSMENT OR DISCRIMINATION**

If the employee's grievance is related to alleged sexual harassment or discrimination by the Department Head or the Mayor on the basis of race, color, religion, sex, national origin, age, or disability, then the initial written grievance may, at the employee's option, be submitted directly to the City Attorney. In such an instance, to allow adequate time for investigation of the grievance, the total cumulative time period which would have been allowed at the other steps in the grievance process will be the maximum time period before written resolution of the grievance is required to be received by the employee.

## **13.2.5 GRIEVANCES RELATING TO SUSPENSION, DEMOTION AND/OR TERMINATION**

**Demotions.** An employee, other than a department head (hereinafter “Director”), may appeal a demotion to the grievance committee. The grievance must be filed in writing in the office of the City Secretary within 24 hours of the demotion.

The grievance committee will be made up of City Secretary or designee, the Director over the employee’s department; and a Director selected by the employee. If the City Secretary is the person issuing the disciplinary action, then a third party would select a Director to sit in the City Secretary’s place

The grievance committee will hear from the employee and review any and all submitted documentation relating to the grievance. The committee will review and discuss the grievance and render a decision no later than 72 hours from the time the committee met.

The decision rendered by the committee will be final.

**Suspensions and terminations.** The suspension or termination of employment or office of department heads (directors), non-elected officers or employees shall be in accordance with Section 7.05 of the City Charter.

In accordance with Section 7.05 (f) of the City Charter employees, other than a department head (director), shall be removed by their respective department head (director) with the consent of the Mayor. These policies provide for a grievance process that shall allow an affected employee to submit a grievance to the grievance committee, prior to the Mayor’s decision on the Department Head’s action to terminate the employee. The recommendation of the grievance committee shall be advisory only, and the Mayor may, but is not required to, follow the recommendation of the grievance committee when making such determination. To invoke the grievance committee’s authority under this section, the employee must file a written grievance, with the City Secretary, within the time period prescribed for appeals of demotions. The grievance committee shall make a recommendation to the Mayor within the time period prescribed for it to make a decision on a grievance of a demotion.

If no appeal is made during the prescribed time period the Mayor may immediately make a decision regarding the termination or suspension. If an appeal is made the Mayor shall wait until a recommendation is made by the grievance committee, or five days after the action of the Director to termination or suspend the employee, whichever occurs first, to render a decision regarding the termination or suspension.

If the grievance committee timely submits a recommendation to the Mayor, and the Mayor fails to make a decision on the director’s action, within three days of receiving the grievance committee’s recommendation, it shall be presumed that the grievance committee’s recommendation has been adopted by the Mayor and shall be deemed the Mayor’s determination on the subject.

The decision of the Mayor is final subject to the employee’s right to appeal in accordance with Section 7.05 (g) of the City’s Charter. Any appeal to City Council must be made in writing and submitted to the City Secretary within five days of the date that the Mayor confirms the Director’s decision to terminate or suspend the employee.

Note: Nothing in these policies may be interpreted to diminish City Council’s inherent right, as stated under Section 7.05 (f) of the Charter to suspend, with or without pay, or remove, all non-elected City officers and any employees upon four affirmative votes of the Council for suspension

or removal, with or without the recommendation of the Mayor; provide that such action is posted as an agenda item at a regular or special Council meeting

### **13.2.6 DOCUMENTATION**

Copies of all documentation relating to the grievance will be filed by the City Secretary in the employee's personnel file immediately upon conclusion of each step in the grievance process.

## **14. JOB (CLASS) DESCRIPTIONS AND PERFORMANCE EVALUATION**

### **14.1 JOB DESCRIPTIONS**

The City Secretary establishes and periodically reviews an official job (class) description for each position in the City.

### **14.2 DISTRIBUTION**

The job description for each employee's position will be (1) given to the employee, (2) reviewed by the employee, and (3) placed in the employee's personnel file along with a certification that the employee has reviewed it. In addition, each employee is given a copy of the job description to keep.

### **14.3 REQUESTS FOR CLARIFICATION**

In the absence of any request for clarification, each employee is considered (1) to understand the responsibilities assigned to the position that he or she occupies, and (2) to agree to perform the responsibilities shown on the job description.

### **14.4 EMPLOYEE PERFORMANCE EVALUATIONS**

The City Secretary will provide for Department Directors and supervisors training on conducting performance evaluations. Department Directors and supervisors will be required to conduct a written performance evaluation of, and an evaluation interview with, each City employee on a semi-annual basis. Final, signed copies of performance evaluation records are maintained in each employee's personnel file.

## **15. PROFESSIONAL DEVELOPMENT AND EDUCATIONAL REIMBURSEMENT**

### **15.1 PROFESSIONAL DEVELOPMENT – GENERAL**

The City encourages its employees to take advantage of high quality educational or training opportunities and professional memberships which are related to, and will enhance, the performance of their work for the City.

Department Directors are encouraged to offer professional development opportunities to their employees. Funds are made available in departmental budgets so employees may attend seminars, workshops, and training opportunities to develop and increase their work skills and abilities including the enhancement of communication and computer skills regardless of current job assignment. In-house and on-site training may also be provided by the City Secretary or other City Departments. Employees are encouraged to contact their supervisor in reference to any training and development opportunities and needs they feel would be beneficial to their position. An employee's Department Director must approve educational and training courses that require payment by the City, release from City duty, or which might interfere with the employee's duties for the City.

### **15.2 REQUIRED ATTENDANCE AT SEMINARS**

When the City requires an employee to attend any educational or training course, conference, or seminar, the City will provide the necessary time off with pay and will reimburse the employee for associated costs, including tuition or registration fees and authorized and documented travel, meals, and lodging. When appropriate, the City may prepay registration fees, hotel costs, and/or airline or other public transportation costs directly to the entity involved. See additional information in section 17 of these policies under the main heading **“Travel and Business Expenses.”**

### **15.3 TUITION REIMBURSEMENT**

This policy is designed to encourage and assist individual employees to obtain a higher level of education with monetary assistance from the City. The availability of this program is subject to City Council approved funding levels and will be established annually as part of the budget process based upon anticipated participation.

Under the Tuition Reimbursement Program, the City of Bay City hopes to encourage upward mobility and employee development by sharing the expense of approved courses and educational programs offered by accredited colleges, universities, secretarial, and trade schools. Employees will be responsible for scheduling classes that are taken as a part of the Tuition Reimbursement Program so that they do not

conflict with their work schedule. The Director has the option of altering the employee's work schedule, if special circumstances are warranted; however, employees will be expected to meet their job performance standards.

The Program is not applicable when an employee takes classes to obtain a certificate or license that is required by their present position or needed to obtain incentive/certification pay. At the Department Director's discretion, these types of expenses shall be covered by the division's training budget or the employee directly.

### **15.3.1 ELIGIBILITY REQUIREMENT**

The City will reimburse an employee for only one associate degree, one undergraduate degree, and one Master's Degree. Classes that are not part of the degree plan and single courses in self-improvement, even though job specific, are not covered under this program.

Employees who are eligible to receive tuition assistance through other programs (i.e. G.I. Bill, scholarships, or grants) are not eligible for duplicate assistance. The City will not pay the cost of tuition which has been or shall be paid from other sources such as scholarships, grants, Veterans' benefits, loans or other subsidies. In the event of partial reimbursement or assistance from other sources, the City will pay that part of the eligible expenses that are not covered by the other sources.

All regular full-time employees who, at the time of application for reimbursement have completed a minimum of one (1) year of continuous service are eligible to participate in the program. The Programs are not applicable to the following: employees on new hire probation or on disciplinary probation.

### **15.3.2 TUITION REIMBURSEMENT PROGRAM**

Employees must submit a completed Tuition Reimbursement Application, approved through the employee's appropriate chain of command up to the City Secretary's Office. Course(s) offered by accredited colleges, universities, or trade schools are eligible for tuition reimbursement if they are 1) required by a degree plan which is related to a City career field; 2) required by a trade school course of study which is related to a City career field; or 3) related to a City career field as determined by the Department Director or designee.

The employee's Director must approve the request, agreeing that the requested course(s) would be directly related to the employee's job or future employment with the City of Bay City and not affect current job performance. The Director will confer with other appropriate Directors, if the job that the employee is preparing for is in another department.

The application must state the manner in which the degree is related to the employee's current job or other job within the City. A school-approved degree plan must be attached to the application. If a school-approved degree plan is not available, the recommended plan must be submitted. The application must also state the number of credits that are needed to complete the degree, the educational institution that the employee will be attending, the type of degree, the major, and the number of hours that the employee expects to attend. Applications must be submitted every semester.

Applications will be submitted to the City Secretary for approval by the relevant Department Director(s). Decisions will be made within 60 days of submission. The approval of the number of courses for reimbursement will also take into account the City's budget. Every attempt will be made to fairly distribute the reimbursement; however, it cannot exceed the City's budget for this program.

The Application will deny requests if:

1. The employee is not in good standing.
2. The employee has not completed their Introductory Period.
3. The employee has not completed one full year of continuous service with the City.
4. The degree will not improve the employee's ability to perform their current job or is not directly related to another City job that the employee would qualify and be considered for with the approved course/degree.
5. The employee has not actively participated in the program since submitting their application. (If employees do not take the classes that they request at the beginning of the budget year, it is unlikely that they will get approval for the following year unless there are unavoidable reasons.)
6. The employee has not actively participated and maintained at least a "C" average in each course that was approved in the preceding/current school year.

Should the employee wish to appeal this decision they must request a meeting with their supervisor, Director, and the City Secretary to discuss. The decision from this meeting will be final.

All participating employees in these Programs shall supply any documentation, as requested by the City related to costs, registration and proof of participation. Failure to provide the requested documentation could result in termination of participation in the program, and immediate repayment of any funds disbursed in accordance with that program.

Tuition reimbursement does not include books, tools, and/or supplies. Mandatory fees will be reimbursed as part of the tuition rate charges if those fees do not relate to items or services that are retained or continue on after completion of the course.

### **15.3.3 REIMBURSEMENT PROCESS**

Upon completion of a course(s), the employee shall submit a Tuition Reimbursement Request Form to the City Secretary's Office. The Request must be submitted not later than 30 days after completing the course work and include copies of receipts and transcripts indicating satisfactory completion of the course(s). Reimbursement will be denied if not submitted within the required time frame or fails to include receipts and transcript. The City shall reimburse the employee as follows:

<u>GRADE RECEIVED</u>	<u>AMOUNT OF REIMBURSEMENT</u>
A	100%
B	75%
C	50%
D	0%

In the event an employee is working on graduate courses, the City shall reimburse the employee as follows:

<u>GRADE RECEIVED</u>	<u>AMOUNT OF REIMBURSEMENT</u>
A	100%
B	75%
Below B	0%

Tuition reimbursement will be paid only once for each approved course. No payment will be made until the full-time employee has furnished satisfactory evidence of having completed the course.

#### **15.3.4 REIMBURSEMENT LIMITS**

The total amount of annual tuition reimbursement that will be considered shall not to exceed \$3,000 in a calendar year.

#### **15.3.5 REPAYMENT OF TUITION**

The City invests in educational assistance with the expectation that the investment be returned through enhanced job performance. Employees must sign an acknowledgement that the total amount of education assistance shall be reimbursed to the City, if the employee leaves the City of Bay City's employment for any reason within 24 months following the date of reimbursement.

In the event that the employee resigns employment or is terminated for poor performance or misconduct prior to the fulfillment of two years of employment, the employee will be responsible for reimbursing the City the amount of their reimbursements according to the graduated scale below:

- Less than one year will require refunding of the full tuition that was paid in the previous 24-month period.
- Less than two years, but more than one year or more years, will require refunding of 50% of the tuition that was paid in the previous 24-month period.

This amount will be deducted from the employee's final paycheck. Employees terminated due to a reduction in force shall not be requested to reimburse tuition monies.

### **15.4 OPTIONAL CONFERENCES AND TRAINING**

At the discretion of the Mayor and within approved budget limits, the City may reimburse an employee for cost of fees, travel, and related expenses to attend professional and technical education and training conferences.

## **16. SEPARATIONS**

### **16.1 TYPES OF SEPARATIONS**

The City of Bay City understands that varying circumstances do cause employees to voluntarily resign employment. Should this time come you are asked to follow the guidelines below.

Separations from employment with the City are designated as one of the following types:

- Resignation;
- Retirement;
- Reduction in Force;
- Dismissal;
- Disability; or
- Death.

An employee previously employed by the City of Bay City will be deemed eligible or ineligible for future employment with the City. A committee of the City Secretary or designee, past employee's Department Director, and the Mayor will determine rehire eligibility.

### **16.2 RESIGNATIONS**

#### **16.2.1 RESIGNATION PROCESSING**

An employee who intends to resign is requested to notify the City Secretary in writing at least ten (10) working days prior to the employee's planned last day of work.

The written resignation shall include the requested effective date of the resignation and signature of the employee. The reason(s) for resigning may be included in the written statement, but it is not required. An employee's resignation is effective in accordance with its terms when a supervisor or Department Head, who has authority to hire the employee's replacement, accepts the resignation. The notice of resignation is placed in the employee's personnel file, in the City Secretary's Office.

Oral resignations will not be accepted.

An absence in excess of one hundred eighty (180) days – An employee who is absent from work for more than 180 calendar days, for any reason except active military service, will be terminated. Brief appearances at work during an overall absence of 180 days will not prevent the City from terminating an employee if determined to be in the City's best interest. Likewise, any employee who reports to work (e.g., in a light duty capacity) but is unable to perform the duties of his or her actual position for a period of 180 days may be terminated.

Nothing in this policy guarantees an employee ongoing employment for 180 days (or for any other period of time) if it is determined that the employee will be unable to return to full-time active duty within a 180-day period. In other words, the City may elect to end the employee's employment before the expiration of 180 days if it is unlikely that the employee will be able to return to full-time active duty at the end of 180 days. An employee who has a paid leave balance remaining at the end of 180 days will be terminated and paid for the leave balance. This policy will be administered consistently with the City's obligations under the Americans with Disabilities Act, as amended, including considering extending leave as a reasonable accommodation.

### **16.2.2 REQUEST TO WITHDRAW RESIGNATION**

An employee wishing to request the withdrawal of an accepted resignation shall submit a written statement to the supervisor or the Department Head outlining the basis for the request prior to the effective date of the resignation. Once a resignation is tendered by the employee and accepted as provided in this section, it may not be withdrawn unless the supervisor or Department Head agrees.

## **16.3 RETIREMENT**

An employee eligible for retirement must notify the City Secretary before his or her planned date of retirement. Notice requirements of the Texas Municipal Retirement System must be met if the retiring employee wishes to begin retirement benefits immediately upon separation from the City.

An employee that is eligible for retirement may retain his or her health insurance benefits through the City. The retiree will become responsible for the full premium of the benefits they select. A retired employee who elects to continue health benefit coverage under this section, and who subsequently elects to discontinue their elected coverage, would no longer be eligible for coverage with the City.

See the Texas Municipal Retirement System's information guide for additional information on retirement.

As approved by City Council during a regular Council Meeting dated May 3, 1990, employees that are eligible for retirement have the opportunity to receive a party or separation pay. An employee with ten to fifteen (10-15) years of service credit may receive a maximum of two hundred dollars (\$200) towards a party and two hundred (\$200) towards a gift. An employee with sixteen to twenty-five (16 - 25) years of service credit may receive a maximum of three hundred dollars (\$300) towards a party and (\$300) three hundred dollars towards a gift. An employee with twenty-six years (26+) or more years of service credit may receive a maximum of three hundred dollars (\$300) towards a party and (\$500) five hundred dollars towards a gift. Under no circumstance will an employee be paid cash.

## **16.4 REDUCTION-IN-FORCE (LAYOFFS)**

A reduction-in-force is a non-disciplinary decrease in the number of authorized positions. Whenever possible, the employee reduction from one department or division may be absorbed by transfers to suitable positions elsewhere. Such situations will not necessarily be at the same pay rate or grade.

The City of Bay City reserves the right to determine the number of and type of personnel required to maintain the functions of the organization. The following are illustrative, but not all inclusive, of the possible basis for a reduction in force:

1. A discontinuation of or reduction in demand for service.
2. A change in level or source of funding.
3. Technological developments that reduce staffing requirements.
4. To accomplish economic or staffing efficiency.
5. Privatization of service/contracting out.
6. Requirements of state and/or federal laws.

The Mayor and the City Secretary shall notify Department Heads of any required employee reductions. The Department Heads shall recommend to the City Secretary which service and/or positions should be deleted. The Mayor shall create a plan that provides a written explanation of whether the layoff plan will impact current service or production. Whenever it is possible, employees that may be affected by a reduction-in-force will be given at least a forty-five (45)-day notice of the imminent loss of employment.

When reductions in force are necessary, decisions on individual separations will be made after considering:

1. The relative necessity of each position to the organization,
2. The performance record of each employee,
3. Qualifications of the employee for remaining positions with the City, and
4. The employee's length of service with the City.

Employees who have been laid off may reapply to the City for other positions. Qualified former employees will be given priority consideration in the event of a vacancy.

When a regular employee who has completed the introductory period is dismissed as a result of a reduction-in-force, he or she will be given written notice and will be paid in full to the time of separation, including payable accrued benefits. In addition, the Department Head will attempt to guide the employee to any available, suitable job openings in the area for which the employee qualifies.

## **16.5 DISMISSAL**

The City of Bay City operates under the legal doctrine of "employment-at-will" and, within requirements of state and federal law regarding employment, can dismiss an employee at any time, with or without notice, for any reason or no reason. Every effort will be made to ensure that employee dismissals are not made in an arbitrary and capricious manner; however, these personnel policies do not constitute an employment agreement between the City and any of its employees and in no way limit or restrict the at-will nature of employment. The City has the right to change these policies at any time, without prior notice to employees.

## 16.6 DISABILITY

In cases of long-term disability during which an employee is unable to return to work for a period of time that would cause an undue hardship for the city to hold the position open, and if no position is available which the employee could perform with a reasonable accommodation by the City, the employee will be separated from employment with the City. *(Legal reference: U.S. Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008.)*

See Section 9 of these policies on “**Health and Safety**” for details on occupational disability resulting from bona fide, on-the-job, work-related injuries and Section 8.6 on “**Family Medical Leave.**”

## 16.7 DEATH

If a City employee dies, his or her estate receives all pay due and any earned and payable benefits as of the date of death, unless a specific beneficiary for unpaid compensation has been named by employee in a signed designation filed with the City.

## 16.8 CALCULATION OF SEPARATION PAY

Upon separation from City employment, a regular employee who has completed his or her one full continuous year will be paid for earned, but unused vacation leave up to the maximum allowable accumulation limit. The separation date for all employees is the last day of actual work or approved leave. Final pay received by the employee will not be construed to extend employment with the City of Bay City beyond the separation date.

Payment for leave balances, excluding sick leave, will be included in the employee's final paycheck and will be calculated in the following manner:

- The total work time and allowable vacation (see Section 8.3 on "Vacation Leave" to determine allowable vacation) and compensatory leave time for nonexempt employees will be calculated as a total number of hours for which compensation is due. The regular hourly rate will be determined by dividing the employee's regular annual salary by 2080 working hours per year. Any amount paid for unused vacation will be based on the hourly rate in effect for the employee at the time of termination.
- For employees who are subject to the Fair Labor Standards Act, any overtime hours worked during the employee's final pay period, which have not been compensated through any of the time-off methods described under Section 6.7 "Overtime Compensation" section in these policies, will be paid in the final paycheck at a rate of one and one-half times the employee's regular hourly rate for each overtime hour worked.
- Unused sick leave may be donated to the City's Sick Leave Pool, or it will be canceled upon termination of employment. The employee will not be compensated for it.

The employee will receive his or her final paycheck, in paper check form, on the City's first regular payday following the employee's separation. Direct deposit is not available, if receiving a final paycheck.

## **16.9 EXIT INTERVIEWS AND RECORDS**

Each employee who leaves City employment is requested to participate in an exit interview, at which time the City Secretary, or his or her designee, restates the type of separation (resignation, retirement, reduction-in-force, disability, or dismissal) and, in the case of voluntary separations, documents the reason(s) the employee is leaving and seeks suggestions about employment-related matters. These comments are documented on an exit interview form.

## **16.10 CONTINUATION OF GROUP HEALTH INSURANCE (COBRA)**

The federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), as amended, allows certain individuals the option of continuing their group health insurance, at the individuals' full expense, under specific conditions. An employee must notify the City Secretary of any qualifying event, and the City Secretary will notify the city's health insurance plan administrator. The following paragraphs summarize the benefits provided under COBRA.

### **16.10.1 ELIGIBLE EMPLOYEE**

To be eligible for continuation coverage, an individual must be an employee of the City covered by the City's group health plan or an individual who is otherwise covered under the plan.

### **16.10.2 ELIGIBLE CIRCUMSTANCE**

An eligible employee has the right to choose continuation coverage if he or she loses group health coverage because of a reduction in his or her hours of employment or the termination of his or her employment (for reasons other than gross misconduct on the employee's part).

The spouse of an employee or other worker covered by the City's group health plan has a right to choose continuation coverage if he or she loses coverage under the City's group health plan for any of the following reasons:

- 1.) The death of the employee;
- 2.) Termination of the employee (for reasons other than gross misconduct);
- 3.) Divorce or legal separation from the employee; or
- 4.) The employee applies for and becomes entitled to Medicare.

The dependent child of an employee or other worker covered by the City's group health plan has a right to choose continuation coverage if he or she loses coverage under the City's group health plan for any of the following reasons

- 1.) The death of a parent;
- 2.) The termination of a parent's employment (for reasons other than gross misconduct), or reduction in a parent's hours of employment with the City;
- 3.) Parents' divorce or legal separation;
- 4.) A parent applies for and becomes entitled to Medicare; or
- 5.) The dependent ceases to be a "dependent child" under the city's group health plan.

### **16.10.3 NOTICE**

Under COBRA, the covered worker or family member has the responsibility to notify the City Secretary of a divorce, legal separation, or a child losing dependent status under the City's group health plan within sixty (60) days of the event or within sixty (60) days of the date on which coverage would be lost because of the event. The City Secretary has the responsibility to notify the plan administrator of the covered worker's death, termination of employment, reduction in hours, or entitlement to Medicare.

When the plan administrator is notified that one of the above events has occurred, the plan administrator will notify the covered worker or family member that he or she has the right to choose continuation coverage. The covered worker or family member then has at least sixty (60) days from the date on which he or she would otherwise lose coverage to inform the plan administrator that he or she wants continuation coverage. If the covered worker or family member does not choose continuation of coverage, group health insurance coverage will end. If the covered worker or family member chooses continuation of coverage, the City's plan administrator will provide coverage that, as of the time that coverage is being provided, is identical to the coverage provided under the insurance plan to similarly situated employees or family members.

If the person's payment is not received by the last day of the month, the City will notify the insurance carrier that the payment was not received. If this occurs, the City will drop the person from coverage.

### **16.10.4 LIMITATIONS AND EXTENSIONS**

Continuation coverage is limited to thirty-six (36) months, unless the covered worker or family member lost group health coverage because of a termination of employment or reduction in hours. In that case, the continuation coverage period is eighteen (18) months. The eighteen (18)-month period may be extended to thirty-six (36) months if other events (e.g., divorce, legal separation, death, or Medicare entitlement) occur during that eighteen (18)-month period. Moreover, the eighteen (18)-month period may be extended for an additional eleven (11) months (for a total of twenty-nine (29) months) if an individual is determined to be disabled (under the rules for Social Security disability benefits) and the plan administrator is notified of that determination within sixty (60) days. An individual who receives the extended coverage due to a

disability must notify the plan administrator when it is determined (for the purposes of Social Security disability benefits) that the individual is no longer disabled.

Continuation coverage may be cut short of the full coverage for any of the following reasons:

- 1.) The City no longer provides group health coverage to any of its employees;
- 2.) The premium for continuation coverage is not paid by the employee in a timely manner;
- 3.) The covered worker or family member becomes eligible for Medicare;
- 4.) There has been a final determination that the covered employee or family member is no longer disabled (in the case of beneficiaries who qualified for the extra eleven (11) months of continuation coverage based on their disability at termination); or
- 5.) The covered worker or family member becomes covered under another group health plan that does not contain any provision restricting or limiting coverage of a “preexisting medical condition.”

*(Legal reference: U.S. COBRA of 1985, as amended; Health Insurance Portability Act of 1996, as amended; and ERISA Technical Release No. 96-1.)*

## **16.11 ABANDONMENT OF POSITION**

An absence of two (2) consecutive workdays shall be considered to have abandoned the job without notice, effective at the end of their normal shift on the second day.

## **17. TRAVEL AND BUSINESS EXPENSES**

### **17.1 PURPOSE**

Department Head It is the policy of the City of Bay City that employees be fully reimbursed for necessary and reasonable job-related expenses incurred in the authorized conduct of City business. Any travel for which any reimbursement will be requested must have prior approval from the employee's immediate supervisor. All requests for reimbursement of expenses are subject to requirements of documentation and reasonableness, and will be honored in conference with these adopted policies and procedures. Expenses which are not permitted under the terms of grants, contracts or agreements with other agencies shall not be charged as costs to those grants, contracts or agreements.

Employees receiving a travel advance **must** submit a completed travel expense report to the Finance Department no later than **three** (3) business days after returning from the trip.

### **17.2 IN-CITY TRAVEL**

All necessary travel by City employee for authorized conduct of City business within the City is authorized. Reimbursements by employees for the use of private vehicles is made monthly upon submission of required report and request forms. Mileage is reimbursed at the rate established by the Internal Revenue Service (IRS). Employees are expected to use the shortest distance between destinations for all travel. Travel between the employee's residence and a City office is not allowed for reimbursement.

### **17.3 OUT-OF-CITY TRAVEL**

Out-of-City travel by City employees is permitted, provided that it is authorized in advance by the employee's Department Head. In the case of Department Heads, the travel requires prior approval of the Mayor. All out-of-state requires prior authorization of the Mayor. Travel reimbursement requests must not exceed departmental budgetary limitations. Reimbursements for out-of-city travel will be made on the most economical conveyance that is reasonably available. When private vehicles are used, reimbursement is allowed on the basis of the mileage reimbursement rate or the least expensive airfare, whichever is less. If no airfare is service is available to the authorized destination, actual mileage is allowed. The difference in cost between first class air accommodations and the least expensive air accommodations are available and with the Mayor's approval.

Some employees may be required to use their personal vehicles for City business in their daily work. In these cases, the employee may receive a regular monthly allowance from the City. In such cases, the employee will receive additional reimbursement for out-of-region travel at the regular mileage reimbursement rate unless the allowance agreement specifically states that out-of-region travel is included in the monthly allowance. The region is defined as within 200 miles.

## 17.4 SUBSISTENCE EXPENSES

Employees engaged in necessary and authorized travel are reimbursed for actual subsistence expenses, subject to documentation and reasonableness, as long as they meet the IRS guidelines for “away from home, which includes an overnight stay. A per diem allowance will be permitted, according to the following schedule:

The per diem allowance shall not exceed the maximum daily allowance as prescribed by the IRS based on locality for the meals and incidental expenses. The employee will receive a percentage of the per diem for the day of departure and the day of return based on the following:

- Departure time before 8:00 a.m. – 100%
- Departure time between 8:01 a.m. and 12:00 p.m. (noon) – 75%
- Departure time between 12:01 p.m. (noon) and 5:00 p.m. – 50%
- Departure time between 5:01 p.m. – 25%
- Return time before 8:00 a.m. – 25%
- Return time between 8:01 a.m. and 12:00 (noon) – 50%
- Return time between 12:01 p.m. (noon) and 5:00 p.m. – 75%
- Return time after 5:01 p.m. – 100%

Subsistence expenses will generally be for lodging, business-related telephone calls, registration, local transportation, and parking. The per diem will cover meals and incidentals (i.e. tolls and gratuities). Employees may receive \$15.00 towards lunch for a one-day travel. Employees must present to their supervisor a detailed receipt outlining the cost to receive the reimbursement.

**Costs of personal entertainment, amusements, personal items, gifts, social activities, personal telephone calls, expenditure of city representative’s spouses, or alcoholic beverages are not allowable for reimbursement.**

The City is not exempt from state or local Hotel Occupancy Taxes. Only state, federal, religious, and public education entities are exempt from Hotel Occupancy Taxes.

All expense, other than per diem expenses, must be accompanied by written receipt in order to receive reimbursement. If the employee chooses to be reimbursed for meals and incidentals instead of receiving the prescribed per diem, written detailed receipts for all expenses must accompany the request for reimbursement. The reimbursement cannot exceed the IRS prescribed per diem allowance and they cannot obtain per diem for one day and reimbursement of receipts for another day on the same travel reimbursement request.

## 17.5 CREDIT CARD POLICY

### 17.5.1 PURPOSE

The purpose of the City of Bay City credit card policy is to establish the use of City credit cards in the course of performing City business. The City of Bay City recognizes that officials and department directors are required to make expenditures of funds in the course of performing their functions in municipal government. The use of credit cards is beneficial to the taxpayer, and enables the City to be more effective and efficient, and more accountable to the public than some of the older, more traditional financial methods. City credit cards provide detailed purchase histories and other important recordkeeping and time saving information. Federal and state governments are wisely using credit cards to reduce paperwork, personnel, and other costs related to financial management. Local governments and virtually all private enterprises are implementing similar uses, and the City of Bay City should reap the benefits of this technology.

### **17.5.2 ISSUANCE**

Bank business credit cards will be issued to all departments. The department directors to whom the cards is issued are responsible for the cards and their proper use. The Mayor and members of the City Council have final approval authority on credit card issuance. The Finance Department is responsible for verifying and reconciling all credit card usage and charges pursuant to this policy and the City's Travel Expense Report. City credit cards may not be used in lieu of the normal purchasing procedures of the City. Credit cards may be used to make lodging reservations and conference reservations or to pay for lodging, meals, and incidental travel expenses. Credit cards may also be used for secured site online purchasing when conventional methods are not available or time is a factor.

An employee should make every effort to inform companies of the City's tax exempt status to help avoid paying sales tax.

### **17.5.3 USAGE**

The maximum single transaction amount is limited to \$2,500.00 without prior written authorization. The card is for procurement purposes only and the balance must be paid monthly to avoid interest charges. All technology related purchases must be made through the IT Department.

Personal use of credit cards is **strictly prohibited** and is subject to disciplinary action. Other prohibited uses include cash advances and alcoholic beverage purchases. A cardholder who makes an unauthorized purchase or carelessly uses the City credit card is personally liable for the total amount of the unauthorized purchase. In addition, the employee is subject to disciplinary action.

In the event a card is lost or stolen, the responsible employee must immediately notify the City Treasurer.

### **17.5.4 RECONCILIATION**

Credit Card activity must be reconciled as established below:

- 1.) The cardholder will submit receipts and/or documentation describing and appropriately coding each transaction.

- 2.) Detailed receipts/documentation should be completed on the expense report and the card returned to the responsible department director no later than three (3) days after use. In the event of a lost or missing receipt, the responsible party must complete a statement explaining the absence of the documentation and confirming that the expenses were legitimately incurred in the conduct of municipal business. Undocumented expenses will be subject to employee reimbursement to the City directly or through payroll adjustments.

### **17.5.5 CANCELLATION**

The Mayor, with the advice of the City Treasurer, may cancel or order the surrender of any City credit card which appears to be misused or abused, and will take the appropriate disciplinary action as provided by these policies.