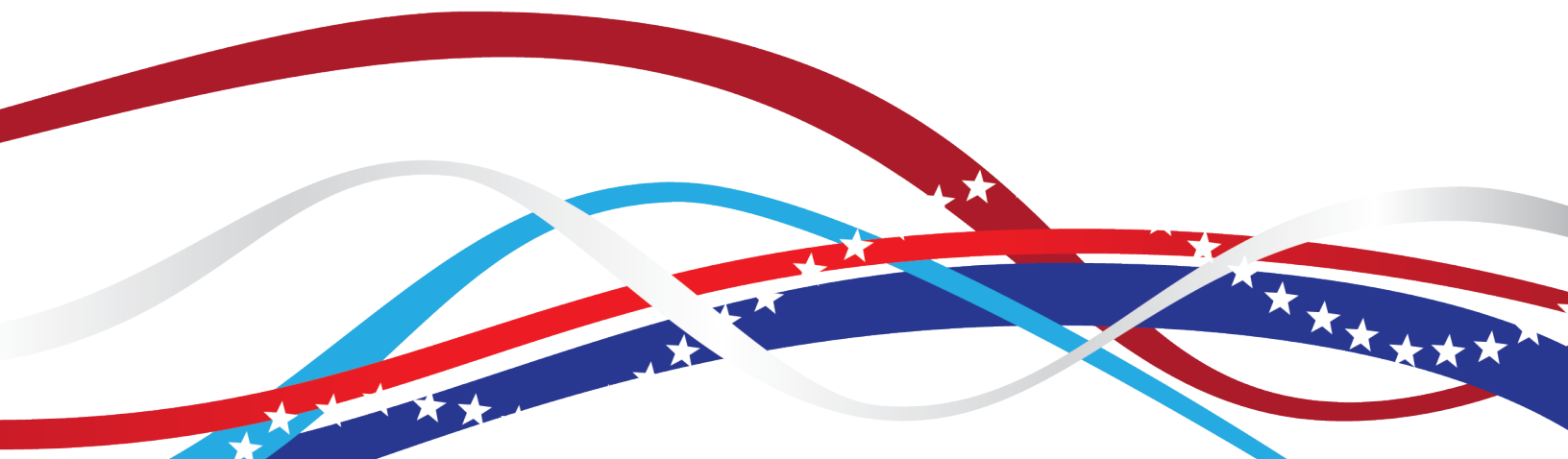




# PERSONNEL POLICY

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## ARTICLE 1 GENERAL

### Sec. 1.1 Administration.

- A. City Administrator.** The City Administrator is designated by the City Ordinance as the Chief Administrative and Executive Officer of the City who is responsible to the City Council for the administration of all the affairs of the City, including the appointment, and when necessary for the welfare of the City, removal of any employee, in conformity with the provisions of this Policy and City Ordinance.
- B. Human Resources Manager.** The Human Resources Manager is appointed by the City Administrator. In the absence of a Human Resources Manager the City Administrator or City Secretary shall act as the Human Resources Manager, and has responsibility for the following functions:
1. administer the regulations of this policy in cooperation with the Department Heads;
  2. review departmental policies affecting employees and ensure that the policies do not conflict with the provisions of this policy;
  3. administer employee benefits;
  4. review all new state and federal laws affecting personnel administration of the City, consult with the City Attorney, and report to the City Administrator when adjustments are needed in this manual or other City procedures to conform to these laws;
  5. maintain a personnel records system, including work records, leave records, disciplinary records, and all pertinent data needed for efficient and proper personnel administration; and
  6. other responsibilities assigned by the City Administrator.

### Sec. 1.2 Administration of this Policy.

Department Heads are responsible for the proper and effective administration of this policy within their departments. Routine matters and duties, such as maintaining records, preparing reports, and payroll documentation may be assigned to a subordinate.



### **Sec. 1.3 Availability of this Policy.**

A copy of this policy shall be issued to each City employee, whether full or part- time status, via email, digital copy, hard copy, and/or internet or cloud based access. Additionally, the full document may be accessed through the City Shared files via the City's computer system. Department Heads and Supervisors shall be required to be knowledgeable of the provisions of this policy. Each employee shall sign a form acknowledging receipt of this policy and the signed form shall be placed in the employee's personnel file.

### **Sec. 1.4 Amendments to this Policy.**

With the exception of matters reserved to the City Council these policies are established by the City Administrator and any amended, revised, or new policies must be approved by the City Administrator. Upon approval by the City Administrator, this revision shall supersede all previous publications of the Personnel Policy. Any policy that is amended, added, or removed will be shared with employees via email, digital copy, hard copy, and/or internet or cloud based access.

### **Sec. 1.5 Equal Opportunity Policy.**

No officer or employee of the City shall discriminate in employment practices based on race, creed, color, religion, veteran status, national origin, sex, age over 40, the existence of a physical or mental disability, genetic information, or any other classification protected under applicable state or federal law. This Equal Opportunity Policy of the City applies to all areas of employment, including, but not limited to recruitment, hiring, job assignments, pay, training, promotions, privileges, discipline, and conditions of employment.

The full cooperation and assistance of all officers and employees of the City is expected to maintain and promote this policy. It is a violation of this policy to take an adverse employment action against any employee because he/she has opposed any practice reasonably believed to be discriminatory or filed any internal or external complaint/grievance/charge or participated in any investigation or proceeding, in accordance with this Equal Opportunity Policy.

### **Sec. 1.6 Americans with Disabilities Act.**

To ensure compliance with the Americans with Disabilities Act, the City will provide reasonable accommodation to any known physical or mental impairments of an otherwise qualified individual with a disability if such reasonable accommodation will enable the individual to perform the essential functions of the position at issue. The City's

obligation under this policy is limited to providing reasonable accommodations that will not result in undue hardship to the City.

Any applicant or employee seeking a reasonable accommodation for a disability that affects the application process or employee's ability to perform the essential functions of the position shall make an appointment with his/her Supervisor, Department Head, City Administrator, and/or Human Resources to discuss options for accommodations.

Applicants or Employees who have a concern or complaint involving potential violations of the Americans with Disabilities Act, including but not limited to harassment, discrimination, or failure to provide a reasonable accommodation, must immediately contact the immediate Supervisor, Department Head, Human Resources or the City Administrator.

### **Sec. 1.7 Statement of At-Will Employment.**

Employment with the City is on an "at-will" basis. Employees who do not have a written, individual employment contract, approved by the City Council and setting forth a specific, fixed term of employment, are employed at-will. This means that no individual supervisor has the authority to enter into an employment contract with any employee. As an at-will employee, either the employee or the City may terminate the employment relationship at any time, for any reason, without notice or cause.

These personnel policies are not intended to, and do not create a contract of employment, nor of any term or condition of employment. Benefits granted herein such as vacation, holiday or sick pay, and certain other forms of leave are given to the employees by the Mayor and City Council and are not required by law. The opportunities granted to employees such as grievance procedures, appeals and other policies do not create a property interest in the employee's position with the City and do not preempt the fact that the City and the City's employees have an "at-will" relationship, unless altered by a written contract, as set forth above.

### **Sec. 1.8 Departmental Rules/Policies.**

Because of the variety of services performed by the City, it may be necessary for individual departments to establish codes of conduct, rules and regulations, and policies and procedures to accomplish departmental responsibilities. All such departmental rules/policies may be more restrictive, but not less restrictive than these policies. In the event of any conflict between departmental rules/policies and the City's Personnel Policies, these policies will control. An employee who violates departmental code of conduct, rules, policy or procedure is subject to disciplinary action, up to and including termination.

## Sec. 1.9 Definitions.

In this policy:

**AFFINITY WITHIN THE SECOND DEGREE** includes an employee's spouse, step-parent, step-children, father-in-law, mother-in-law, spouse's grandparents, spouse's grandchildren, brother-in-law, sister-in-law, son-in-law and daughter-in-law. Sec. 3.05.

**ALCOHOLIC BEVERAGES** means alcohol, or any substance containing more than one-half of one percent of alcohol-by-volume that is capable of use for beverage purposes alone or when diluted.

**AMERICANS WITH DISABILITIES ACT OF 1990** means Title 42 U.S.C. §12101, *et seq.*, as amended.

**APPLICANT** means a person who has completed a written application form for an open position and provided any clarification information requested.

**APPOINTING AUTHORITY** means a person or group of persons having authority to appoint or to remove a person from a position of City employment.

**APPOINTMENT** means initial employment by the City.

**BENEFIT** means an employer-sponsored program that includes, but is not limited to, holidays, vacation leave, sick leave, and health and life insurance, but does not include salary, service credit, or seniority.

**BOARD** means the employee Accident Review Board.

**CALL BACK** means the unscheduled return to work outside of normal hours at the request of a supervisor. It does not include overtime or holiday work scheduled in advance.

**CHILD** means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is:

- A.** under 18 years of age; or
- B.** 18 years of age or older and incapable of self-care because of a mental or physical disability.

**CITY** means the City of Early, Texas.

**CITY ADMINISTRATOR** means the City Administrator of the City or the City Administrator's designee.

**CONSANGUINITY WITHIN THE THIRD DEGREE** includes an employee's great grandparents, grandparents, parents, children, grandchildren, great-grandchildren, brother, sister, siblings' children, and parents' siblings. Sec. 3.05.

**COMPENSATORY TIME** referred to as comp time, is paid time off given to employees instead of overtime pay.

**DEMOTION** means the assignment of an employee to another position having less responsibility or requiring less experience, education, technical, or professional expertise, and which is usually at a lower salary. A demotion may be effected for either a disciplinary or non-disciplinary reason.

**DEPARTMENT HEAD** means a person appointed by the City Administrator who is responsible for the administration of a department.

**DISMISSAL** or **DISCHARGE** means involuntary termination of employment with the City.

**DRUG PARAPHERNALIA** means equipment, products, or materials, as defined in Chapters 481, 484 or 485 of the Texas Health and Safety Code that may be used to facilitate the use of controlled substances or inhalants.

**DRUG AND ALCOHOL TEST** means the entire process of testing an individual for the presence of illegal drugs or alcoholic beverages, beginning with the collection of a specimen of bodily fluids, and continuing through the conclusion of laboratory testing of a specimen.

**EMPLOYEE** means a person employed and paid by the City and includes a person working full or part-time, or in temporary positions, but does not include an independent contractor, contract employee, the Municipal Court Judge(s), the City Attorney, volunteer, or any elected or appointed City official.

**EXEMPT EMPLOYEE** means any employee who occupies an executive, administrative, or professional position as defined by the Fair Labor Standards Act. If a position is in this classification, the employee is not eligible for overtime pay.

**FAIR LABOR STANDARDS ACT** means Title 29 U.S.C. §201, et seq., as amended.

**FIRE SUPPRESSION EMPLOYEE** means a sworn employee of the Fire Department working shifts and whose primary duties are to respond to calls for fire suppression services.

**FMLA** means the Family and Medical Leave Act of 1993.

**GRIEVANCE** means an issue raised by an employee relating to the employee's benefits or conditions of employment.

**HEALTH CARE PROVIDER** means:

- A.** a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices;
- B.** podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the state and performing within the scope of their practice;
- C.** nurse practitioners, nurse-mid-wives, and clinical social workers who are authorized to practice under state law and who are performing within the scope of their practice;
- D.** Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or
- E.** any health care provider from whom the City or the City's group health plan's benefits administrator will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

**ILLEGAL DRUGS** means controlled substances, as defined in Chapter 481 of the Texas Health and Safety Code, and inhalants, as defined in Chapters 484 and 485 of the Texas Health and Safety Code.

**IMPAIRED** or **IMPAIRMENT** means the inability of an employee to perform duties safely and competently due to use of alcohol, illegal drugs, prescription drugs or over the counter drugs.

**INTERIM ASSIGNMENT** means a temporary assignment of an employee to another position or duties other than those of his/her current regular position.

**INTERMITTENT LEAVE** is FMLA leave taken in separate blocks of time due to a single qualifying reason.

**JOB** (see POSITION)

**LEAVE WITH PAY** means an authorized temporary absence with pay.

**LEAVE WITHOUT PAY** means an authorized temporary absence without pay.

**LEGAL GUARDIAN** means a person appointed by a court to guard the interests of an individual who is a ward.

**MANUAL** means this Personnel Policies Manual.

**MILITARY LEAVE** means any authorized absence of an employee for active or reserve duty or training in the United States armed forces or State Guard.

**NON-EXEMPT EMPLOYEE** means an employee covered by the minimum wage and overtime provisions of the Fair Labor Standards Act.

**PARENT** means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

**PART-TIME EMPLOYEE** means any employee scheduled to work not more than thirty (32) hours per work week on average.

**PART-TIME FIRE SUPPRESSION EMPLOYEE** means a sworn employee of the Fire Department. The standard work period for fire suppression personnel is 28 days. The standard number of hours worked during this work period for part-time is not more than 180 hours.

**POSITION** means a collection of tasks, duties, and responsibilities regularly assigned to and performed by one person. The term "job" is synonymous with "position" when it is performed by one person.

**PROMOTION** means the change of an employee from a lower classification to a higher classification with a resulting increase in salary. A temporary or interim assignment to a higher classification, even with a temporary increase in salary, does not constitute a promotion.

**REAPPOINTMENT** means employment of a person who has previously been employed by the City.

**REASONABLE SUSPICION** means a belief based on objective facts sufficient to lead a reasonably prudent person to suspect that an employee may be under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job may be impaired or so the employee's ability to perform the job safely may be reduced.

**REGULAR EMPLOYEE** means a person employed by the City in a full-time or part-time capacity, providing the position is not of a seasonal or temporary nature; nor stated as restricted or under the provisional period of employment.

**REINSTATEMENT** means the reappointment of an employee who was reduced in classification or separated from employment as a result of a position being vacated or abolished by the City Council.

**REINSTATEMENT LIST** means a list of individuals, who have been reduced or separated from a particular classification as a result of positions being vacated or abolished by the City Council, ranked in the order of seniority.

**REPRIMAND** means a statement to an employee by a supervisor describing deficiencies in the employee's performance or acts of the employee that are in violation of the

standards of conduct and describes corrective measures which the employee should take. A reprimand is formal if it is in writing.

**SEASONAL EMPLOYEE** means an employee who holds a position designated as a seasonal position in the position description and job posting.

**SEPARATION** means any termination of employment with the City.

**SERIOUS HEALTH CONDITION** means an illness, injury, impairment, or physical or mental condition that involves:

- A.** in-patient care in a hospital, hospice, or residential medical care facility; or
- B.** continuing treatment by a health care provider, including one or more of the following:
  - 1.** a period of incapacity of more than three consecutive calendar days that requires:
    - a.** treatment two or more times by a health care provider or by a provider of health care services under the orders of a health care provider; or
    - b.** treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider;
  - 2.** any period of incapacity due to pregnancy or for prenatal care even if no treatment is received during the absence;
  - 3.** any period of incapacity or treatment for an incapacity due to a chronic serious health condition even if no treatment is received during the absence;
  - 4.** period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective;
  - 5.** any period of absence to receive multiple treatments by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider.

(Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, and periodontal disease are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave.)

**SPOUSE** means a husband or wife as defined or recognized under state law for purposes of marriage, including common law marriage.

**SUSPENSION** means an involuntary absence without pay imposed by an appointing authority for disciplinary purposes.

**SWORN EMPLOYEE** means an employee of the Police Department or Fire department who is certified by the State Commission on Law Enforcement Officer Standards and Education or the State Commission on Fire Protection Personnel Standards and Education.

**TEMPORARY EMPLOYEE** means an employee:

- A.** whose employment is scheduled to last less than six (6) months;
- B.** who holds a seasonal position, even though the employment may last more than six (6) months;
- C.** in a position which, by City policy and practice, is intended to give introductory work experience to a person preparing for entry into the work force; or
- D.** in a position scheduled to work 40 hours per week but on a short-term basis.

**TERMINATION** means cessation of employment with the City.

**TRANSFER** means a change from one position to another in which departmental or classification lines, or both, may be crossed, but which does not result in either promotion or demotion.

**UNDULY DISRUPTIVE** means an act which would impose an unreasonable burden on the City's ability to provide services of acceptable quality and quantity for the public.

**WORKDAY** means one shift during which a department is open for business or for which an employee is scheduled to work.

**WORKING HOURS** means the time during which an employee is on duty, including regular time, overtime, and emergency duty.

**WORK PERIOD** means a regularly recurring designated period of work which is used in accordance with the Fair Labor Standards Act to determine when a nonexempt employee is entitled to overtime compensation.

**WORK WEEK** means the number of hours an employee is regularly scheduled to work during a seven-day work period.



## ARTICLE 2 APPLICATION AND INITIAL EMPLOYMENT

### Sec. 2.1 Recruitment.

- A. Human Resources shall advertise the employment needs of the City in a manner which attracts an adequate supply of qualified candidates for positions as needed;
- B. In collaboration with department heads and managers, Human resources shall identify recruitment needs and establish recruiting procedures which will result in the most efficient and successful candidate placement within the limitations of budget and time;
- C. Department Heads are responsible for notifying Human Resources regarding any vacancies or requests for opening positions and ensuring accurate and updated job descriptions are available for those positions. Human Resources will be responsible for posting internally or externally to requested sites once approval for position(s) is confirmed.

### Sec. 2.2 Applications.

- A. **Application Form.** Applicants for employment with the City shall complete a City of Early employment application. Application forms are available on the City's website or hard copies are available at City Hall. Qualified applicants are those who fully complete an employment application.
- B. **False or Misleading Information.** An applicant or an employee who provides false information on the application form, or who fails to disclose information that is pertinent to the appointment, is subject to denial of employment, dismissal, or other disciplinary action.

### Sec. 2.3 Basic Employment Qualifications.

In addition to the qualifications applicable to each position, an applicant must:

- A. be at least 18 years of age or meet special age requirements for the Police and Fire Departments;
- B. be at least 16 years of age for specified seasonal or temporary positions;
- C. have a valid social security number;
- D. be a citizen of the United States or possess a valid resident alien work authorization;

- E.** agree to be fingerprinted if required for certain public safety positions;
- F.** satisfactorily complete a post-offer drug screening test;
- G.** have the ability to obtain a valid drivers' license when applicable and necessary for the job;
- H.** possess a satisfactory driving record, if driving is a required job duty;
- I.** possess a satisfactory criminal history, if required because of job duties;
- J.** obtain satisfactory results on a post-offer medical and/or psychological exam, if required because of job duties;
- K.** satisfactorily complete the employment, education and personal reference checks; and
- L.** obtain satisfactory results of a polygraph examination provided that such tests are uniformly required for any application to that position prior to appointment.

#### **Sec. 2.4 Special Qualifications for Sworn Positions in the Police and Fire Departments.**

- A. Age.** Applicants for sworn positions in the Police and Fire Departments must be at least 20 years of age. The minimum age limit may be lowered to 18 years of age for the Fire Department if approved by the City Administrator.
- B. Physical tests.** Applicants for sworn positions in the Police or Fire Department must pass physical tests relevant to the essential functions of the position, including, but not limited to range of motion and aerobic fitness. Physical and/or psychological examinations may be waived for part-time employment in the Fire Department if the applicant can provide verification that such tests have been performed within the last twelve (12) months, and providing the applicant is currently employed full-time for another agency in the same or related capacity. In such cases the employee will be required to provide the City with verification of the results of such examinations.
- C. Vision.** The vision of applicants for sworn positions in the Police or Fire Department must be correctable to 20/20.
- D. Hearing.** The hearing of applicants for sworn positions in the Police or Fire Departments must test between minus 10 to plus 25 (ANSI standard).

## **Sec. 2.5 Evidence of Qualifications.**

- A.** Applicants for positions that are scientific, professional, technical or duties that require special qualifications may be required to provide documentary evidence of necessary education, training or experience.
- B.** Applicants for positions requiring college graduation may be required to furnish a transcript of their college work as well as a copy of their diploma.
- C.** Whenever college training is allowed to substitute for work experience, an applicant may be required to document the education with a transcript.

## **Sec. 2.6 Retention of Applications.**

Whether or not an applicant is hired, promoted, or transferred, the application shall not be returned, but shall be retained in the Human Resources Office for a period of one year from the date of creation of the application or the date of the personnel action involved, whichever is later. Applications over one year old will be retained in the Office of the City Secretary for a period of time as prescribed under the provisions of the Records Retention Act.

## **Sec. 2.7 Physical Examinations and Health.**

- A. Pre-employment.** In compliance with the Americans with Disabilities Act of 1990 ("ADA"), the City does not:
  - 1.** require a pre-employment physical examination for any City position;
  - 2.** inquire as to whether an applicant has a disability before or after the offer of a position is extended; or
  - 3.** inquire about an applicant's worker's compensation history.
- B. Positions with physical requirements.** The Human Resources Manager shall, with the advice of the Department Head, designate which City positions require regular and sustained periods of physical effort, agility, and mobility, or regular and sustained operation of motor equipment or vehicles. In positions having a minimum physical requirement set by the City, the minimum physical requirements shall be identified in the Job Description. When an offer of employment is made for these positions, the offer will be conditioned upon the applicant passing a physical examination to ensure the applicant is physically capable of performing the essential functions of the position. All

requirements to pass the physical examination will be job-related and consistent with business necessity and in conformance with Federal and State Law.

A post-offer physical examination, psychological examination and drug screening shall be required for all Sworn Police and Fire Department positions.

**C. Confidentiality.** The results of a physical examination shall be kept confidential and may only be disseminated in accordance with applicable state and federal law with the following exceptions:

1. supervisors may be informed regarding restrictions on work duties of employees and necessary reasonable accommodations;
2. if emergency treatment might be required, then first aid and safety personnel may be informed; and
3. information may be provided to government officials investigating compliance with the ADA.

**D. Reasonable Accommodations.** If an otherwise qualified applicant has a disability which might impede job performance, the City will nevertheless consider the applicant in competition with other qualified applicants and determine whether reasonable accommodations can be made to overcome the impediment without imposing an undue hardship.

**E. Drug Test.** Any applicant who is offered employment with the City must submit to a post offer drug test to ascertain the presence of certain drugs. If the applicant has a positive result for an illegal drug or a drug for which the employee is unable to produce a valid prescription, the employment offer is rescinded. Applicants may reapply for other positions within the City following twelve (12) months from positive test date.

## **Sec. 2.8 Reinstatement.**

An employee that is reinstated following a reduction in force, or as a result of a Court Order or City Administrator's decision after the appeal of a dismissal will be reinstated to previous service earned during the immediately preceding period of regular employment.

## **Sec. 2.9 Personnel Records.**

**A. Retention and Inspection.** Human Resources will maintain work history records for each employee and retain those records in accordance with the City's records

retention schedule. An employee's record is available for inspection in the Human Resources Department by that employee and the employee's immediate supervisor, manager, Department Head, or the City Administrator.

**B. Information Update.** Within two (2) weeks of the event or change, employees must notify the Human Resources Department concerning any of the following:

1. Change of address, whether it is mailing or residential.
2. Change of phone number, whether it is listed or unlisted.
3. Change in marital status, number of dependents (for purposes of health insurance and income tax withholding), or any relationship prohibited under the City's nepotism policy.
4. Change of beneficiary for life insurance and retirement benefits.
5. Any additional schooling, training, certificates or degrees earned during an employee's course of employment.
6. Any changes in social security or driver's license numbers or class.
7. Any criminal matter resulting in arrest, conviction, probation or deferred adjudication.
8. An employee who operates City vehicles as a part of their duties will immediately notify their supervisor if for any reason their driver's license is revoked or suspended prohibiting them from performing their duties as a driver of city vehicles.
9. For drivers of City vehicles, any motor vehicle accident; moving violation; or arrest, conviction, probation or deferred adjudication resulting from DWI/DUI.
10. The existence of any protective order or restraining order to which an employee is a party.

Failure to provide the required notification in a timely manner may result in discipline, up to and including termination.

**C. Employment Information Disclosure** All requests for information concerning current, temporary or past employees must be referred to the Human Resources Department to protect the employee's right to privacy. An individual, other than Human Resources staff, the City Secretary (in accordance with the Texas Public Information Act), or Police Department Staff (in accordance with the Texas Occupations Code Section 1701.451), who releases personal information considered to be confidential

by law will be subject to disciplinary action up to and including termination. Only the following information will be released on inquiry:

1. Employee Name
2. Position(s) held with City
3. Confirmation of Salary
4. Length of service and standing/eligibility for rehire

### **Sec. 2.10 Immigration Law Compliance.**

- A. The City is committed to employing only United States citizens and aliens who are authorized to work in the United States and who comply with the Immigration Reform and Control Act of 1986.
- B. Within the first three days on the job, each new employee must properly complete, sign, and date the first section of the Immigration and Naturalization Service Form I-9 and provide the appropriate documentation for section two of Form I-9 indicating their legal right to work in this country.
- C. Before rehired employees commence work, they must also complete the Form I-9 if
  - a) they had not previously filed with this organization,
  - b) the previous form is more than 3 years old,
  - or c) if the previous form is invalid in any other aspect.

## ARTICLE 3 CONDITIONS OF EMPLOYMENT

### Sec. 3.1 Regulation of Employees Not in a Contract; Expectations.

- A. All employees of the City serve at the will and pleasure of the City. Neither this policy nor any other policy of the City, nor any statement of a City official, shall be construed as granting a property interest in employment with the City. The existence of this policy does not constitute any limitation on the rights of the City to manage its affairs. The City reserves the right to interpret, change, suspend, cancel or dispute, with or without notice, all or any part of this policy. Employees will be notified before implementation of any change.
- B. Although adherence to this policy is considered a condition of continued employment, nothing in this policy alters an employee's at-will status and shall not constitute nor be deemed a contract or promise of employment. Employees are expected to continually meet job performance standards, comply with departmental regulations and adhere to City rules of conduct in order to continue employment with the City.

### Sec. 3.2 Provisional Period.

- A. The City shall require a twelve month provisional period for all regular employees. This provisional period is a time for the employee to demonstrate qualifications for continued employment. Every employee appointed or promoted to a new position shall be required to successfully complete a twelve month provisional period. Licensed Police Officers, Emergency Medical Services and Fire Department employees shall be required to complete a twelve month provisional period.
- B. The Department Head and/or Supervisor shall review the performance of an employee every 60 days during the provisional period and provide the provisional employee with a written review at least once every 60 days. This review process will be used to prepare and submit a formal evaluation of the progress at the end of the provisional period. Reviews will address specific areas of performance that are satisfactory or in need of improvement. When addressing areas in need of improvement, the Department Head/Supervisor shall provide the employee specific recommendations to improve his/her performance. The review will be completed on a form approved by Human Resources. The completed review form, signed by both the Department Head/Supervisor and the employee, will be filed with Human Resources.
- C. The provisional time period shall not affect the employee's eligibility for health insurance benefits, nor shall it waive retirement contribution requirements through the Texas Municipal Retirement System. Sick Leave shall accrue from the date of employment. However, Sick Leave shall not be used until the employee has completed sixty (60) days

of employment. This provision applies to all job classes. Vacation Leave shall also accrue from the date of employment. An employee becomes eligible to use vacation leave after twelve (12) months of continuous full time employment. An employee who terminates employment prior to twelve (12) months of service shall forfeit all vacation leave accrued during the period of employment.

- D.** An employee who fails to successfully complete the provisional period may be separated from employment with the City, or a promoted employee may be eligible to return to a previous position within the City provided that the vacated position has not been filled.
- E.** Provisional employees newly hired by the City do not have a right to appeal discipline. However, newly promoted employees who have completed their initial new hire provisional period will retain their right to appeal discipline during their promotional provisional period.
- F.** At-will status does not change upon completion of a provisional period. Continued employment after the provisional period does not change or affect the employee's at-will status.

### **Sec. 3.3      Extension of Provisional Periods.**

- A.** Provisional periods may be extended for up to three (3) additional months for performance reasons. The reason(s) for the extension must be documented, and the City Administrator must approve all extensions of the provisional period for performance reasons. Documentation must provide information to the employee about the performance deficiencies, expected level of performance and the period for which the provisional period is extended.
- B.** Provisional periods must be extended when provisional employees are on any leave with or without pay, for more than 10 consecutive business days during the provisional period. Provisional period extensions for leave will be for a period equal to, but not exceeding, the days of absence.

### **Sec. 3.4      Compliance with Regulations and Laws.**

An employee shall comply with the provisions of the ordinances of the City, with this policy, and with the instructions and directives promulgated by the City Council or by a person in whom authority is vested by city ordinance or City Council.

At no time shall an employee be obligated to follow instructions known to be a false representation to the public or in violation of Federal or State Law or Ordinances of the



City. Refusal to obey such false or illegal instructions shall not constitute grounds for disciplinary action.

### Sec. 3.5 Nepotism.

No person who is related within the second degree of affinity or within the third degree by consanguinity to any elected officer of the City or to the City Administrator is eligible for any office, position, clerkship or other service of the City. This prohibition does not affect an officer or employee within the named degree, who has already served at least twelve (12) months employment with the City at the time when the elected officer or the City Administrator takes office.

No employee may work in a position which is in the line of supervision of a person who is related within the second degree of affinity or third degree of consanguinity or anyone living in the same household as the employee. Employees working in the same department who are related within the second degree of affinity or third degree of consanguinity or living in the same household will not, to the extent possible, be assigned to the same shift. Shifts of relatives or individuals in the same household working in the same department at the time of adoption of this policy will not be changed unless one of the individual's changes positions.

In the case of a marriage of two (2) existing employees, or other situation giving rise to a relationship prohibited by this policy, the individuals concerned will decide who will terminate employment. If no decision can be made within 30 calendar days, the City Administrator will decide.

#### A. Affinity (Marriage Relationship):

First Degree	Second Degree
Spouse	Mother-in-Law
	Father-in-Law
	Sister-in-Law
	Brother-in-law
	Daughter-in-law
	Son-in-Law
	Spouse's Grandparents
	Spouse's Grandchildren
	Step-parent
	Step-children

## B. Consanguinity (Blood Relationships):

First Degree	Second Degree	Third Degree
Mother	Grandmother	Great-Grandmother
Father	Grandfather	Great-Grandfather
Sister	Granddaughter	Great-Granddaughter
Brother	Grandson	Great-Grandson
Daughter	Uncle	Great-Uncle
Son	Aunt	Great-Aunt
	Niece	Great-Grand Niece
	Nephew	Great-Grand Nephew
	First Cousin (Aunt/Uncle's Son or Daughter)	Second Cousin (Employee's mother or father's first cousin's children)
		First Cousin Once Removed (Employee's cousin's children)

## Sec. 3.6 Work Periods.

**A. Standard work periods.** Standard work periods are established for purposes of compliance with the Fair Labor Standards Act.

1. The standard work period for employees, other than Sworn Police Officers and fire suppression personnel, is seven (7) days. The standard number of required work hours within the work period is established as a minimum of forty (40) hours for full-time, regular, non-exempt employees
2. The standard work period for fire suppression personnel is 28 days. The standard number of hours worked during this work period is 212.
3. The standard work period for Sworn Police Officers and other fire personnel is 14 days. The standard number of hours worked during this work period is 80 hours.

**B. Meal Periods** Employees are normally provided an unpaid meal break near the middle of the workday. Employees will be relieved from role accountabilities during unpaid meal breaks.

**C. Breaks** Employees working an eight-hour shift may receive two (15) minutes breaks and employees working a twelve hour shift may receive four (15) minute breaks. Such rest periods shall be considered a privilege and not a right, and shall never interfere

with proper performance of the work responsibilities and work schedules of each department. This fifteen minutes should include time traveling to and from the area where the break is taken. If a crew or employee is working on a project, it is advised that the break should occur on the worksite or in close proximity. Traveling back to a breakroom at one of the city facilities may not be the best use of a privileged break period.

### **Sec. 3.7     Hours of Work.**

The City Administrator or the City Council reserve the right to determine the regular, open business hours for City offices and facilities. Administrative office nonexempt employees shall be required to maintain a regular work schedule consistent with the established open business hours of the City. Employees may not start work earlier than their regularly scheduled hours or work later than their regularly scheduled hours unless they have obtained prior permission from their supervisor. This policy does not prohibit overtime hours worked by an hourly-paid employee provided authorization has been given by the Supervisor and/or the Department Head prior to incurring overtime. Supervisors have the responsibility to determine that funds are available before authorizing overtime work and to administer overtime as evenly as possible among all employees qualified to do the job. If an employee fails to obtain prior permission to work overtime, he/she will receive overtime pay in accordance with FLSA regulations but is subject to disciplinary action, up to and including termination.

### **Sec. 3.8     Health Fitness.**

- A.** It is the continuing responsibility of each employee to maintain the standards of physical and mental health fitness required for performing the essential duties of his/her position. An employee who becomes aware of a medical or mental disability that may affect his/her ability to perform the essential duties of his/her assigned position must inform the Human Resources Department. Failure to do so may result in disciplinary action up to and including termination.
- A.** When it is suspected that the health condition of an employee constitutes a hazard to persons or property, or prevents the employee from effectively performing his/her essential job duties, the employee may be required by his/her Department Head, upon consultation with the Human Resources Manager, to submit to a City-paid health examination, drug screening, and/or psychological examination. The employee shall be paid for the time required for such examination. Authorization for disclosure of all reports to the City shall be a condition of continued employment with the City.

- B.** The City offers a discounted rate to local fitness facilities. For information about taking advantage of this benefit consult with the Human Resources Manager.

### **Sec. 3.9 Solicitations.**

Solicitation of funds for any purpose during working hours on City property is permitted only with the approval of the Department Head and as may be authorized by the City Administrator. Failure to obtain such authorization prior to solicitation of funds may lead to disciplinary action up to and including termination of employment.

### **Sec. 3.10 Separation Requirements.**

- A.** In order to resign in good standing, an employee is expected to provide at least two (2) weeks written notice of the intention to separate from employment. Failure to provide this notice results in the City Administrator having authority to revoke terminal pay covering up to 80 hours of unused vacation leave to which an employee may be eligible. Insufficient notice by the employee may also result in the employee being considered ineligible for rehire.
- B.** An employee who is the bearer of a City purchasing card and has filed either verbal or written notification to a supervisor of intent to resign from employment may be required to surrender the purchasing card upon the date the notification is provided.
- C.** An employee who has notified the City of his/her intent to resign shall schedule an appointment with Human Resources to discuss final pay and benefits along with the completion of an exit interview.
- D.** COBRA (Consolidated Omnibus Budget Reconciliation Act)

### **Sec. 3.11 Retirement/Pension Plan – Participation Requirements.**

The City is a participant in the Texas Municipal Retirement System (TMRS). All employees eligible under TMRS established guidelines are required to participate in the City's retirement program regardless of age at the time of employment, unless otherwise exempt under provisions of the Texas Municipal Retirement System.

A specified percentage of the employee's earnings, as determined by City Ordinance, shall be deducted from each paycheck and set aside, along with City's designated contribution, to guarantee a retirement income for life. The participation of the employee becomes effective on the date of employment with the City. All other provisions under this section are covered in detail in the Texas Municipal Retirement System Handbook,

which is provided to the employee through the Human Resources Department at the time of hire and upon enrollment of other employee benefits.

### **Sec. 3.12 Group Insurance.**

- A. Medical, Vision, and Dental Insurance:** All regular full-time employees are covered by medical, vision, and dental insurance upon completion of thirty (30) days of employment. Insurance coverage begins the first of the month following completion of thirty (30) days. The cost of providing this insurance to employees is paid by the City. This insurance provides for payment of hospitalization, major medical expenses, vision, and dental expenses up to limits of policy for illness and accidental injuries off the job. Coverage for other family members is available by payroll deductions at the end of thirty (30) days.
- B. Life Insurance:** The City provides group life insurance coverage for all regular full-time employees after being employed for thirty (30) days. Insurance coverage begins the first of the month following completion of thirty (30) days; the cost of providing this insurance to employees is paid by the City. The life insurance is payable in the event of death of an employee from any cause at any time or place while he is insured. Payment will be made to the beneficiary designated by the employee.
- C. Employee Assistance Program:** This program provides free and confidential assessments, short-term counseling, referrals, prevention, and education services for you and your dependents. A trained counselor is available 24/7, 365 days of the year to help employees and their dependents cope with life's stressors so that they can live a happy, productive lifestyle. The cost of providing this program to all full and part-time employees and their dependents is paid by the City.
- D. Air Evac Lifeteam Membership:** The City pays for this annual membership for all full-time employees, and part-time and volunteer fire fighters. This membership covers you and your family for emergency air transport with participating providers across 32 states. New membership to this program will begin 15 days after the employee begins work for the City of Early.

### **Sec. 3.13 Federal and Court Ordered Garnishments.**

- A. Child support wage withholding.** The City, upon receipt of a court order or letter signed by the employee, will automatically deduct child support in accordance with the directions contained in the court order or employee letter. An employee letter cannot supersede a court order. If child support is ordered by a court, another court order must be issued to cancel or modify the amount of the original court order.

- B. IRS garnishments.** The City will adhere to any wage garnishment issued by the Internal Revenue Service. A garnishment issued by the IRS must be released by the IRS.

### **Sec. 3.14 Use of City Property.**

Employees who are assigned tools, equipment, vehicles, or any other City property are responsible for them and for their proper use and maintenance. Personal use of City property is not permitted. Violation may result in disciplinary action to include possible termination and/or possible prosecution.

- A. Maintenance.** An employee who is assigned equipment or a vehicle is responsible for the condition and operation of that vehicle. Maintenance Log must be kept and updated each time an item is checked. The following items must be checked at a minimum each time fuel is added to the vehicle:

1. Engine oil level;
2. Automatic transmission oil level;
3. Engine coolant;
4. Fuel level;
5. Windshield washer fluid;
6. Belt and hose condition;
7. Tire air pressure;
8. Overall interior and exterior appearance;
9. Other items as applicable to specific vehicles.

- B. Department(s) Maintenance Policy.** The Department head may establish policies that require more detailed and frequent maintenance checks and records.

### **Sec. 3.15 Replacement of City Equipment.**

Any employee who loses or damages City equipment must make a written report, documenting the circumstances, to the immediate supervisor who will submit the report for review by the Department Head. Determination of an employee's financial responsibility for replacement or repair of the equipment will be made by the Department Head, or by the action of the Accident Review Board.

### **Sec. 3.16 Possession of Weapons.**

**A. Definitions.** In this section:

1. CITY WORK SITE includes:
  - a. City buildings and real property;
  - b. Other assigned work locations;
  - c. City vehicles and equipment other than approved take home vehicles; and
2. CITY BUILDING means a building or portion of a building owned, leased, or otherwise controlled by the City.

**B. Prohibition.** It is the policy of the City that a City employee shall not carry on or about his or her person, any instrument or weapon that is specifically designed, made, or adapted for the purpose of inflicting serious bodily injury or death, including, but not limited to, clubs, firearms, handguns, illegal knives, explosives, crossbows, bows and arrows, throwing stars, and knuckles, regardless of whether or not the person is licensed by the State of Texas to carry a concealed handgun:

1. at a City work site;
2. in any City building; or
3. while conducting City business.

**C. Exemptions.** This section will not prohibit an employee from the following:

1. A peace officer, and animal control personnel, or firefighter commissioned and/employed by the City and carrying or using a handgun or weapon in the performance of their duties to the City.
2. From properly storing and securing a handgun in an approved take-home vehicle provided that the handgun is secured in the locked vehicle and kept out of site;
3. in the employee's private vehicle if the employee is licensed by the State of Texas to carry a concealed handgun or otherwise authorized and not prohibited by the laws of this country or state;
4. from storing an appropriately secured weapon in the employee's vehicle or approved take-home vehicle parked at a City Work Site; or

- D. Department Requirement.** A Department that is authorized by this policy to carry a handgun or weapon will be required to establish a policy and procedure addressing the minimum requirements below:
1. That the employee comply with Federal and State laws, and the Policy of the City of Early;
  2. If open carry will be allowed or not;
  3. What the minimum training and qualification will be to include the frequency, the training course, and documentation;
  4. A description of the type of firearms and weapons allowed;
  5. The authorized locations on the employee's person where it can be carried and the type of retention holster required;
  6. Under what operational situations the firearm or weapon is not allowed to be worn; and
  7. Where the firearm or weapon is secured when not worn on the employee's person;
  8. How the employee will be notified of policy changes or updates.

### **Sec. 3.17 Secondary Employment.**

- A.** The City does not wish to control the personal affairs of its employees or regulate their personal time. However, because outside activities such as holding a second job may interfere with, or detract from, an employee's work on behalf of the City, work for other employers shall be disclosed and approved. Employees will not be permitted to hold another job (including self-employment and volunteer work) that might discredit the City, result in a conflict of interest (or potential conflict of interest) or result in anything less than a satisfactory performance of the employee's regular and normal duties on behalf of the City. Other outside activities that similarly distract from an employee's ability to satisfactorily perform his or her job with the City are also discouraged.
- B.** Before engaging in self-employment or employment with another employer, the employee must submit a written request and obtain written authorization from his/her Department Head. A copy of the request and authorization will be filed with the Human Resources Manager to be maintained in the employee's personnel file. Failure to acquire prior written approval is grounds for disciplinary action, up to and



including termination. The employee's Department Head or the City Administrator may revoke approval of secondary employment at any time.

- C.** Under no circumstances may an employee on FMLA leave, sick leave, disability leave, or workers' compensation leave work another job (whether for pay, as a volunteer or as self-employment), unless expressly authorized in writing by the City Administrator. The City will not provide leave benefits for injuries or illnesses suffered as a result of another job. Violation of this provision may result in disciplinary action up to and including termination.

### **Sec. 3.18 Breastfeeding Support.**

- A.** In order to allow employees to take advantage of the many health benefits of breastfeeding, and in compliance with the Fair Labor Standards Act, the City provides reasonable break time for an employee to express breast milk for her nursing child for one (1) year after the child's birth each time such employee has need to express the milk. The City will also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.
- B.** All women who breastfeed their child and who need to express milk during the working day will work with their supervisor and Human Resources to determine how best to accommodate the needs of the mother while still accomplishing the performance of her job.
- C.** Supervisors will allow flexible working arrangements. Women may use their break and lunch time to express milk. Sick or Vacation hours may also be used to express milk if needed. Breaks to express milk should not last longer than 30 minutes. If an employee needs to take more than two breaks during the work day to express milk, the employee will need to use personal time (lunch, sick and/or vacation hours).
- D.** Human Resources will work with each nursing mother to determine a private area in which they may express milk. Milk may be placed in City refrigerators provided that it is appropriately marked.

## ARTICLE 4 COMPENSATION

### Sec. 4.1 Salaries.

All pay ranges of City employment shall be identified in the Compensation Pay Plan approved by the City Council. Any change in the schedule must be approved by the City Council.

### Sec. 4.2 Time Records.

By law, the City is obligated to keep accurate records of the time worked by employees. Time is maintained utilizing department designated time sheets. Leave request forms must be completed and submitted with time sheets for any leave taken.

Employees are responsible for accurately maintaining time records. No one may record hours worked on another employee's time sheet. Tampering with employee time records is cause for disciplinary action, up to and including termination. Employees are responsible for notifying their supervisor in the event of any errors identified on the time sheet.

### Sec. 4.3 Exempt Employees.

**A. Function and pay.** Exempt employees are paid on a fixed salary basis regardless of the number of hours worked unless the employee is absent for a full day and:

1. permission has not been sought or has been sought and denied
2. accrued leave has been exhausted; or
3. the employee is authorized to use leave without pay

An exempt employee's pay shall not be changed unless directed and authorized by the City Administrator and/or the City Council.

Exempt employees do not receive overtime pay but may take compensatory leave at the convenience of the department and with the authorization of the Department Head and/or Director.

#### **Sec. 4.4 Compensation for Overtime Work.**

- A. Weekly Overtime.** A nonexempt employee is entitled to overtime pay for all hours worked in excess of 40 during a seven-day (7) work period. For purposes of computing weekly overtime, the first seven days on a payroll will constitute one seven-day work period, and the second seven (7) days on a payroll will constitute a second seven-day work period. Working of overtime hours and the method of compensation must be approved in advance by the appropriate Supervisor or Department Head. The Department Head may require a written understanding or agreement with an employee on compensation for overtime work.
- B. Payment of Cash for Overtime Worked.** The City reserves the right to pay any non-exempt employee cash for any overtime worked in lieu of banking compensatory hours. Employees may not elect to take overtime hours as compensatory hours unless the use of compensatory time has been authorized, in writing, by the City Administrator.
- C. Exception.** This section does not apply to nonexempt sworn employees of the Police and Fire Departments.

#### **Sec. 4.5 Overtime Compensation for Sworn Employees of the Police Department.**

- A. Weekly Overtime.** A nonexempt sworn employee of the Police Department is entitled to overtime pay at the overtime rate, for all hours worked in excess of 80 during a fourteen-day work period.
- B. Payment for Overtime Worked.** The City reserves the right to pay any non-exempt employee cash for any overtime worked in lieu of banking compensatory hours. Employees may not elect to take overtime hours as compensatory hours unless the Department Head has obtained written authorization from the City Administrator.

#### **Sec. 4.6 Overtime Compensation for Sworn Employees of the Fire Department.**

- A. Weekly Overtime.** A nonexempt sworn employee of the Fire Department who works a fourteen-day work period is entitled to overtime pay at the overtime rate, for all hours worked in excess of 80 during a fourteen-day work period.
- B. Overtime for Fire Suppression Employees.** A nonexempt sworn employee of the Fire Department who works a 28-day, 212 hour work period, is entitled to overtime pay for all hours worked in excess of 212. For hours worked in excess of 212 in a 28-day cycle,

fire suppression employees shall receive additional compensation at the overtime rate.

- C. Payment for Overtime Worked.** The City reserves the right to pay any non-exempt employee cash for any overtime worked in lieu of banking compensatory hours. Employees may not elect to take overtime hours as compensatory hours unless the Department Head has obtained written authorization from the City Administrator.

#### **Sec. 4.7 Pay Corrections or Adjustments.**

Every effort is made to avoid errors in any paycheck. If an employee believes an error has been made, the employee should tell their supervisor immediately. The Supervisor will take the necessary steps to research the problem and to assure that any necessary correction is made promptly. If an employee is overpaid, the amount of overpayment will be deducted from their next paycheck.

#### **Sec. 4.8 Paid Leave.**

- A.** For purposes of calculating overtime hours for all employees, other than fire suppression employees, paid leave will not be counted as worked time. An employee is charged with paid leave only on days the employee would otherwise have been scheduled to work. No more than 40 hours paid leave may be charged in one seven-day work period.
- B.** Fire suppression employees working a 28-day, 212 hour work cycle are annually scheduled to work 2920 hours of which 164 hours is scheduled overtime. The City Council has determined overtime compensation should be paid for those 164 hours of scheduled overtime regardless of whether or not the employee actually works all of the time scheduled. Accordingly, paid leave will be counted as time worked for fire suppression employees working a 28-day, 212-hour work cycle when the paid leave is substituted for part of the 2920 hours scheduled annually. When paid leave is substituted for any other work time, the paid leave will not be counted as time worked; rather, the employee must actually work the hours to earn overtime compensation.

#### **Sec. 4.9 Longevity Pay.**

All full-time employees will receive \$00.03 per hour per years of service longevity pay. Longevity pay shall commence upon completion of one (1) year of service to the City and continue annually on the anniversary of employment.

#### **Sec. 4.10 Overtime Rate.**

All nonexempt employees will be paid for overtime worked at the rate of 1½ times the employee's regular hourly rate of pay. For purposes of calculating overtime pay, this hourly rate shall include base, incentive, and/or certification pay.

#### **Sec. 4.11 Overtime on Holidays.**

A nonexempt full-time regular employee who is required to work on an official paid holiday will be paid eight (8) hours of holiday pay at a regular rate of pay in addition to his/her regular pay. Any Police Officer working on a holiday will be paid holiday pay at the regular rate for same number of hours for the regular scheduled shift they work in addition to his/her regular pay for that shift.. A fire suppression employee working a 28-day, 212 hour work period who is required to work on an official paid holiday will be paid twelve (12) hours of holiday pay at a regular rate of pay in addition to his/her regular pay. Department Heads are responsible for assuring compliance with the provision of this policy. The City may elect to bank the holiday hours instead of payment on that pay period.

#### **Sec. 4.12 Authorization for Overtime.**

An employee shall not be permitted to work overtime unless authorization has been given by the Department Head. The Department Head has the responsibility to determine that funds are available before authorizing overtime work. A Department Head may authorize overtime under the following circumstances:

- A.** Hours worked in excess of the number of regular hours during the designated work period of the employee;
- B.** A Call-Back for an emergency if otherwise off duty;
- C.** Attendance at an approved/required training class or meeting by the Department Head if time for attendance is in addition to the employee's regular work schedule.

#### **Sec. 4.13 Documentation of Overtime.**

The Department Head shall maintain records of all overtime worked by nonexempt employees using the standard City time sheet and submit with payroll timesheet records. Department Heads are required to maintain overtime records within the department and these records are subject to review under the City Administrator's direction. Payment for overtime work shall be itemized separately on the time and attendance report.

The records must include the following information:

- A.** Number of overtime hours worked each work week or work period;
- B.** The reason for the overtime hours;
- C.** Number of overtime hours paid each work week or work period and the rate paid;
- D.** Number of compensatory hours accumulated and taken each work week or work period;
- E.** Number of compensatory hours compensated monetarily, the amount paid, and the date of payment; and
- F.** Any written understandings or agreements with respect to the accrual and use of compensatory time.

#### **Sec. 4.14 Call Backs.**

An employee who is contacted, but is able to perform the work from home will be paid for the actual hours worked.

An employee who is contacted and must return to the work site outside of regularly scheduled work hours due to the employee's failure to properly perform his/her duties or due to the employee's own neglect or negligence will be paid for the actual hours worked.

An employee who is contacted and must return to the work site (due to no fault of his or her own) outside of regularly scheduled work hours will be paid a minimum of one (1) hour, or the actual hours worked, whichever is greater. If the call back merges with the employee's regularly scheduled working hours, the employee will be paid for the actual hours worked.

This section does not apply to exempt employees.

#### **Sec. 4.15 On Call.**

Policies for on call pay shall be established within the Department Policy by the Department Head and approved by the City Administrator through the annual budget process.

### **Sec. 4.16 Social Security.**

All city employees are covered under the Federal Insurance Contributions Act (FICA) in accordance with Federal Law.

### **Sec. 4.17 Payment of Compensation upon Employee's Death.**

- A.** Any employee may, by written notice filed with the Human Resources Manager, designate a person or persons to whom, in case of one's death, payment shall be made of any amounts due for services. The employee may withdraw or change this designation without the consent of the person designated.
- B.** If no such designation is filed, and if no application has yet been made for the probate of a will or for administration of the estate, such payment shall be made to the employee's spouse. If there be no spouse, the amount shall be paid to such of the children as are of lawful age. If there be no such children, the amount shall be paid to the executor or administrator of his estate upon application.
- C.** Any person receiving payment under subsection B, above, shall sign an agreement to indemnify the City against all claims asserted by others by the making of such payments.

### **Sec. 4.18 Paid Part-Time Fire Fighters.**

- A.** Part-time Fire Fighters are employees of the City of Early and are hired and work at will. These employees' hours are subject to change as a condition of employment.
- B.** The standard work period for fire suppression personnel is 28 days. The standard number of hours worked during this work period for part-time is not more than 160 hours.
- C.** Part-time Fire Fighters are subject to some but not all benefits of full-time employees

#### **Benefits not included are:**

- 1.** Overtime
- 2.** Paid Leave (vacation, holidays, sick days, funeral leave ect.)
- 3.** Retirement
- 4.** Medical Coverage other than workman's compensation.

- D.** All Part-time Fire Fighters are subject to general orders, operational procedures, protocols, and State/Federal requirements.
- E.** These general orders, operational procedures, and protocols shall be approved in writing by the City Administrator.
- F.** All Part-time Fire Fighters are required to hold in good standing, and maintain the necessary licensing and certification by the state to work as a paid Fire Fighter.

**Paid On Call Fire Fighter** To better serve the citizens of Early and increase response time, the City of Early and the Early Fire Department have established a paid on call program beginning October 1, 2017. This program provides 365 days a year paid on call coverage in the evenings and at night to guarantee a response to emergency calls.

- G.** It is the responsibility of the Fire Chief and the City Administrator to establish minimum qualifications for the paid on call Fire Fighter.
- H.** The minimum qualification for a Fire Fighters to be eligible for the paid on call will be that the Fire Fighter be a certified Fire Fighter with a certification as an EMT
- I.** Pay for the on call Fire Fighter will be determined by the City Administrator and presented for approval to the City Council as a part of the annual budget process.
- J.** The Fire Chief will establish General Orders within the Department Policy and protocols that govern the paid on call program, and response of such Fire Fighter to call outs.

#### **Sec. 4.19 Volunteer Fire Fighter Compensation Plan.**

- A.** The City Administrator with the City of Early Fire Chief and approval of the Early City Council will develop compensation benefits for qualified volunteer Fire Fighters who volunteer as a part of the Early Volunteer Fire Department. From time to time this compensation will be reviewed, modified, and added to as a part of the fiscal annual budget process.

#### **Sec. 4.20 Employee Relocation Cost.**

- A.** The purpose of this policy is to comply with Federal Guidelines in accordance of the Uniform Guidance 2 CFR 200 requirements
- B.** Relocation cost are not paid to existing employees or upon recruitment of a new employee.



- C.** It is at the discretion of the City Council to adopt procedures or policies to pay for relocation cost if such need should arise.

#### **Sec. 4.21 Employee Pay for Travel And Training.**

- A.** Non-exempt employees will be paid their normal hourly rate or over-time rate if applicable for the actual amount of time spent for approved training that relates to the employees job description. This time does not include optional after hours socials or events. The Department Head and the employee should schedule training to avoid over-time if at all possible.
- B.** Non-exempt employees will be paid their normal hourly rate or over-time rate if applicable for the actual amount of time spent for approved travel that relates to the employees job description. This does not include travel to and from work under the normal commute to work. The Department Head and the employee should schedule travel to avoid over-time if at all possible.
- C.** Any anticipated over-time from travel or training should be included in the Travel/Training request form.

## ARTICLE 5 LEAVE POLICIES

### Sec. 5.1 Holidays.

- A. Eligibility.** Full-time regular employees are eligible for paid holiday leave. When an official paid holiday occurs on a scheduled workday of an employee who works the day or shift before and following the holiday, or is on approved leave the employee is entitled to holiday leave. Full-time regular employees shall receive pay for eight (8) hours of holiday pay. Fire suppression employees working a 28-day, 212 hour work period shall receive ten (10) hours of holiday pay.
- B. Worked holiday.** As many employees as possible shall be given each holiday off without loss of pay. Employees who are required to work on a designated holiday shall be paid in accordance with Section 4.11. Paid holiday leave does not apply to part-time, temporary, or seasonal employees.
- C. Loss of holiday pay.** An employee will not receive pay for a holiday if the employee is:
1. terminating employment with the City, and the last day as a paid employee is the work day before a paid holiday;
  2. on leave of absence without pay the work day before the paid holiday;
  3. absent on the work day before or following a paid holiday without approved leave or without approval of the employee's supervisor in advance; or
  4. absent without leave on a holiday when the employee is scheduled to work.
- D. Holidays designated.** The following days are the official paid holidays for the City:
1. New Year's Day (January 1);
  2. Martin Luther King Day (January 20<sup>th</sup>)
  3. President's Day;
  4. Good Friday;
  5. Memorial Day;
  6. Independence Day (July 4);
  7. Labor Day;

8. Veterans Day
  9. Thanksgiving Day;
  10. Day after Thanksgiving Day;
  11. Christmas Eve (December 24)
  12. Christmas Day (December 25)
  13. Birthday Holiday (as determined by the date of birth of each employee. The Birthday Holiday must be taken in 8-hour increments within the week of the employees birthday)
- E. Religious holidays.** An employee wishing to observe a religious holiday not designated in Subsection (d), shall, at the employee's option, be given vacation leave (if available), leave without pay or have the time charged to other appropriate leave.
- F. Substitute holidays.** If a designated holiday falls on a Saturday, the preceding day shall be deemed the holiday. If a designated holiday falls on a Sunday, the following day shall be deemed the holiday.
- G. Holiday Pay –** Total hours for Holiday Pay shall never exceed eight (8) hours for full-time regular employees regardless of the number of hours that may be scheduled to work or not worked on a City-designated holiday. Total hours for Holiday Pay shall never exceed eight (8) hours for patrol officers of the Police Department who take off or are scheduled off for the Holiday. Any Patrol Officer scheduled to work on a holiday will earn compensation time at the same number of hours for the shift they work. Hours worked will be paid at their regular rate. Total hours for Holiday Pay shall never exceed ten (10) hours for fire suppression employees working a 28-day, 212 hour work period regardless of the number of hours that they may be scheduled to work or not worked on a City-designated holiday. Any holiday/compensation hours banked must be used within one calendar year or they will be forfeited.

## **Sec. 5.2    Vacation Leave.**

- A. Eligibility.** Full-time regular employees earn vacation leave in accordance with this section, but vacation leave may not be taken until the employee has completed twelve (12) months of service. Vacation leave does not vest during the first twelve (12) months of employment, and vacation leave is forfeited if the employee terminates employment before completing twelve (12) months of service.

- B. Vesting and accrual.** An employee's accrual of vacation leave vests upon completion of twelve (12) months full time continuous employment. Except as provided in Subsection (d), full-time employees shall earn vacation leave as follows:

Regular Employees Annual		Annual Accrual
Service	Accrual	Rate
1 year	40 hrs	40 hrs
2-8 yrs	80 hrs	80 hrs
8+ yrs	120 hrs	120 hrs

- C. Use of vacation leave.** Employees are encouraged to use their vacation time each year. Vacation leave shall be taken at a time approved by the Department Head giving due consideration to the needs of the City and interests of the employee. Normally, no more than 10 working days of vacation shall be taken consecutively without prior approval of the City Administrator.

- D. Accumulation.** Employees' accumulated vacation will be capped at a maximum of 160 hours plus their annual vacation accrual hours.

- E. Miscellaneous vacation rules.** Vacation leave will be administered according to the following rules:

1. Vacation time will be charged only for time during which the employee would ordinarily have worked;
2. If an official paid holiday falls within an employee's vacation leave, the employee will not be charged a vacation day for the same day as the holiday;
3. Employees who are transferred, promoted, or demoted shall retain accrued vacation time;
4. With the approval of the Department Head, vacation may be taken in eight (8) hour increments or less (twelve (12) hours or less for Fire Suppression employees);
5. Vacation time shall not be advanced to employees;
6. Department Head vacations require City Administrator approval.

- F. Vacation Leave "Buy Back".** As a part of the City's "Buy Back" provisions, a full-time employee having accrued over 160 hours may receive payment for up to 40 hours of vacation leave so long as does not lower the employee's accumulated hours below the 160 hours. This "Buy Back" is for up to 40 hours in one fiscal year and must

be taken as one lump sum payment. All the necessary payroll taxes and deductions apply. Payment shall be based on the employee's rate of pay at the time of the "Buy Back". The request for the "Buy Back" can be made by filling out and submitting the designated request form. The pay for this "Buy Back" will be received on the employees next pay period after the form is submitted and approved.<sup>1</sup>

- G. Payment upon separation or Transition to Part Time Status.** An employee who has completed at least twelve (12) months of full time continuous service with the City, upon separation from employment or transition to part time status, is entitled to be paid for all accrued vacation leave.

### **Sec. 5.3 Sick Leave.**

- A. Eligibility.** Full-time regular employees shall accrue sick leave in accordance with this section. Sick leave will accrue from date of hire, but may not be used until after an employee has completed 60 days of continuous full-time employment with the City.

**B. Accrual.**

1. All full-time employees shall accrue 4 hours of sick leave per month in each calendar year, totalling 6 days or 48 hours per year. If an employee is on approved unpaid leave for two weeks or more, accrual will cease until such time as the employee returns to full time duty.

**C. Sick Leave Use.** Sick leave with pay may be used when:

1. an employee is incapacitated from the performance of the employee's duties due to an illness, surgical procedure, or injury;
2. a medical, dental, or optical examination or treatment is necessary; provided that approval of the supervisor is obtained;
3. an employee is incapacitated by or recovering from pregnancy, miscarriage, or childbirth;
4. an employee has been exposed to a contagious disease that would warrant quarantine by a health officer, and the employee's presence on the job would jeopardize the health of others; or

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<sup>1</sup> Added 08/24/2020



## **Sec. 5.4 Personal Leave.**

- A.** Each regular full-time employee shall be credited 16 hours of personal leave on January 1<sup>st</sup> of each year after they have completed their twelve month provisional period. New employees will receive 8 hours (1 day) of personal leave on their first anniversary date upon completion of the first twelve (12) months of full time employment with the City.
- B.** Employees may take personal leave for any reason with approval of their Department Head.
- C.** Non-exempt employees may take personal leave in hourly increments.
- D.** Personal leave shall not accrue from one year to the next. Any unused personal leave will be forfeited on December 31<sup>st</sup> of each year.
- E.** Unused personal leave is not paid upon separation.

## **Sec. 5.5 Injury Leave.**

- A. Eligibility.** A full-time regular employee that is determined to have been injured in the course of employment with the City and has been awarded workers compensation benefits is eligible for injury leave (see Wage Continuation Benefits). An employee may be granted injury leave for a maximum of 180 days, and any time off work related to the injury shall not be counted against the employee's sick or vacation leave during the first 90 days following the date of injury. Absences must be substantiated with Physician's Statement. The City will fully comply with the ADA in all matters related to injury leave.
- B. Injury Leave Pay and Benefits.** Injury leave pay will be the difference between the employee's regular pay and the wage amount paid by workers compensation, and is to be identified as "supplemental pay". Employees on injury leave continue to accrue vacation, sick leave, and other benefits. An injured employee may be eligible for modified duty in accordance with Section 6.03.
- C. Responsibility.** The injured employee is responsible for providing Human Resources with documentation from the attending physician to assist in determining the potential duration of the injury leave. This information must be provided as soon as is feasible following the determination that injury leave is required.

## **Sec. 5.6     Military Training Leave.**

- A. Eligibility.** An employee who is a member of the Texas National Guard, Texas State Guard or reserves of the United States Armed Forces shall, upon notification to the Department Head and submission of appropriate documentation, when available, be granted leave for a period required to perform active duty for training. A temporary employee will be given authorized leave without pay for this purpose.
- B. Definition.** Active duty for training means to be engaged in short periods of authorized military training such as cruises, training schools, weekly or weekend drills, and other similar activities.
- C. Length of leave.** In accordance with Section 431.005 of the Texas Government Code, an employee engaged in authorized military training or duties will receive pay and accrue benefits as if the employee were on the job, for up to 15 work days (three calendar weeks) in any one year.
- D. Leave in excess of 15 days.** An employee on military leave who is ordered or authorized to participate in training or other duty for more than 15 work days in one (1) calendar year will be placed on leave without pay for any time in excess of 15 work days.
- E. Notice to Department Head.** An employee shall give as much advance notice as possible to his/her supervisor regarding dates for military training leave. Annual or quarterly training schedules should be given to the Department Head as the schedules become available to the employee.
- F. Rescheduled workdays.** An employee who participates in weekend military training that occurs on a scheduled work day may reschedule a work day, if approved by the Department Head, rather than have the absence charged to military leave, if the employee reschedules the work day within the same work week.

## **Sec. 5.7     Military Active Duty Leave.**

- A. Eligibility.** Any employee who leaves a position with the City for the purpose of entering any branch of the United States Armed Forces, including a reserve component, for extended active duty, shall be placed in military active duty status and granted leave without pay. The employee should give a supervisor advance notice of the employee's intent, when possible, and, for reemployment purposes, submit a copy of the orders for inclusion in the employee's personnel record, when available.



- B. Use of military leave and vacation leave.** While serving on military active duty, an employee may elect to use military training leave and any accrued vacation leave, or similar leave accrued before the commencement of such service.
- C. Length of active duty.** In accordance with Section 4312, Title 38, United States Code, an employee may serve a total of five years on active duty in the armed forces and still be eligible for reemployment. An employee's right to reemployment is not protected for periods of military active duty longer than five years.
- D. Reemployment.** An employee who returns from active duty as a member of the armed forces of the United States is entitled to reemployment in the position the employee would have been employed if continuous employment with the City had not been interrupted by military service; or in the same position held upon entrance to active duty; or in a position of comparable seniority, status and pay, if the employee:
  - 1.** is physically and mentally qualified to perform the duties of the position;
  - 2.** was discharged, separated, or released from military active duty under honorable or general conditions;
  - 3.** has not been on military active duty leave for more than five years; and
  - 4.** makes written application for reemployment within 90 days after discharge, separation, or release from military active duty and presents evidence of the discharge, separation, or release from military active duty.
- E. Leave for military physical exam.** An employee called for a military pre-induction physical examination will be allowed a reasonable time with pay, including travel time, to take the examination.
- F. Credit for military service. In accordance with USERRA,** an employee with the City upon reemployment following military active duty will be allowed full credit for time spent in the military service for the purpose of computing eligibility for vacation and sick leave. The employee will be entitled to all seniority, rights and benefits that the employee would have attained had the employee remained continuously employed with the City.

## **Sec. 5.8    Funeral Leave.**

A full-time City employee who has completed twelve (12) months of continuous full time service may be eligible for up to 40 hours of funeral leave per calendar year in cases of the death of a member of the employee's immediate family. In order to establish eligibility for funeral leave, the employee shall be required to disclose the relationship of the deceased person to the Department Head. An employee not otherwise meeting the

qualifications under this provision may claim the absence against available paid leave. The employee would otherwise be required to take Leave without pay if no leave is available. Funeral leave with pay does not accumulate.

For purposes of this policy, "immediate family" is defined to include the employee's spouse, child, brother, sister, mother, father, grandparents, grandchildren, stepparents, step-children, and shall include the spouse's immediate family. Step siblings, and a legal guardian may also be considered as immediate family.

### **Sec. 5.9 Leave Request.**

An employee, that with advanced notice, wishes to use leave should fill out the approved leave request form with enough advanced notice for a Department Head to review, consider, and approve the request based on various factors.

- A.** It is the responsibility of the employee to know if sufficient paid leave is available to fill their leave request.
- B.** In the event of an unanticipated absence such as sick leave, the employee will fill out the request when returning to work so that the leave is documented and available with the employee's timesheet.
- C.** All Department Heads will insure that request for leave are handled fairly and expeditiously, taking into accounts the needs of both the employee making the request, the availability of paid leave, and the organization.
- D.** After the request is considered by the Department Head, the determination of the leave will be recorded and a copy provided to the employee and the City Administrator for final review.
- E.** A copy of all leave taken in a pay period will be provided with the employee's time sheet to the City Secretary for calculation of the employees pay.

### **Sec. 5.10 FMLA Leave.**

- A. Federal law.** FMLA leave is provided in compliance with the Family and Medical Leave Act of 1993. When questions arise concerning FMLA leave that are not answered in this section, the Department Head or Human Resources Manager should refer to federal regulations, 29 C.F.R. Part 825, for additional guidance. Family and Medical Leave Act regulations, overseen by the US Department of Labor, require employers, including City of Early, to advise employees of their potential FMLA entitlements. Failure to do so places the City in non-compliance with Federal law and

regulations. These regulations are controlling in any matter on which this policy is silent.

**B. Eligibility.** An employee is eligible for FMLA leave if the employee has been employed by the City:

1. for at least twelve (12) months; and
2. for at least 1,250 hours of service during the previous 12-month period.

The 12-month period an employee must have been employed with the City to be eligible for FMLA leave need not be consecutive months. However, prior service which occurred more than seven (7) years prior to the request for leave will not be considered in determining whether the employee worked for the City for at least twelve (12) months.

**C. Entitlement and reasons for leave.**

1. An employee who is eligible for FMLA leave is entitled to take a total of 12 work weeks of leave during a 12-month period for one or more of the following reasons:
  - a. Because of the birth of a child of the employee and in order to care for the child;
  - b. Because of the placement of a child with the employee for adoption or foster care;
  - c. In order to care for the spouse, child, or parent of the employee, if the spouse, child, or parent has a serious health condition;
  - d. Because of a serious health condition that makes the employee unable to perform the functions of the employee's position; or
  - e. For any qualifying exigency arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation.
2. An employee who is eligible for FMLA leave is entitled to take 26 weeks of leave during a single 12-month period for the employee to care for a spouse, child, parent, or next of kin who is a service member undergoing medical treatment, recuperation, or therapy, is on out-patient status, or is on the temporary disabled retired list for injury or illness.

**D. Calculation period.** A "rolling" 12-month period during which an employee is eligible for 12 work weeks of leave will be measured backward from the date an employee

uses any FMLA leave under Subsection (c)(1)(A) – (c)(1)(E). The single 12-month period during which an employee is eligible for 26 work weeks of leave will be measured from the first day the eligible employee takes FMLA leave to care for the covered service member and ends twelve (12) months after that date for employees using FMLA leave under Subsection (c)(2).

**E. Expiration of entitlement to leave.** Entitlement to FMLA leave under Subsection (c)(1)(A) or (c)(1)(B) for the birth or placement of a child expires at the end of the 12-month period beginning on the date of the birth or placement.

**F. Leave taken intermittently or on a reduced leave schedule.**

1. Leave taken under Subsection (c)(1)(A) or (c)(1)(B) may not be taken intermittently or on a reduced leave schedule. Subject to Paragraph (2) below, Subsection (k)(2) and Subsection (l)(1), leave under Subsection (c)(1)(C), (c)(1)(D), (c)(1)(E) and (c)(2) may be taken intermittently or on a reduced leave schedule under certain circumstances. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under Subsection (c).
2. If an employee requests intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment, the City may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and that:
  - a. has equivalent pay and benefits; and
  - b. better accommodates recurring periods of leave than the regular employment position of the employee.

**G. Effect of worker's compensation leave.** FMLA leave shall run concurrently with leave taken by an employee as worker's compensation leave if the injury meets the criteria for a serious health condition.

**H. Exhaustion of paid leave.** An employee who takes FMLA leave must use and exhaust accrued sick leave, vacation leave, and any other applicable leave with pay, excluding compensatory leave, as part of the 12 or 26 work weeks of FMLA leave, before beginning leave without pay status. For employees on FMLA receiving wage continuation benefits as outlined in Section 6.06 in this policy manual, accrued sick leave, vacation leave and any other applicable leave will be utilized following exhaustion of the 90-day wage continuation provision. Accrued leave available following exhaustion of FMLA does not guarantee that additional leave will be granted to an employee. The City Administrator maintains the authority to make

employment determinations based on the individual circumstances and the impact to the department and/or City's operational needs at such time FMLA and any authorized extensions have been exhausted.

**I. Duties of employees.**

1. When the necessity for FMLA leave under Subsection (c)(1)(A) or (c)(1)(B) is foreseeable because of an expected birth or placement, the employee shall provide his/her Department Head with notice of the employee's intention to take FMLA leave, and shall be forwarded to Human Resources not less than 30 days before the date the leave is to begin. If the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide notice as soon as practicable.
2. When the necessity for FMLA leave under Subsection (c)(1)(C), (c)(1)(D), (c)(1)(E) or (c)(2) is foreseeable because of planned medical treatment or qualifying exigency arising from active duty or call to active duty, the employee:
  - a. shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the City, subject to the approval of the health care provider; and
  - b. shall provide Human Resources with not less than 30 days' notice, before the date the leave is to begin; except, that if the date of the treatment or qualifying exigency requires leave to begin in less than 30 days, the employee shall provide the notice as soon as practicable.
3. When an employee takes paid or unpaid leave for a reason that qualifies for FMLA leave, the employee shall include in the notice or request given to the Department Head, a description of the reason for the leave.
4. An employee giving notice for or requesting paid or unpaid leave does not need to expressly mention FMLA. If the employee states a reason that qualifies for FMLA leave, the employee has met the obligation of giving notice.
5. In the absence of unusual circumstances, nothing herein excuses an employee from complying with the requirement to notify his/her supervisor of an absence as required by Section 7.02 of these policies.

**J. City's notice to employee.**

1. Within five (5) business days of receipt of notice from an employee requesting paid or unpaid leave, Human Resources or designee shall notify the employee of the employee's eligibility to take FMLA leave and the employees' rights and

responsibilities for taking FMLA leave. This written information must be provided to the employee in a language in which the employee is literate.

2. Within five (5) business days of receipt of enough information to determine whether the leave is being taken for an FMLA-qualifying reason (e.g., after receiving certification) the City must notify the employee whether the leave will be designated and counted as FMLA leave.
3. For unusual circumstances involving notice and designation of FMLA leave, Human Resources should refer to 29 C.F.R. part 825.

**K. Spouses employed by the City.** If a husband and wife are both employed by the City, the aggregate number of work weeks of FMLA leave to which both are entitled is limited to 12 or 26 work weeks during any 12-month period, if the leave is taken:

1. under Subsection (c)(1)(A) or (c)(1)(B);
2. to care for a sick parent under Subsection (c)(1)(C); or
3. to care for an ill or injured service member under Subsection (c)(2).

**L. Certification required.**

1. Human Resources may require, by giving a written request to an employee, that FMLA leave under Subsection (c)(1)(C) or (c)(1)(D) be supported by a certification issued by the health care provider of the employee or the child, spouse, or parent of the employee. A certification must be furnished in a timely manner when requested. A certification must state:
  - a. the date on which the serious health condition commenced;
  - b. the probable duration of the condition;
  - c. the appropriate medical facts within the knowledge of the health care provider regarding the condition;
    - i. for purposes of leave under Subsection (c)(1)(C), a statement that the eligible employee is needed to care for the child, spouse, or parent and an estimate of the amount of time that the employee is needed to care for the child, spouse, or parent; and
    - ii. for the purposes of leave under Subsection (c)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee;

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certification must be furnished in a timely manner when requested. A certification must state:

- a.** whether the covered service member's injury or illness was incurred in the line of duty on active duty;
- b.** the approximate date on which the serious injury or illness commenced and its probable duration;
- c.** a statement or description of appropriate medical facts regarding the covered service member's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave.
- d.** information sufficient to establish that the covered service member is in need of care, and whether the covered service member will need care for a single continuous period of time and an estimate as to the beginning and ending dates for this period of time;
- e.** if an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment appointments for the covered service member, whether there is a medical necessity for the covered service member to have such periodic care and an estimate of the treatment schedule of such appointments;
- f.** if an employee requests leave on an intermittent or reduced schedule basis to care other than for planned medical treatment, whether there is a medical necessity for the covered service member to have such periodic care;
- g.** the following additional information:
  - i.** the name and address of the employer of the employee requesting leave, the name of the employee requesting leave, and the name of the covered service member for whom the employee is requesting leave to care;
  - ii.** the relationship of the employee to the covered service member;
  - iii.** whether the covered service member is a current member of the Armed Forces, the National Guard or Reserves, and the covered service member's military branch, rank, and current unit assignment;
  - iv.** whether the covered service member is assigned to a military medical facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces



receiving medical care as outpatients and the name of the medical facility or unit;

- v. whether the covered service member is on the temporary disabled retired list; and
- vi. a description of the care to be provided to the covered service members and an estimate of the leave needed to provide the care.

Invitational Travel Orders or Invitational Travel Authorizations issued to any family member to join an injured or ill service member at his or her bedside will be accepted in lieu of the required certification for the duration of the time specified in the orders or authorizations.

4. If problems or questions arise concerning the content of a required certification, Human Resources should refer to 29 C.F.R. Part 825.
5. If the City determines that a certification provided for leave under Subsection (c)(1)(C), (c)(1)(D) or (c)(2) is incomplete or insufficient, the City will provide the employee with seven calendar days to cure any deficiency. If the deficiency is not cured, the City has the right to either deny FMLA leave or contact the health care provider for purposes of clarification and authentication of the medical certification. Any contact with a health care provider will be made only by a health care provider, Human Resources or the City Administrator and, when necessary, upon receipt of a HIPAA authorization provided by the employee. If an employee refuses to provide a necessary HIPAA authorization and does not otherwise clarify the certification, the City may deny FMLA leave.
6. If the City has reason to doubt the validity of the certification provided for leave under Subsection (c)(1)(C) or (c)(1)(D), the City may require, at the expense of the City, that the employee obtain the opinion of a second health care provider designated or approved by the City. A health care provider designated or approved under this paragraph may not be employed on a regular basis by the City.
7. If the second opinion described in paragraph (3) differs from the opinion in the original certification the City may require, at the expense of the City, that the employee obtain the opinion of a third health care provider designated or approved jointly by the City and the employee. The opinion of the third health care provider is final and binding on the City and the employee.
8. If an employee submits a complete and sufficient certification in support of his or her request for leave because of a qualifying exigency, and the qualifying exigency involves meeting with a third party, the City may contact the individual

or entity with whom the employee is meeting for purposes of verifying the meeting or appointment schedule and the nature of the meeting. The City may also contact an appropriate unit of the Department of Defense to request verification that a covered military member is on active duty status.

**M. Health benefits.** The City will continue to provide health benefits to an employee while on FMLA leave at the level and under the conditions benefits would have been provided if the employee had continued in employment for the duration of the leave. Employees with dependents and/or optional supplemental coverages or on unpaid FMLA leave will be responsible for the payment of insurance premiums normally paid through payroll deductions. Failure to pay those premiums may result in loss of coverage. The City will recover the cost that the City paid for the health benefits during the period of paid leave if:

1. the employee fails to return to work after the period of leave to which the employee is entitled has expired; and
2. the employee fails to return to work for a reason other than:
  - a. the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under Subsection (c)(1)(C) or (c)(1)(D); or
  - b. other circumstances beyond the control of the employee.

**N. Delay or denial of FMLA benefits.**

1. The City may delay the taking of FMLA leave under the following circumstances:
  - a. if an employee fails to give timely advance notice when the need for FMLA leave is foreseeable, FMLA leave may be delayed until 30 days after the date the employee provides notice to the City of the need for FMLA leave;
  - b. if an employee fails to provide in a timely manner a requested medical certification to substantiate the need for FMLA leave, fails to provide clarification, or cooperate in the City's efforts to seek clarification, the continuation of FMLA leave may be delayed or denied.
2. If an employee fails to provide a requested fitness-for-duty certification to return to work which addresses the employee's ability to perform the essential functions of the employee's job, the City may delay restoration until the employee submits the certificate.

3. If the employment relationship terminates, an employee's rights to continued leave, maintenance of health benefits, and restoration cease under FMLA but benefits under COBRA will still be made available in accordance with the law.
4. If an employee fraudulently obtains FMLA leave, the City may deny job restoration and/or maintenance of health benefits.

### **Sec. 5.11 Other Leave with Pay.**

- A. Jury and other court leave.** When an employee is summoned to serve on a jury or grand jury or subpoenaed as a witness in a court of law on a scheduled work day, the employee will be excused from work and receive pay for the number of hours required for the jury duty or court subpoena; provided that:
1. the jury summons or subpoena creating the necessity for leave is presented to the Department Head the next work day after the employee receives it, so that arrangements for a replacement can be made, if needed;
  2. the employee notifies the Department Head if the employee is selected to serve on a jury or of any other circumstances that might result in the necessity for the leave to be extended;
  3. an employee will not be compensated if the employee is a party to the lawsuit, either civil or criminal, unless it is job related;
  4. paid jury and other court leave may not exceed forty (40) hours (48 hours for fire suppression staff) in any one (1) week and is limited to 20 work days in a calendar year;
  5. compensation paid to the employee for serving on a jury or as a witness is the property of the employee;
  6. temporary, seasonal, and part-time employees are not eligible for paid jury and other court leave unless it is work related.
- B. Voting.** An employee eligible to vote in a national, state, county, or municipal election, shall, when necessary, be allowed sufficient leave with pay to exercise this right. The requested leave must be approved by the Department Head.
- C. Special Leave.** A Department Head may grant employees special leave with pay and actual expenses to attend professional conferences, conventions or short schools, or to visit other cities in the interest of the City, as authorized by the City Administrator.

## Sec. 5.12 Other Leave without Pay.

- A. Eligibility.** Leave without pay, other than military leave and FMLA leave, is granted as a matter of administrative discretion. No employee is entitled to leave without pay as a matter of right, but it may be granted to any employee.
- B. When granted.** The City Administrator may grant leave without pay to an employee for the following reasons:
1. To participate in training or education that would result in increased job ability;
  2. To recover from illness or disability after FMLA leave has been exhausted; or
  3. In circumstances described in other parts of these policies.
- C. Benefits.** Except for military training or active duty leave and injury leave, benefits shall not accrue while an employee is on leave without pay, when leave exceeds time worked for any month. For purposes of TMRS service credits, if there is any month in which earnings cannot be reported to TMRS, the months of service in TMRS are reduced accordingly.
- D. Health Benefits.** Employees on leave without pay will be responsible for the payment of insurance premiums normally paid by the employee through payroll deductions. Failure to pay those premiums may result in loss of coverage.
- E. Return from leave.** When an employee who has been granted Leave Without Pay desires to return before expiration of the leave, the Department Head may require that reasonable notice, not in excess of 15 calendar days, be given. Except for FMLA leave, military training or active duty leave, an employee who returns to work after leave without pay which exceeds three (3) months, shall be given an adjusted service or seniority date and an adjusted anniversary date for merit review and vacation leave carry over purposes.
- F. Revocation of leave.** The City Administrator may revoke leave without pay upon finding evidence that the cause for granting leave without pay was misrepresented or has ceased to exist.

## Sec. 5.13 Absence without Leave.

Unauthorized absence without leave for 2 or more consecutive working days, or failure to return at the expiration of a leave is considered to be an automatic resignation or job abandonment. An automatic resignation may be rescinded by the Department Head if the employee presents satisfactory reasons for the absence within three (3) days of the

date the automatic resignation became effective. Employees not supplying satisfactory reasons for the absence may be deemed ineligible for re-hire. Automatic resignation or job abandonment results in an employee's forfeiture of vacation leave which might be otherwise payable upon termination.

#### **Sec. 5.14 Administrative Leave.**

When an employee is under investigation for an alleged crime, official misconduct or disciplinary matters, or is awaiting a hearing/trial, he/she may be placed on administrative leave with or without pay for the duration of the investigation or proceedings. If the investigation or proceedings clear the employee, he/she shall be eligible to resume work under such terms and conditions as may be specified by the City Administrator, which may include compensation of back pay if compensation was withheld.

#### **Sec. 5.15 Inclement Weather Policy.**

##### **Policy**

- A.** All employees are expected to make an effort to arrive at work each day prior to commencement of the work period, regardless of weather conditions. However, when inclement weather is forecasted or in effect, department heads may use their discretion in permitting employees who live outside the immediate vicinity to report for work one hour after the start of the employee's work day and/or be released one hour before the end of the employee's work day. For the purpose of this policy, "immediate vicinity" shall be defined to include Early and a 15-mile radius of City Hall.
- B.** When driving conditions, as a result of inclement weather, are such that an employee believes he/she would endanger his/her life or property in driving to work but the City has not been "officially closed", the employee should report to work at such time when conditions should improve.
- C.** When weather conditions are such that the City Administrator declares the administrative offices "officially closed" due to severe weather conditions, employees will be excused for the day, with pay and without being required to use accrued benefit time. The responsibility for designating those emergency service personnel who are required to be on the job regardless of weather conditions will rest with the Department Head and the City Administrator.

### **Employee Responsibility**

- A.** When driving conditions are such that an employee will not arrive at work prior to the commencement of the work period, he/she shall notify his/her supervisor immediately of his/her tardiness and expected time of arrival.
- B.** When driving conditions are such that an employee believes he/she would endanger his/her life or property in driving to work, but the City has not been "officially closed", the employee shall notify his/her supervisor immediately that he/she will not be reporting to work unless conditions improve. The employee shall contact his/her supervisor during the day providing an update on weather conditions to determine his/her ability to report to work.

### **Leave**

- A.** An employee working less than the employee's scheduled hours during any work period due to inclement weather conditions, will have accrued leave balances reduced by the number of hours missed including: floating holiday leave, if available; and vacation leave, if available. If no leave is accrued and available, employees will be granted leave without pay for hours not worked.
- B.** When the City Administrator declares the administrative offices "officially closed", regular full-time and part-time employees who are scheduled to work that day, other than emergency personnel, will be excused for the day without penalty or loss of pay.

### **Procedure for Official Closing**

The City Administrator shall notify the Executive Team, and the Human Resources Department that City administrative offices will be "officially closed" as soon as such decision has been reached. The Executive Team will, as soon as practical, contact their respective Department Heads notifying them of the "official closing". Department Heads are then responsible for notifying their supervisors, and supervisors are responsible for notifying their employees. Department Heads are also responsible for ensuring that Public Safety, emergency response, sanitation, water and waste water personnel that must still report for duty have been designated and report for duty.

Any adjustments outside of the above guidelines must be approved by the City Administrator.

## ARTICLE 6 INJURED OR ILL EMPLOYEES

### Sec. 6.1 Injury on the Job.

- A. Medical Care.** The City of Early is committed to assuring the health and safety of its employees. Realizing that accidents can and do occur, the City is diligent in seeing that proper care and procedure is followed.
- B.** The supervisor is responsible for ensuring that an employee who is injured or believed to have been exposed to blood borne pathogens, hazardous chemicals, or any contagious illness during the course of employment receives appropriate initial medical care. When notified that an employee has been injured and or exposed, a supervisor shall:
1. if qualified personnel are available, assure that first aid is begun;
  2. if the injury is serious, as may be indicated by, but not limited to, profuse bleeding, broken bones, unconsciousness, or shock, call for emergency medical transportation by calling 9-1-1.
  3. if the injury requires medical care but does not warrant emergency transport, assure that the employee is taken to the emergency care facility designated by the City. Subsequent to the initial medical treatment, and in accordance with Texas Worker's Compensation Commission regulations, an employee reserves the right to select his/or own attending physician within the network. Such change must be requested by the employee and approved by the Texas Worker's Compensation Commission.
- C. Reports.** Regardless of the severity of the injury or length of exposure, an employee who is able must report immediately to the supervisor any injury or exposure incurred in the course of his/her duties for the City of Early. The employee must make the initial report and provide it to his/her immediate supervisor who is then responsible for filing the report with the Human Resources Manager for proper and timely filing of the work injury/exposure claim to the City's insurance carrier. Additionally, all supervisors must submit a Supervisor Accident Form.
1. The employee, if able, must complete a First Report of Injury form and sign it. A supervisor's signature verifies the information and the supervisor is responsible to complete and forward a draft of the First Report of Injury form, along with the Supervisor Accident Form to the Human Resources Manager. These reports shall be filed within 24 hours of the occurrence on all injuries regardless of severity of the injury if at all possible, and under no circumstances shall it be filed more than 3 days following the injury. Failure to file the report in a timely manner may result in

disciplinary action. The Supervisor shall also be responsible to file an incident report to the appropriate Department Head for submission to the Accident Review Board for evaluation if the injury is severe and/or if there is reason to suspect that there is a pattern of similar injuries requiring review. This report shall be filed within 24 hours of the occurrence on all injuries regardless of severity of the injury. Failure to file the report in a timely manner may result in disciplinary action.

2. The Supervisor shall be responsible for informing the employee regarding the appropriate action to follow concerning a work injury. In the absence of a Supervisor, the employee should contact the Human Resources Manager or designee. The employee should experience no out-of-pocket medical expenditure due to a work injury.
3. It is the employee's responsibility to provide Human Resources with status updates for proper claim reporting and record maintenance.

## **Sec. 6.2 Medical examination.**

- A. **When required.** An employee who has been ill or injured on the job shall obtain a medical examination from an approved medical provider of the employee's choice or the City physician if:
  1. the employee has received emergency treatment at a hospital; or
  2. the Department Head has documented reason(s) to believe that the physical or mental condition of the employee could result in danger to persons or property or that it interferes with normal work performance, and the Department Head instructs the employee to report for examination.
- B. **Physician's release.** If it is determined that an employee returning from injury or illness must have a medical examination before resuming work, the employee must obtain a written release from the employee's attending physician or the City physician, indicating the employee's fitness to return to duty. The release must stipulate what kind of duty is permitted, specify limitations, if any, and state the date of the employee's release from medical care. This release is to be submitted to the Human Resources Manager. If a satisfactory release is not presented, the City may place an employee on unpaid administrative leave for a predetermined period of time until sufficient documentation is provided. It is the responsibility of the injured employee to obtain the necessary documentation as required by the City.
- C. **Determination made by City physician.** If the City physician determines that an employee is not able to perform any or all of the essential duties of the employee's position as set forth in the job description, the physician will document the limitations.



### **Sec. 6.3 Modified Duty.**

- A. Purpose.** The purpose of this section is to provide a process by which injured and ill employees may receive temporary work assignments that will benefit their full recovery. It is not intended nor to be used as a disability program.
- B. Evaluation of injured or ill employee.** When an employee is required to be absent from work because of an extended period of recovery from injury or illness, the employee's case will be reviewed by the Department Head, the Human Resources Manager, and City Administrator. A report of examination and evaluation conducted by the attending physician or the City physician will be used in accordance with applicable laws to determine the capabilities and prognosis for recovery of the injured or ill employee. A review of the potential work assignments will be conducted by the Department Head, City Administrator and Human Resources Manager to determine if an assignment is available which matches the injured or ill employee's training and skills and/or limited physical limitations as determined by the treating physician.
- C. Work assignment.** A modified duty work assignment will be offered to an injured or ill employee if:
1. it is approved by the Department Head;
  2. a work assignment exists within the City which meets the abilities documented by the attending physician or the City physician; and
  3. a modified duty work assignment would enhance the recovery of an injured or ill employee and facilitate the employee's return to the regular duty work assignment held before the injury or illness.
- D. Length of modified duty work assignments.** Modified work assignments shall not exceed 90 calendar days. An extension may be granted at the discretion of the City Administrator. However, an employee is limited to a total of 180 calendar days per year of modified duty.
- E. Conditions of modified duty.** As a condition of continuing in a modified duty work assignment, an employee must:
1. adhere to prescribed treatment and make reasonable efforts toward rehabilitation;
  2. accept progressively more demanding assignments as the employee's condition improves;
  3. make visible progress in returning to full performance capability;

4. Provide regular written progress updates from the attending physician ;
  5. The legal use of prescribed and over-the-counter drugs is permitted while on City premises, while on duty, while conducting City-related business or other activities off premises, while driving a City-owned or leased vehicle, or while operating or using other City-owned or leased property or equipment only if it does not impair an employee's ability to perform the essential functions of the job (or operate the vehicle, property or other equipment) effectively and in a safe manner that does not endanger the employee, citizens or other individuals in the workplace. Examples of impairment include, but are not limited to, drowsiness, dizziness, confusion, or feeling shaky.
- F. Termination of modified duty.** An employee's modified duty work assignment will be terminated if:
1. the employee is found to be performing beyond the modified duty restrictions;
  2. the work assignment is completed;
  3. the employee performs unsatisfactorily in the position; or
  4. budgetary constraints do not allow continuation of the position.

## **Sec. 6.4 Reassignments.**

If an employee's injury or illness will regularly prevent the employee from performing the essential functions of the employee's regularly assigned duties, the City Administrator, in conjunction with the Department Head, shall attempt to locate a suitable City position for the employee. Such position must be authorized and vacant and the individual must be qualified to perform the essential functions of the position. If no position is available at the time the individual is determined physically unable to perform the essential function of the employee's job, the employee may be placed on Family Medical Leave, if qualified for such leave, or may be placed on leave utilizing wage continuation benefits as outlined in 6.06 or accrued leave if available for a period of time to be determined by the City Administrator. Should the employee refuse to accept an available position, termination of employment may occur. The City will not create a position.

## **Sec. 6.5 Life-Threatening Illness.**

- A. Fair and equal treatment.** Pursuant to its commitment to providing fair and equal opportunity to all employees while providing a safe work environment, the City will treat employees with a life-threatening illness like other employees as long as they meet performance standards, are able to perform the essential functions of their

position, and medical and other information indicates that their condition is not a threat to themselves or to others. The City will attempt to reasonably accommodate these employees whenever practicable.

- B. Confidentiality and sensitivity.** If an employee contracts a life-threatening illness, or if an employee discovers a fellow worker has contracted a life-threatening illness, all reasonable efforts must be exercised to ensure that this information remains private and confidential. All employees should treat employees with a life-threatening illness with compassion and understanding.
- C. Physical examination.** To assure the City that an employee with a life-threatening illness is not a danger to anyone, the City may require the employee to be examined by a physician at the expense of the City. All information related to the examination will be confidential and will be disclosed only when it is necessary.

## **Sec. 6.6 Wage Continuation Program.**

- A. Policy:** The City is committed to meeting its obligation under the Texas Workers' Compensation Act (the Act) to provide medical, rehabilitation, and wage-replacement benefits to employees who sustain work-related injuries or illnesses. All work-related injuries and illnesses, whether eligible for the Wage Continuation Plan or not, may be covered under the Family Medical Leave Act (FMLA), and any missed time due to the injury or illness will be counted toward the employee's FMLA allotment. As specified in this policy, the City goes beyond the requirements of the Act by providing a Wage Continuation Program to employees to supplement the temporary income benefits available under state laws that do not provide full wage replacement. An employee does not have to be eligible for FMLA to be eligible for wage continuation benefits.
- B. Workers' Compensation Statutory Provisions**
  - 1. Payment Purposes:** When an employee is injured within the course and scope of employment for the City, the employee may be eligible for workers' compensation payments pursuant to the Act. These payments may include 1) payments for reasonably required and necessary medical treatment; 2) a statutory amount that provides a portion of the employee's average weekly wage while the employee is unable to work because of the injury for up to 104 weeks; and 3) additional monetary benefits for permanent disability suffered as a result of the on-the-job injury.
  - 2. Temporary Income Benefits:** Under the Act, temporary income benefits do not begin until after the seventh calendar day of absence from work due to an on-

the-job injury. After twenty-eight calendar days of lost time, and subject to qualifications, the seven-day waiting period will be paid retroactively.

### **C. Salary Continuation Program**

- 1. Start Time for Wage Continuation Benefits:** As workers' compensation benefits provide nothing to an employee during the first seven (7) calendar days, wage continuation will provide the eligible employee with his or her regular pay for that period. Should an employee miss twenty-eight or more calendar days due to occupational injury and receive payment for the first seven days, the employee must sign over the check received from the third party administrator for this amount within 72 hours of receipt.
- 2. Maximum Time for Wage Continuation Benefits:** Subject to the provisions outlined below, an employee who sustains an injury in the course and scope of employment and who is eligible for workers' compensation benefits, shall be eligible for wage continuation benefits. Wage continuation benefits shall automatically terminate at the expiration of ninety calendar days from the date the employee was first unable to work. In no event will wage continuation benefits extend past 90 calendar days for any injury, including any later aggravation, relapse, or re-injury. In the event a subsequent injury to a different body part is determined to have occurred because of, or as a result of a different incident, the circumstances may warrant an additional wage continuation benefit cycle.
- 3. Use of Accrued Leave:** Once wage continuation benefits have been exhausted, the employee must use accrued sick, personal, and vacation leave to supplement income benefits to provide the employee with the equivalent of his/her "take-home pay", until the employee is released for full-time or restricted duty. After all sick leave has been exhausted, the employee may use personal and vacation leave as available. If the employee exhausts all available accrued leave, the employee will receive only the workers' compensation income benefits until he or she is released for regular or restricted duty.

### **D. Qualifications to Receive Wage Continuation Benefits**

- 1. Reporting On-the-Job Injury:** An employee who sustains any on-the-job injury, however minor, and who is physically able, must report the injury as soon as the injury is discovered to his/her immediate supervisor and receive such medical treatment as may be necessary. If the injured employee is unable to physically report his/her injury, it is the responsibility of his/her immediate supervisor to complete the on-the-job injury report and supervisor accident report as soon after the injury as possible.

2. **Income Benefits:** An employee must be receiving income benefits from the City's workers' compensation insurance provider to be eligible for wage continuation. In addition, within seventy-two hours of receipt of workers' compensation temporary income benefits from the third party administrator, the employee must endorse and remit to the City the check received.
3. **Temporary, Seasonal and Part Time Employees:** Temporary, seasonal and part-time employees are not eligible for wage continuation benefits.
4. **Wage Continuation Benefits After Notice of Retirement or Resignation:** An employee who is injured after giving notice of retirement or resignation or after receiving notice that the employee is to be laid off or discharged shall not receive and shall not be eligible for wage continuation benefits beyond the date the retirement, discharge, resignation, or layoff is to be effective.
5. **Examination by City physician:** The City Administrator or his designee may require an injured employee, in addition to medical treatment secured by the employee under workers' compensation laws, to submit to examination and treatment at the City's expense by a physician or psychologist chosen or approved by the City of Early as a condition of receiving or continuing to receive wage continuation benefits. Failure to submit to such exam and/or treatment and failure to authorize records related to such exam and/or treatment shall result in termination of employment.
6. **Modified duty:** An employee who is injured must accept modified duty assignments if cleared and authorized by the employee's attending physician. Modified duty assignments are given to the injured employee if available. The duties will accommodate the injury of the employee to prevent further irritation of the injury. If an employee should express concern that the injury is preventing him/her from performing essential duties of the modified work assignment, or if the supervisor has justifiable concerns regarding an employee's ability to perform essential duties of that assignment, the employee may be referred to the City physician for additional evaluation at the City's expense.
7. If an employee is required to participate in physical rehabilitation or to have additional physician appointments after being released to duty and exhausting wage continuation benefits, the employee will be required to utilize available sick, vacation, or other applicable leave to supplement his/her regular pay.

#### **E. Release and Subrogation of City Rights**

1. **Release to Return to Work:** Before reporting back to work, an employee must provide a written release from a physician to the Human Resources Manager. The

release should indicate the employee's fitness to return to duty, stipulate the type of duty permitted, specify any physical restrictions, and the date of the employee's release from medical care. Employees returning to work without this documentation will not be permitted to resume their duties and will be placed on leave with 48 hours to obtain and present the required documentation.

2. **Subrogation Rights of City:** The City has subrogation rights granted by law or contract for other benefits, including workers' compensation. Therefore, the City shall be subrogated to the rights of the injured employee or the employee's beneficiary as a third party to the extent of the injured employee's wage continuation benefit payments paid to the employee under this policy.

#### **F. Ineligibility and Wage Continuation Benefit Termination**

An employee may forfeit all rights to initial and/or further wage continuation benefits if the employee:

1. fails or refuses to comply with the treating physician's instructions regarding treatment and/or rehabilitation of the employee's injury; or disregards or violates the treating physician's instructions regarding treatment and/or rehabilitation of the employee's injury.
2. refuses to perform restricted, partial, or part-time duty when offered by the City and which has been authorized by the treating physician.
3. refuses to accept or perform a different job within the City when offered by the City Administrator and which has been authorized by the treating physician.
4. falsifies or misrepresents the employee's physical condition or capacity.
5. refuses to return to duty on the workday he/she has been released by the treating physician.
6. fails to contact the Human Resources Department at a minimum every other week regarding the employee's condition and expected return to work date. This must continue until a physician's statement is received which states or estimates the period of time the employee will be unable to perform duty. In addition, each time the employee sees a doctor for consultation or treatment, the employee must submit a progress report from the physician to the Human Resources Department.
7. has been injured as a result of the employee's blatant disregard for customary and established safety policies, procedures, or instructions as determined by the

employee's Department Director or City Administrator as a result of an investigation into the facts.

- 8.** is found to be working, either part-time or full-time and either for pay or as a volunteer or otherwise, for or on behalf of himself or herself or any other person, firm or corporation, or any other person, firm or corporation or any other employer.
- 9.** retires, dies, resigns, or is discharged for any reason while receiving wage continuation benefits.
- 10.** is injured as the result of the employee's violation of any Federal, State or local law, ordinance or statute.
- 11.** workers' compensation income benefit terminates.
- 12.** fails to sign over to the City the check received from the third party administrator as workers' compensation temporary income benefits within seventy-two (72) hours of receipt.
- 13.** fails to keep medical appointments or refuses to submit to an examination or to such diagnostic tests, x-rays, surgical procedures, or other as a physician or psychologist prescribes or recommends as medically necessary to identify, diagnose, treat, or cure the employee's injured condition.
- 14.** is injured:
  - a.** while engaged in horseplay;
  - b.** while intoxicated by alcohol, controlled substances, glue, dangerous drugs, aerosol paint, or similar substances;
  - c.** in willful efforts by employee to injure self;
  - d.** by an act of a third person to injure for personal reasons other than through workplace violence;
  - e.** through an act of God (tornado, flood, etc.), unless exposure to risk of acts of God are within the normal scope of the employee's job duties;
  - f.** through voluntary participation in off-duty recreational or social activities; or
  - g.** while participating in activities that would be detrimental to recovery; or refusing to participate in activities that will aid in healing.

In addition to forfeiting the employee's eligibility to receive wage continuation benefits, an employee's failure to comply with this policy may subject the employee to disciplinary action, up to and including termination of employment.



## ARTICLE 7 EMPLOYEE STANDARDS OF CONDUCT

### Sec. 7.1 Fair Employment Practices.

**A. City responsibilities.** The City workforce exists to provide essential municipal services to the community. The City organization is committed, within its financial constraints, to maintaining a workforce of the most qualified workers to provide reliable, quality and cost-efficient services to the community in a respectful and friendly manner.

**B. Management responsibilities.**

1. In keeping with the respect due each employee, City management is committed to:
  - a. providing effective and efficient delivery of services;
  - b. compensating employees fairly for work done;
  - c. providing safe, healthy, work conditions in accordance with provisions of all applicable laws;
  - d. adequately instructing and training employees in their duties;
  - e. supplying necessary tools and equipment (except those customarily provided by employees);
  - f. providing reasonable opportunities for development experience and competitive advancement; and
  - g. actively engaging in equal opportunity activities.
2. City management shall not dismiss an individual, fail or refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of the individual's race, color, age, religion, sex, national origin, disability, political opinions, veteran status, or affiliations. Employment and promotion opportunities are based upon applicant skills, merits, abilities, experience, training and other factors deemed important or applicable by the City Administrator, as stated in the job or position description.

**C. Employee responsibilities.** An employee shall:

1. be loyal to and meet the reasonable expectations of City management and the citizens of the City;

2. report to work regularly and on time;
3. consistently meet or exceed performance standards established for the employee's job;
4. work in a professional, cooperative, safe, and friendly manner; and
5. abide by all policies as outlined in the Personnel Policy and Safety manuals along with any department specific policies and/or operating procedures.

## Sec. 7.2 Employee conduct.

### A. Performance standards.

1. An employee is expected to consistently maintain satisfactory performance standards. Whenever work habits, attitude, production, or personal conduct of an employee fall below a desirable standard, the problem should first be addressed through the mutually cooperative efforts of the supervisor and the employee. These efforts include but are not limited to:
  - a. analysis of the problem;
  - b. determination of needed changes and assistance; and
  - c. implementation of a corrective plan of action and establishment of achievement dates.
2. If performance standards are not met within a reasonable period of time, the employee, depending upon the documented reasons for failure, may be transferred, demoted or dismissed.

### B. Unacceptable conduct. The following types of conduct are unacceptable and may be reason for corrective discipline in the form of reprimand, suspension, demotion, or dismissal, depending upon the facts and circumstances of each case. The examples given are typical but not all-inclusive.

1. Unsatisfactory attendance is exemplified by, but not limited to, the following violations:
  - a. unexcused absence or tardiness;
  - b. failure to give notice of an absence or tardiness to the supervisor at least one (1) hours before starting time, or such other time as designated in a written policy established by the Department Head;

- c. failure to return to work after any authorized leave of absence;
  - d. separate absences or days of tardiness which exceed the average absences or days of tardiness of the employee's work group and which lack sufficient justification; or
  - e. absence or tardiness that causes significant curtailment or disruption of service without sufficient justification;
- 2. Job abandonment occurs when an employee deliberately and without authorization is absent from the job for two or more consecutive work days, or refuses a legitimate order to report to work. An employee who has abandoned his/her job is considered to have resigned without notice and may be deemed ineligible for rehire. Any unauthorized leave shall be unpaid.
- 3. Inability or unwillingness to perform assigned work satisfactorily is exemplified by, but is not limited to, the following violations:
  - a. failure to follow routine written or verbal instructions;
  - b. arguing over assignments or instructions; or
  - c. an accumulation of other deficiencies indicating the employee's continuing failure to adequately perform in a productive, efficient, and competent manner.
- 4. Indifference towards work is exemplified by, but is not limited to, the following violations:
  - a. inattention, inefficiency, loafing, sleeping, carelessness, or negligence;
  - b. failure to remain at one's work station, leaving work without permission, or taking excessive time or more time than allowed for meal or rest periods;
  - c. performance of personal business;
  - d. excessive use of cell phone, computer, or other technology for personal use;
  - e. interference with the work of others; or
  - f. discourteous or irresponsible treatment of the public or other employees.
- 5. Sabotage is exemplified by, but is not limited to, the following violations:
  - a. deliberate damage to or destruction of City equipment or property;

- b.** defacing of City property;
  - c.** unauthorized alteration, removal, destruction, or disclosure of City records;
  - d.** advocacy of or participation in unlawful trespass or seizure of City property;
  - e.** encouraging or engaging in slowdowns, sit-ins, strikes, or other concerted actions or efforts to limit or restrict employees from working;
  - f.** refusal to cross picket lines;
  - g.** interference with the public use of or access to City services, properties, or buildings; or
  - h.** threats to commit any act of sabotage as defined in this subparagraph.
- 6.** Safety violations are exemplified by, but are not limited to, the following violations:
  - a.** failure to follow City or departmental safety regulations;
  - b.** failure to use required safety apparel;
  - c.** removal or circumvention of a safety device;
  - d.** failure to wear vehicle or equipment safety restraint(s) while operating it.
  - e.** lifting in an unsafe manner;
  - f.** operation of vehicle or other equipment in an unsafe manner;
  - g.** smoking in a prohibited area;
  - h.** endangering of one's own safety or that of others by careless or irresponsible actions or negligence;
  - i.** failure to report an on-the-job injury, vehicle accident, or unsafe work condition; or
  - j.** failure of a supervisor to remove from the work place or to assist to a safe location an employee whose mental capabilities are impaired due to injury, illness, alcohol or drug use, or emotional distress.
- 7.** Dishonesty is exemplified by, but is not limited to, the following violations:
  - a.** acceptance of money or anything of value from a person subject to the regulatory decision or supervision of the employee;

- b.** cheating, forging or willful falsification of official City reports or records;
  - c.** false reporting of the reason for paid leave of absence; or
  - d.** any other falsifying action detrimental to the City or fellow employees.
- 8.** Theft regardless of property value, is exemplified by, but is not limited to, the following violations:
  - a.** unauthorized taking of City property or the property of others;
  - b.** unauthorized use of City or employee funds;
  - c.** using or authorizing the use of City equipment or employee services for other than official City business; or
  - d.** using or authorizing the use of City equipment or employee services without proper authority.
- 9.** Insubordination is exemplified by, but is not limited to, the following violations:
  - a.** willful failure or refusal to follow the specific orders or instructions of a supervisor or higher authority; or
  - b.** pursuit of a denied request to a higher authority without revealing the lower level disposition; provided that:
    - i.** if the employee believes an instruction or order is improper, he should obey the instruction or order and file a grievance later; or
    - ii.** if the employee believes the instruction or order, if followed, would result in physical injury to the employee or others or damage to City equipment, the employee should request approval by the next higher level of supervision before performing the work, unless the danger complained about is inherent to the job.
- 10.** Use of drugs or alcohol is exemplified by, but is not limited to, the following violations:
  - a.** an employee is judged unable to perform duties in an effective and safe manner due to:
    - i.** ingestion, inhalation, or injection of an illegal drug, or a legal drug for which the employee does not have a prescription or which is used in a manner that is different than prescribed; or

- ii. ingestion of an alcoholic beverage;
    - b. an employee possesses or ingests, inhales, or injects into his body an illegal drug or a legal drug for which the employee does not have a prescription or which is used in a manner that is different than prescribed:
      - i. during working hours;
      - ii. before reporting for working hours;
      - iii. in a City vehicle; or
      - iv. on City property.
    - c. an employee possesses or ingests an alcoholic beverage:
      - i. during working hours;
      - ii. before reporting for working hours;
      - iii. in a City vehicle; or
      - iv. on City property, except at an authorized City event.
    - d. an employee possesses or ingests marijuana or THC:
      - i. during working hours;
      - ii. before reporting for working hours;
      - iii. in a City vehicle; or
      - iv. on City property.
  - 11. Disturbance is exemplified by, but is not limited to, the following violations:
    - a. fighting or boisterous conduct;
    - b. deliberate causing of physical injury to another employee or citizen;
    - c. intimidation;
    - d. unnecessary disruption of the work area;
    - e. use of profane, abusive, threatening, or loud and boisterous language;

- f. spreading of false reports; or
- g. other disruption of the harmonious relations among employees or between employees and the public.

**12. Illegal discrimination and harassment (Policy Against Discrimination and Harassment)**

- a. The City of Early prohibits any and all forms of discrimination, including harassment, because of age over 40, color, race, ancestry, religion, sex, genetic information, marital status, veteran status, national origin, disability, including but not limited to verbal, physical, and visual. It is also the City of Early's policy to prohibit any form of sexual harassment. The City of Early will investigate any complaint of discrimination and/or harassment and take timely and appropriate disciplinary action if it is found to have occurred. The City of Early also prohibits any retaliatory action against anyone who has complained in good faith about harassment or discrimination. This policy applies to all City agents and employees, including supervisors and elected or appointed officials, as well as volunteers, citizens, vendors, and visitors to the workplace.

All employees have the unconditional right to work in a professional atmosphere that promotes equal opportunities and prohibits discriminatory practices, including harassment. Any employee who has any questions or concerns about these policies should talk with his or her supervisor, Department Head, Human Resources Manager, or the City Administrator.

- b. Human Resources Manager.

The Human Resources Manager is responsible for enforcing this policy and will serve as the investigative officer for harassment, discrimination and retaliation issues. The Human Resources Manager will receive training about harassment, discrimination and this policy, and will be responsible for investigating complaints. The Human Resources Manager is also responsible for distributing this policy to all employees, and ensuring that all supervisors have received training about harassment, discrimination and this policy.

- c. Definitions:

**Harassment.** Harassment consists of unwelcome conduct, whether verbal, physical, or visual, that is based on a person's race, color, ancestry, religion, national origin, age, sex, marital status, disability, veteran status or genetic information and impairs another employee's ability to perform the duties of their job.

**Sexual harassment.** Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, or verbal or physical acts of a sexual or sex-based nature where:

- i. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
  - ii. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  - iii. 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.
- d. Prohibited Conduct: The City considers the following conduct to represent the types of acts which violate this policy:
  - i. Physical assaults, such as:
    - rape, sexual battery, molestation, or attempts to commit these assaults; and
    - intentional physical conduct that is sexual in nature, such as touching, pinching, patting, grabbing, brushing against another person's body, or poking another person's body.
  - ii. Unwanted sexual advances, propositions, or other sexual comments, such as
    - sexually-oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience;
    - preferential treatment or promises of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward; or
    - subjecting, or threats of subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of the employee's job more difficult because of that employee's rejection of sexual advances, speech, or conduct.
    - Sexual or discriminatory displays or publications in the workplace or when engaged in City business by employees, such as displaying



pictures, posters, calendars, graffiti, objects, promotional materials, or reading materials that are sexually suggestive, sexually demeaning, or pornographic, or bringing into the work environment or possessing the material to read, display, or view at work. A picture is presumed sexually suggestive if it depicts a person who is not fully clothed or in clothes that are not suited to or ordinarily accepted for accomplishing routine work and who is posed for the obvious purpose of displaying or drawing attention to the private portions of the body.

- Subjecting, or threats of subjecting, an employee to unwelcome attention or conduct or intentionally making performance of the employee's job more difficult because of that employee's race, color, ancestry, religion, national origin, age, sex, marital status, disability, or veteran status.
- Retaliation against a person who filed a harassment complaint or participated in the investigation of a complaint, such as disciplining, changing work environments of, providing inaccurate work information to, or refusing to cooperate or discuss work-related matters with an employee because that employee has complained about or resisted harassment, discrimination, or retaliation.
- Other acts of a similar nature.

### iii. Complaint Procedure

- The City encourages employees who encounter harassment to firmly and promptly notify the offender that the behavior is unwelcome and that the conduct must stop.
- An employee who experiences or observes discrimination, harassment, or retaliation must report the incident to a supervisor, Department Head, the Human Resources Manager, or the City Administrator, whomever the employee feels most comfortable approaching.
- The complaint may be either oral or written. However, oral reports of harassment must be reduced to writing by either the complainant or the person who receives the complaint, and must be signed by the complainant, if possible.
- Anonymous complaints will be taken seriously and investigated.
- All discrimination, harassment, and/or retaliation complaints must be forward to the Human Resources Department.

- Under the direction of the Human Resources Manager, each complaint will be promptly and thoroughly investigated to determine whether the discrimination and/or harassment complained of occurred. Within a reasonable time, the Human Resources Manager will produce a written report and provide a copy of the report to the complainant, upon request.
- The Human Resources Manager will also recommend remedial measures based upon the results of the investigation, and the City Administrator will promptly consider and act upon the recommendation. To the extent practicable and allowed by the Texas Public Information Act, the City will keep complaints and the terms of their resolution confidential.
- An employee will not be subject to retaliation or discipline for reporting, pursuing, opposing or participating in a sexual harassment complaint in good faith.

**iv. Responsibility of Employees**

- An employee or applicant for employment who believes he/she has been harassed or discriminated against or knows of or suspects harassment or discrimination in the workplace, sexual or otherwise, has the responsibility to report the conduct to a supervisor, Human Resources Manager, or the City Administrator.

**v. Duties and Responsibilities of Supervisors**

- Supervisors must treat all complaints seriously and confidentially. Each case will be promptly and thoroughly investigated to determine whether the harassment complained of occurred.
- All reports or suspicions of discrimination and/or harassment, sexual or otherwise, which come to a supervisor's attention must be referred immediately to the Human Resources Manager for investigation.

**vi. Discipline**

An employee found to have violated this policy will be subject to remedial training and/or disciplinary action, including written reprimands, transfer, demotion, suspension, or termination. By enforcing this policy, the City will preserve the right of every employee and applicant for employment to enjoy a workplace free of harassment of any type.

False, exaggerated or malicious complaints of harassment, discrimination or retaliation (as opposed to complaints which, even if erroneous, are made in good faith) will result in appropriate disciplinary action.

**vii.** Appeal of the Decision

Actions taken as a result of a harassment determination may be appealed in accordance to the Grievance Procedures under the City of Early Personnel Policies.

**viii.** Recordkeeping

All records concerning a harassment investigation shall be kept in a separate locked file in the Human Resources Department. Records concerning any subsequent disciplinary actions shall be kept in the regular personnel files.

**13.** Abuse of City property:

**a.** Abuse of City property is exemplified by, but is not limited to, the following violations:

- i.** negligent damage or destruction of City equipment or property;
- ii.** waste of materials or negligent loss of tools or materials;
- iii.** improper maintenance of equipment; or
- iv.** damage caused by use of tools or equipment for purposes other than that for which the tool or equipment was intended.

**b.** In addition to appropriate disciplinary action, damage caused by proven intent will cause the employee to be responsible for the repair or replacement of any damaged property. Failure to reimburse the City is cause for dismissal.

**14.** Misconduct is any criminal offense or immoral conduct, during or off working hours, which, on becoming public knowledge, could have an adverse effect on the City or on the confidence of the public in City government.

**15.** Disregard of public trust is any conduct, during or off working hours, which, on becoming public knowledge, could impair the public's confidence or trust in the operation of City government.

**16.** Failure to report a violation is exemplified by, but not limited to, failure to report to the proper authority any known violation described in Subparagraphs (5), (6), (7), (8), (10), (11), (12), or (13).

**C. Disciplinary and legal actions.** Where the evidence supports a violation of this section, disciplinary action may be taken independently of and before any legal action or criminal conviction.

### **Sec. 7.3 Employee Appearance.**

**A. Policy.** It is the policy of the City that employees, when on duty, should appear clean, neat, and in appropriate attire exemplifying a positive and professional public image in order to foster respect from citizens and confidence in the services the City provides.

**B. Uniformed employees.** Employees who wear uniforms, other than public safety employees, shall:

1. keep uniform articles clean and in good repair;
2. shirts will be unbuttoned no lower than the second button from the top, and excessively long shirt tails will be kept tucked in. The Department Head will be responsible for establishing department policies in the event that an untucked shirt tail poses a safety concern, that will require the employee to tuck the shirt tail in;
3. wear shoes that are enclosed and appropriate to the job being performed;
4. wear appropriate approved logo caps or hats with the uniform;
5. keep hair clean and appropriate for protective clothing and safety equipment;
6. not wear any portion of the City-issued uniform for the employee's personal off-duty attire;
7. not intentionally damage or destroy any part of the uniform (The City must be reimbursed for uniform articles intentionally damaged or destroyed.); and
8. return all uniform articles as requested when employment with the City is terminated (Separation pay will be limited to minimum wage until articles have been returned).

Employees who are issued uniforms are expected to exercise care and cleanliness in the maintenance of these uniforms. It is understood that some departments have duties that will make it difficult to keep uniforms clean while working, however, employees should attempt to maintain as neat of an appearance as possible (shirt tucked in, etc.).

Employees are responsible for notifying their supervisor when uniforms need replacement for authorization to purchase.

Replacement uniforms will be furnished at the City's expense on an as needed basis.

Supervisors will be responsible for determining the need for uniform/apparel replacement.

**C. Uniformed public safety employees.** Uniformed public safety employees shall abide by departmental policies.

**D. Non-uniformed office employees.** Supervisors are responsible for setting appropriate dress standards for their departments. Supervisors will offer guidance as to proper attire. In setting dress standards, supervisors should consider these factors:

1. Employees must present a clean and appropriate appearance.
2. Employees are expected to dress appropriately for their job and the nature of the work performed. Conservative business casual attire is considered appropriate and may include collared shirts, slacks, dressy capris, dresses, skirts, blouses, or jeweled or dressy knit tops. Footwear should be comfortable and practical for office work. Cargo pants and nice jeans may be worn on casual Fridays, however, spaghetti strap shirts, sheer or low-cut shirts and house shoes/rubber flip-flops are not permitted. Tee shirts are not permitted, with the exception of being worn on Fridays or a city approved logo shirts worn on special workday assignments.
3. The nature of the employee's public contact.
4. Safety considerations, such as necessary precautions when working near machinery.

**E. Non-uniformed non-office employees.** Non-uniformed non-office employees must also present a clean professional image appropriate to the work they are performing; therefore, they should adhere to the following guidelines:

1. An approved logo shirt is to be worn.
2. Shirts shall be worn at all times and shall not be unbuttoned below the second button from the top.
3. Shorts will not be worn unless necessary for the job and approved by the Department Head.
4. Footwear appropriate to safety and the nature of the job shall be worn.

5. No severely torn or tattered clothing shall be worn.
6. Only approved logo hats or caps will be worn

**F. General guidelines.** All employees shall adhere to the following guidelines:

1. No immodest attire shall be worn.
2. Appropriate underclothing shall be worn at all times.
3. Hats, caps or any article of clothing which displays alcoholic beverages, drugs, pornography or advertising material of any kind is unacceptable.
4. Hair styles of both male and female employees shall be appropriate to the position of the employee, and extremes of any type are unacceptable. Extremes include length, color, and style. Hair shall be clean and neatly groomed at all times. Sideburns shall not extend below the ear lobe.
5. Beards and mustaches shall be kept clean and neatly trimmed. For reasons of safety, persons who may be required to wear self-contained breathing apparatus shall not wear facial hair that could interfere with the facial mask.
6. Body piercing shall be limited to the ears. No other visible body piercing is permitted.
  - a. The City Administrator has the final authority to allowing employees employed at the time of the adoption of this policy to remain exempt from this policy so long as no new visible piercings occur.
7. Exposed Tattoos (including temporary tattoos), body art, or branding which displays obscene, extremist, racist or offensive design, logo or wording representing an illegal act or giving the impression that employees may not impartially discharge their duties, or detracts from a uniform or professional appearance are prohibited.
  - a. At a minimum, all face and neck tattoos must be covered at all times during working hours.
  - b. The City Administrator has the final authority as to the appropriateness of any visible tattoos, body art or branding and direct that they be covered with a bandage or wrap.

**G. Enforcement.** It is the responsibility of the Department Head to enforce the provisions of this section. Employees in doubt about a particular article of clothing or matter of grooming should consult the Department Head or Human Resources. Generally, the Department Head will determine appropriateness; however, the City Administrator

has final determination. Failure to comply with this section following one warning shall constitute a violation subject to disciplinary action.

- H. Appeals.** A grievance concerning a supervisor's decision pursuant to this section shall be made through the grievance procedure.

## **Sec. 7.4 Conflict of Interest.**

- A. Policy.** It is hereby declared to be the policy of the City that the proper operation of democratic government requires that:

1. Public employees be independent, impartial and responsible only to the people of the City;
2. Governmental decisions and policy be made using the proper procedures of the governmental structure; and
3. No employee have any financial interest, direct or indirect, or engage in any business, transaction or professional activity or incur any obligation of any nature which is in conflict with the proper discharge of his duties in the public interest.

- B. Standards of Conduct.** An employee of the City shall not:

1. Accept or solicit a benefit that might reasonably tend to influence the employee in the discharge of his official duties.
2. Use his/her official position to secure special privileges or exemptions for himself or others.
3. Grant any special consideration, treatment or advantage to a person or organization beyond that which is available to every other person or organization. This shall not prohibit the granting of fringe benefits to City employees as a part of their employment or as an added incentive to the securing or retaining of employees.
4. Disclose information that could adversely affect the property or affairs of the City, or directly or indirectly, use any information understood to be confidential which was gained by reason of his/her employment for his/her own personal gain or benefit or for the private interest of others.
5. Transact any business on behalf of the City in his/her official capacity with any business entity with which he/she is an officer, agent or member or in which he/she has a financial interest. In the event that such a circumstance should arise, then he/she shall make known his/her interest, and turn the matter over to his/her

superior for reassignment, state the reasons for doing so and have nothing further to do with the matter involved.

6. Personally provide services for compensation, directly or indirectly, to a person or organization who is requesting an approval, investigation, or determination from the department of which the employee is a member.
7. Accept other employment or engage in outside activities incompatible with the full and proper discharge of his/her duties and responsibilities with the City, or which might impair his/her independent judgment in the performance of his/her public duty. An employee who plans to engage in outside employment while employed by the City of Early must follow the secondary employment policy.
8. Receive any fee or compensation for services due to status as an employee of the City, from any source other than the City, except as may be otherwise provided by law. This shall not prohibit an employee from performing the same or other services for a public or private organization that the employee performs for the City, providing there is no conflict with the employee's City duties and responsibilities.
9. Knowingly perform or refuse to perform any act to deliberately thwart the execution of the City ordinances, rules or regulations or the achievement of official City programs.
10. Use City supplies, equipment or facilities for any purpose other than the conduct of official City business.
11. Engage in any dishonest or criminal act or any other conduct prejudicial to the government of the City or that reflects discredit upon the government of the City.

## **Sec. 7.5 Political Activity.**

- A. Policy.** In order to maintain a high level of professionalism within the City and maintain the proper operation of a democratic government, an employee of the City shall not:
1. Coerce another employee to participate in, or to refrain from participating in, a political campaign; or
  2. Require an employee to contribute to any political fund, render any political service, or support any political election or punish an employee in any way for refusing to do so.



- B. Endorsements as City Employees.** Employees are prohibited from using their official capacity to influence, interfere with, or affect the results of an election. City employees shall not participate in any of the following types of activities:
- 1.** Employees, during hours of work or while in uniform, shall not take an active part in any political campaign for an elective position. The term "active part" includes but is not limited to the following:
    - a.** making political speeches;
    - b.** passing out cards or other political literature;
    - c.** writing letters or signing petitions;
    - d.** actively and openly soliciting votes; or
    - e.** making public remarks about the candidates for such elective positions.
  - 2.** Employees shall not engage in any activity which could be construed as giving Departmental sanction to any candidate for public office. This includes, but is not limited to, the following:
    - a.** soliciting votes, wearing campaign buttons, or distributing campaign literature at work or in a City uniform or in the offices or buildings of the City of Early;
    - b.** listing the employee's position or occupation in an endorsement of a candidate for public office; or
    - c.** addressing political gatherings in support of, or in opposition to, a partisan candidate where the employee's occupation is mentioned or listed.
- C. Candidates for Early City Council.** Any City employee who enters a race for Early City Council shall resign. If he/she loses the race, he/she can be reinstated to his/her previous position if the position is still open and available.
- D. Candidates for Political Office.** Outside of the Early Municipal Development District employees shall not hold an appointive or elective City office, a partisan office in any jurisdiction, or any other office where service would constitute a direct conflict of interest with City employment. If an employee decides to assume such an office, the employee shall resign from City employment or shall immediately forfeit employment with the City.

## Sec. 7.6 Loss Prevention.

- A. Employee responsibilities.** It is the responsibility of all employees to help the City in loss prevention. If an employee becomes aware of losses or damage due to negligence, theft, willful destruction or abuse, or for any other reason, it is the employee's responsibility to report it to a supervisor, a Department Head and/or the City Administrator's office immediately. Employees must notify a supervisor immediately of any incident that results in loss or damage to the City, its employees, or the general public. Employees should also promptly alert a supervisor immediately regarding any situation which may result in such a loss. Investigation of theft or other criminal behavior may require that employees cooperate with law enforcement officials.
- B. Procedures.** Employees who have access to the City's funds in any form must follow the prescribed procedures for recording, handling, and protecting money as detailed in this policy, and departmental procedures and guidelines. The City imposes strict standards to prevent fraud and dishonesty. If employees become aware of any evidence of fraud or dishonesty, they must immediately advise their supervisor so that the City can promptly investigate.
- C. Accurate Records.** Accurate and reliable records are necessary to meet the City's legal and financial obligations and to manage the affairs of the City. The City's books and records must reflect, in an accurate and timely manner, all business transactions. The employees responsible for accounting and record-keeping must fully disclose and record all assets and liabilities, and must exercise due diligence in enforcing these requirements.
- Employees must not make or engage in any false record or communication of any kind, whether internal or external, including, but not limited to:
1. False expenses, attendance, production, financial, or other similar reports or statements.
  2. False advertising, deceptive practices, or other misleading representations.
- D. Security.** Supervisors, or their designees, are responsible for locking and securing all doors, gates, chains, locks, setting alarms, etc., and for key removal from vehicles and equipment. Other security measures may also be required from time to time. Failing to comply with security precautions is a serious violation of City policy.
- E. Access to City Property.** Absent specific approval from the City Administrator, only authorized City employees are permitted on City premises outside of regular business hours. Only authorized City employees are permitted in secured areas of the premises.

- F. Disciplinary Action.** A violation of this policy, or a failure to report a violation of this policy may result in criminal and/or internal disciplinary action against the primary offender and any employee who failed to report it or concealed knowledge of the incident.

## ARTICLE 8 DISCIPLINE, APPEAL, AND GRIEVANCE PROCEDURES

### Sec. 8.1 Discipline Procedures.

- A. Policy.** In the interest of ensuring that the Department Head has all of the necessary information, and to ensure that mistakes in judgment are not made due to lack of information, the following measures shall be taken prior to imposing any discipline. While the following steps and procedures should be taken in every case before discipline is imposed, failure to take any one or all of the measures shall not give rise to a claim, cause of action, or other legal action against the City.
- B. Procedures and notices.** The procedures for a disciplinary action of reprimand, suspension, demotion, or dismissal include the following:
- 1. Pre-disciplinary meeting.** Before any disciplinary action of suspension, demotion, or dismissal is taken against an employee, the Department Head is required to meet with the employee, inform the employee in writing of the charges and that discipline could be imposed, and provide the employee the opportunity to explain or defend his/her actions or omissions in writing within 24-48 hours following the pre-disciplinary meeting. Within a reasonable amount of time after the employee presents his/her written response to the charges, the Department Head will determine the appropriate disciplinary action to be taken, if any, and meet with the employee to inform him/her in writing of the disciplinary action to be taken
  - 2. Reprimand, suspension, demotion, and dismissal.** A Department Head has the authority to reprimand, suspend, demote, or dismiss an employee. When one of these disciplinary actions is taken against an employee, the employee must be given written notice stating:
    - a.** the type of disciplinary action taken, i.e., reprimand, suspension, demotion or dismissal;
    - b.** the specific rule or rules violated;
    - c.** the specific acts of the employee which were in violation of the rule;
    - d.** the employee's right to appeal, if any, to a specific office within a specified time; and
    - e.** the finality of the action if the employee fails to appeal within the specified time.

- 3. Appeal to the City Administrator.** If the disciplinary action is dismissal, demotion, or suspension, a regular employee (excluding provisional new hires) may appeal by filing written notice with the City Administrator within three (3) working days from the time the employee is notified of the action. The City Administrator will conduct an appeal meeting, at which time the employee or Department Head may produce witnesses and examine any documents or other evidence presented at the meeting. The decision of the City Administrator is final.

## **Sec. 8.2     Grievances.**

- A.** A grievance shall mean an alleged violation or inequitable application of rules, regulations, procedures or policies of the City of Early. A grievance is a dispute between two or more employees; or between an employer and employee concerning interpretations or applications of any provisions of rules, regulations, procedures or policies relating to work which adversely and directly affects the aggrieved employee. The grievance procedure may not be used to complain about disciplinary action.
- B.** Employees are encouraged to make reasonable efforts to resolve a dispute before filing a formal grievance.
- C.** Employees should make an effort to address any grievance in a timely manner. In any event, a grievance must be filed within 30 days from the date of the alleged violation or event that created the grievance, or within 30 days after the employee becomes aware of the event giving rise to the grievance.
- D.** Should an employee have a grievance against his/her supervisor or Department Head, then the employee will follow the procedure below, but may file the grievance with the next higher level.
- E. Appeal to Supervisor.** An employee who has a grievance must present it in writing to his/her supervisor. The supervisor will conduct an interview with the employee and, within ten (10) working days, make a determination regarding the grievance. The supervisor's determination will be presented to the employee in writing. If the matter is resolved at this level, a written record of the grievance, the supervisor's determination and any action resulting from the grievance becomes part of the employee's permanent record. If the matter cannot be resolved at this level, the supervisor, upon request, will make his/her written determination available to the Department Head.
- F. Appeal to Department Head.** If a satisfactory resolution of the grievance is not reached with the supervisor, the employee may, within five (5) working days, request that the matter be referred to the Department Head for hearing and resolution. The

Department Head will conduct an interview and consider the merits of the grievance and within 10 working days, make a determination regarding the grievance. The Department Head's determination will be presented to the employee in writing. If the matter is resolved at this level, a written record of the grievance, the supervisor's determination, the Department Head's determination and any action resulting from the grievance becomes part of the employee's permanent record.

- G. Appeal to City Administrator.** If a satisfactory resolution of the grievance is not reached with the Department Head, the employee may, within five (5) working days, request that the matter be referred to the City Administrator for hearing and resolution. The City Administrator shall, within five (5) working days, conduct an interview and consider the merits of the grievance. If the City Administrator does not immediately make a determination, he/she will estimate the time needed to reach a determination and provide this estimate to the employee. The City Administrator will make a final determination on the matter and, if necessary order policy changes and/or take other actions in the best interest of the City. The City Administrator's determination will be presented to the employee in writing. A written record of the grievance, the supervisor's determination, the Department Head's determination, and the City Administrator's determination will become part of the employee's permanent record. The City Administrator's determination is final.
- H. Representation and Assistance.** An employee may be represented by legal counsel or may request assistance from anyone of his/her choosing. The grievance procedure shall be informal. All discussions shall be conducted in a manner most conducive to quick and satisfactory resolution of the matter.

## **ARTICLE 9      PERFORMANCE EVALUATIONS**

### **Sec. 9.1      Purpose, Method and Forms.**

The purpose of employee evaluations is to provide employees with information regarding their overall performance. Evaluations will be used to recognize desirable performance, identify specific areas where improvement is needed, provide direction and guidance to improve performance, establish goals and objectives for the future, and identify developmental opportunities.

Employee evaluations shall be conducted using City Administrator approved software and/or forms and under procedures prescribed by the Human Resources Department. Evaluations will focus on the essential functions of each position as delineated in the position description.

### **Sec. 9.2      Rating Period and Reevaluations.**

Each employee's work will be evaluated at least annually on or immediately following the employee's employment anniversary date, promotion date, or date of transition to most recent position. If, in any given year, budgetary concerns do not allow for pay increases, annual evaluations are still due in accordance with this policy.

Annual evaluations and any concurrent step increases are based on assessment of performance over a 12 month period and any employee who is absent, regardless of reason, for more than 4 weeks at a time during that period must have the evaluation period extended by that timeframe so as to allow maximum opportunity for adequate performance assessment to occur. Therefore, an evaluation may not necessarily fall on an employee's anniversary or promotion date. Department Heads are responsible for compliance with provisions of this policy.

Provisional employees are to be evaluated every 60 days and formally evaluated at the end of the six (6) or twelve (12) month provisional period. Department Heads are responsible for assuring that employees are receiving evaluations in accordance with this provision.

If an employee receives an overall evaluation rating that does not "Meet Expectations" the evaluation must reflect specific actions that the employee can take to improve to a level of performance which meets expectations and the employee must be reevaluated within two (2) months. If the employee shows inadequate or no improvement, the employee's Department Head shall determine any action to be taken.

### **Sec. 9.3 Notice to Employee.**

An employee shall be given a copy of each evaluation report as soon as it is complete. Employees will be permitted to offer a written reply to the evaluation report prior to signing the report. No use may be made of the evaluation results until the evaluator reviews the report directly with the employee.

### **Sec. 9.4 Use of Evaluation Results.**

The results of employee evaluations shall be considered for the following purposes:

- A.** identifying employee strengths and areas of needed improvement.
- B.** determining necessary training.
- C.** promotional opportunities.
- D.** performance based awards.
- E.** giving a merit increase to an employee for outstanding performance as recommended by the Department Head and approved by the City Administrator.
- F.** determining whether disciplinary action is warranted against an employee.

### **Sec. 9.5 Employee Conferences.**

As frequently as the supervisor determines is necessary, a supervisor shall conduct an employee counseling meeting with an employee. The supervisor should communicate forthrightly to the employee the supervisor's reactions to the employee's conduct and performance. The supervisor should offer positive assistance in correcting any deficiency.



## ARTICLE 10 DRUG FREE WORK PLACE POLICIES

### Sec. 10.1 Purpose.

The City recognizes that drug and alcohol abuse ranks as one of the major health problems in the world and adversely affects an employee's performance and safety on the job. It is necessary and required by law for the City to provide a drug-free working environment for its employees. The objective of this policy is to provide a drug and alcohol-free workplace in order to foster safety and productivity and to provide education and treatment to employees. To further this objective, the City has established a Zero-tolerance Policy with respect to drugs and alcohol.

### Sec. 10.2 General Policy Statement.

To maintain a drug-free work place, the City prohibits the unlawful manufacture, distribution, dispensing, possession, sale, purchase, use or presence of illegal drugs, alcoholic beverages, or drug paraphernalia in the work place, during working hours, or in a City vehicle.

### Sec. 10.3 Application of Policy.

This policy applies to all City employees regardless of rank or position and includes full-time employees, temporary and part-time employees, volunteers, and reserve police officers.

### Sec. 10.4 Post-Offer Drug Screening.

- A. Test required.** As a public employer, the City is entrusted with protecting the health and safety of its citizens. This obligation includes ensuring that public safety is not in jeopardy as a result of drug use by City employees. In keeping with this obligation, individuals who have been offered employment with the City shall be required to submit to pre-employment drug tests.
- B. Positive test.** An applicant with a confirmed positive test for any illegal drug or any drug for which he or she does not have a valid medical prescription, will not be considered further for employment. The applicant may be considered for employment and re-testing after a period of twelve (12) months.
- C. Consent.** All job applicants will be required to sign a consent form authorizing pre-employment drug testing and the use of test results in employment decisions.

Applicants who refuse to sign the consent form will not be considered for employment.

## **Sec. 10.5 Reasonable Suspicion Testing of Current Employees.**

- A. Test required.** When a Department Head or supervisor has a reasonable suspicion that an employee, at work or when reporting to work, appears to be under the influence of alcohol or illegal drugs, or otherwise impaired, and therefore may be impaired or unfit for duty, the employee will be required to consent to a drug and/or alcohol test.
- B. Reasonable suspicion.** Circumstances which constitute a factual basis for determining reasonable suspicion may include, but are not limited to:
1. Direct observation of drug or alcohol use or possession;
  2. Possession of drug paraphernalia;
  3. Observation of physical symptoms of drug or alcohol use, such as slurred speech, red watery eyes, dilated pupils, drowsiness, or sleeping;
  4. Sudden, unexplained personality changes, drastic mood swings, or changes in personal habits, including inattention to personal hygiene or frequently borrowing money;
  5. Documented deterioration of an employee's job performance, which may include excessive absenteeism or tardiness;
  6. Information provided by a reliable or credible source which is independently corroborated;
  7. Involvement in accidents or injury in which obvious precautions were not taken, improper or careless orders were given, or an unusually reckless attitude is present;
  8. Arrest or conviction for a drug or alcohol-related offense on or off the job, or the identification of an employee as the focus of a criminal investigation into illegal drug use, possession, or trafficking.
- C. Reasons for reasonable suspicion shall be documented.** In establishing a basis for reasonable suspicion, the Department Head, or supervisor will interview the employee about possible causes for the observed behavior, and will describe the incident in writing. This process will serve to document the circumstances leading to the conclusion that a test for the presence of an illegal drug or alcohol is warranted.

- D. Review of documentation.** Once the initial interview and written description has been completed, the highest ranking available department official must contact the City Administrator or Human Resources Manager for a review of the documentation. The City Administrator or Human Resources Manager must concur with the department official's recommendation before a drug and alcohol test is performed. Outside of regular working hours, or at times when the City Administrator or Human Resources Manager are not available for consultation, a Department Head may order an employee to submit to an immediate drug and alcohol test, pursuant to the guidelines of this article. The City Administrator or Human Resources Manager must be notified of the testing at the earliest opportunity, and all records relating to the incident will be maintained by the Human Resources Manager.

## **Sec. 10.6 Post-Accident Testing.**

- A. Test Required.** An alcohol and drug test will be administered to an employee who, while on duty, is involved in a vehicular or other type of accident if: (1) the accident involved loss of human life; (2) the employee received a citation for a moving violation arising from the scene of the accident; (3) the accident involved bodily injury to any person who, as a result of the injury, immediately receives medical treatment; (4) one or more motor vehicles incurs damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle; or (5) the accident caused major property damage, estimated at or above \$5000.00.
- B. When tested.** An employee shall be subject to post-accident alcohol and drug testing as soon as practicable following the accident.
- C. Time limit for testing.** An employee subject to post-accident testing shall be subject to a breath alcohol test not later than eight hours following the accident and to a drug test no later than 32 hours following the accident.
- D. Report on delayed testing.** If an alcohol test is not administered within two hours following the accident, the reasons the test was not administered shall be documented. If an alcohol test is not administered within eight hours following the accident, attempts to administer the test shall cease and the reasons for the delay documented. If a drug test is not administered within 32 hours following the accident, attempts to administer a drug test shall cease the reasons the test was not promptly administered documented.
- E. Availability for testing.** An employee who is subject to post-accident testing shall remain readily available for such testing or shall be deemed to have refused to submit to testing. Nothing herein shall be construed to require the delay of necessary

medical attention or to prohibit the employee from leaving the scene of the accident for the period of time necessary to obtain assistance in responding to the accident, obtain necessary medical treatment for injured people, or to obtain materials necessary to secure the accident site.

- F. Notification to Human Resources.** The supervisor, employee, or other City employee must contact the Human Resources Manager, or designee, regarding the need for post-accident testing.

## **Sec. 10.7 Conducting Drug and Alcohol Tests.**

- A. Consent form.** Employees required to submit to a drug or alcohol test will be required to sign a consent form provided by the Human Resources Manager. Refusal to sign the consent form shall be considered a refusal to take a drug or alcohol test and will result in immediate termination of employment.
- B. Testing facility.** All drug and alcohol tests will be conducted under the supervision of the City's designated physician or testing facility. Testing will be performed using a specimen of urine, or other bodily fluid suitable for testing. Collection of specimens, delivery of specimens to a laboratory, and laboratory testing will all be conducted in accordance with relevant security-related provisions of the Mandatory Guidelines for Federal Work Place Drug Testing Programs. Laboratory testing will be conducted only by laboratories that have been certified by the Department of Health and Human Services.
- C. Drugs screened.** The City will screen for all substances required under the Mandatory Guidelines for Federal Drug Testing Programs and the cut off levels for a positive result established therein.
- D. Prescription or over-the counter medicine.** In the event that a positive finding may have been caused by the use of a prescribed medication or over-the counter, the tested person will be given the opportunity to confer with the supervising physician, and to present a current prescription for a medication that caused the positive test result. If the physician finds the prescribed medication to be the legitimate cause of the test result, the overall test results will be reported to the City as "negative", and the person shall not be subject to any adverse action as a result of the drug test. However, disciplinary action may be taken against an employee who failed to disclose the use of over-the counter or prescription medication as required in this Article.
- E. Re-testing.** An employee or applicant who tests "positive" may request a re-test of the original sample at the employee's own expense. An employee's request for a re-test must be made in writing to the Department Head within three working days of

receipt of the test results. Applicants must submit a written request to be re-tested to the Human Resources Manager within three (3) working days of receipt of the test results. Re-testing may be performed by the same laboratory or by a second laboratory that meets the City's laboratory certification requirements. Proper chain-of-custody procedures must be followed when transferring specimens.

### **Sec. 10.8 Current Employees – Consequences of Positive Test Results or Failure to Submit to a Drug and Alcohol Test.**

- A. Positive test.** Any current employee who tests positive for the presence of illegal drugs, narcotics (without a valid prescription), or alcohol in a reasonable suspicion or post-accident drug and alcohol test shall be subject to immediate dismissal.
- B. Refusal.** Employees who refuse to submit to a drug and alcohol test required pursuant to this article shall be subject to immediate termination.

### **Sec. 10.9 Security of Data.**

Test results will be held in the strictest confidence. The personal identification of the applicants failing to pass the test will not be communicated to anyone other than the applicant and the appropriate staff member in personnel and selected City employees on a need to know basis. For purposes of this section, those with a need to know will be the Human Resources Manager or designee, the City Administrator, the City Attorney, the Department Head of the department in which the employee works, and the employee's immediate supervisor. In the appropriate case, the information may be released only if required by court order from any court of competent jurisdiction. Applicants and employees who are tested will be provided with a copy of the test results if requested in writing. Dissemination of information relating to the results of any drug testing conducted on any employee to any person who has no need to know, may result in disciplinary action, including dismissal of the person disseminating the information.

### **Sec. 10.10 Self-Declaration as a Substance Abuser.**

- A. Participation in City Employee Assistance Program.** Any employee may identify himself or herself at any time as an abuser of drugs or alcohol and voluntarily through a recognized treatment program approved by the City, seek counseling and rehabilitation. In these instances, the employee will be permitted the use of available leave subject to the provisions set forth in Article V. Employees undergoing treatment will be required to authorize disclosure of their progress in treatment to the Human Resources Manager. Employees who fail to actively participate in and comply with

the rules of the rehabilitation program will be subject to immediate revocation of their leave and dismissal from employment.

- B. May not be used to avoid drug or alcohol testing.** This section is not intended to provide a means for an employee to avoid any required drug and alcohol testing. Once the process of establishing reasonable suspicion has been initiated, or an accident or injury has occurred, an employee may not seek treatment in an effort to avoid testing and possible disciplinary action.

### **Sec. 10.11 Drug or Alcohol Convictions.**

- A. Notification required.** Any employee who is convicted of any criminal activity involving the illegal use or possession of drugs or alcohol must notify the employee's supervisor no later than five days after a conviction. Failure to do so may result in disciplinary action, including dismissal.
- B. Conviction during working hours.** Employees who plead guilty or nolo contendere to a violation of criminal drug and alcohol statutes, which occurred during working hours, shall be dismissed from employment.
- C. Other Convictions.** Except as provided by Subsection (b), employees who are convicted under any drug or alcohol statute may be allowed to remain employed by the City, depending on the circumstances of their arrest and conviction, and the nature of their position with the City. Continued employment with the City will be contingent upon the employee's active participation in a recognized treatment program and the employee's work performance. Any convicted employee who is allowed to remain employed will be subject to periodic testing as provided in this Article.

### **Sec. 10.12 Employee Assistance.**

- A. Referral.** The City will provide employees with confidential referral for assistance in resolving or accessing treatment for addiction to, or dependence on, illegal drugs or alcohol. The cost of treatment, counseling, or rehabilitation resulting from referral will be the responsibility of the employee. The City's group health plan may provide benefits for substance abuse treatment.
- B. Leave for treatment.** Employee assistance activities, such as referral appointments, will be treated on the same basis as other personal business or health matters with regard to use of sick leave or other paid leave.

### **Sec. 10.13 Follow-up Testing of Known Substance Abuser.**

Employees who have completed a drug or alcohol rehabilitation program will be subject to periodic unscheduled testing for the period of two years after completion of the program. Employees who successfully complete treatment for use of drugs or alcohol and subsequently are found during working hours to be in possession of or under the influence of alcohol or drugs, or test positive at any time will be subject to dismissal from employment.

### **Sec. 10.14 Disclosure of Prescription or Over-the-Counter Drug Use to Supervisor.**

- A. Notification required.** The City recognizes that employees may from time to time need to take prescription or over-the-counter medications that may cause the effects of light-headedness, weakness, dizziness, drowsiness, sedation, loss of coordination, disorientation, or other comparable side effects. The employee is required to notify the employee's supervisor prior to reporting for duty if the employee's performance is compromised or diminished from use of prescription or over-the-counter drugs. It is the responsibility of employees to request reassignment to other duties, if needed and available, for the duration of impairment, or to request the use of available leave.
- B. Failure to notify.** Employees who fail to notify their supervisor of such impairment, and who continue to work, may be required to take available leave, or to perform other assignments and may be subject to disciplinary action if supervisory intervention is required.
- C. Drug Testing.** An employee who appears to be impaired or unfit for duty as a result of the use of prescription or over-the-counter medication will be required to consent to a drug test which may include testing for abuse of the prescription or over the counter medication.

### **Sec. 10.15 Employees on Designated Stand-by Status or Subject to Call-back.**

- A. On-Call employees.** Employees who are designated for "on-call status" are expected to be free of alcohol or illegal drugs, and available to report to work for the duration of their on-call status. "On-call" employees who fail to report to a call to duty, or who report for duty under the influence of drugs or alcohol, may be subject to drug and alcohol testing and discipline, including dismissal.



**B. Emergency Duty.** The City recognizes that, in rare instances, employees who are not designated for call-back may be requested to report for emergency or unexpected duty. Employees who may be under the influence of alcohol or legally obtained medication must report this fact to their supervisor when requested to report for duty. Based on this report, the supervisor and employee may jointly decide whether the employee may perform requested duties while under such influence. In no event, however, will employees reporting to emergency duty under the influence of drugs, alcohol or legally obtained medication, be allowed to operate vehicles or mobile equipment. Employees may decline calls for emergency duty because of off-duty use of alcohol or legally obtained medication. In this event, the employee will not be subject to any disciplinary action or penalty.

### **Sec. 10.16 Off-Duty Conduct.**

It is not the City's intent to intrude upon the private lives of its employees. The City does, however, reserve the right to take disciplinary action, up to and including dismissal, in the event that an employee's off-duty involvement with drugs or alcohol is damaging to the City's reputation or business, or interferes with the employee's job duties.

### **Sec. 10.17 Searches.**

When reasonable suspicion, as defined by this article, exists, the City reserves the right to conduct unannounced searches for unauthorized substances anywhere on City property, including, but not limited to, lockers, desks, file cabinets, City vehicles and employees' personal vehicles parked on City parking lots. A copy of the key or combination of any lock used by the employee to secure anything on City property will be provided to the Department Head and stored in a safe place with other city keys. Personal property on City premises shall be subject to such searches. All such searches must be authorized and conducted under the direction of the City Administrator or his/her designee, and the grounds for suspicion must be described in writing prior to the search. Employees who refuse to cooperate during such unannounced searches shall be subject to disciplinary action, up to and including dismissal.

### **Sec. 10.18 Administrative Procedures.**

From time to time, the City Administrator may formulate administrative procedures to accompany the rules of this article. Such procedures shall apply to all City departments. Such procedures shall be disseminated to all employees and shall be available for copying and inspection in the City Administrator's office.



## **ARTICLE 11     DRUG TESTING FOR DRIVERS OF COMMERCIAL MOTOR VEHICLES**

### **Sec. 11.1     Federal Mandate.**

- A.** The City must comply with the Omnibus Transportation Employee Testing Act of 1991 (the Act), and the regulations promulgated by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), which require employers to test employees who drive commercial vehicles as part of their job duties, for the use of alcohol and drugs.
- B.** The purpose of the provisions of the Act and the regulations are to deter misuse of alcohol and drugs and to protect the public and employees from the damage such misuse may cause. To implement the federal requirements, the City adopts and implements this policy.
- C.** Although the Act does not require zero tolerance in regard to positive drug and/or alcohol testing or other prohibited conduct, the City has adopted a zero tolerance policy to further ensure the safety of employees, citizens, and the general public. The consequence of a positive test and/or prohibited conduct will be immediate termination.
- D.** Neither this policy nor any of its terms are intended to create a contract of employment or to contain the terms of any contract of employment. The City retains the sole right to change, amend or modify any term or provision of this policy without notice. This policy is effective upon adoption by the City Council, and will supersede all prior policies and statements relating to alcohol or drug use by drivers of commercial motor vehicles.

### **Sec. 11.2     Applicability.**

- A.** This article applies to:
  - 1.** City employees who drive or repair commercial vehicles, including driving full-time, part-time, intermittently, and/or occasionally that meet the requirements of Part 49 Code of Federal Regulation for the U.S. Department of Transportation and the Federal Motor Carrier Safety Administration, Part 382, or as amended;
  - 2.** applicants for a position which includes, as a part of the job duties of the position, a requirement that the employee operate a commercial vehicle, as defined above, either full-time, part-time, casual, intermittently, or occasionally; and

- ### Sec. 11.3 Definitions for this Article.

**COLLECTION SITE** means a place where individuals present themselves for the purpose of providing breath or urine samples to be analyzed for specified controlled substances. This site must possess all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage and transportation or shipment of the samples to a laboratory.

**COMMERCIAL MOTOR VEHICLE** means a motor vehicle or a combination of motor vehicles used in a commerce to transport passengers or property if the motor vehicle:

- A.** has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
- B.** has a gross vehicle weight rating of 26,001 or more pounds;
- C.** is designed to transport 16 or more passengers, including the driver; or
- D.** is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulation (149 C.F.R. 172, subpart F).

**CONFIRMATION TEST** means:

- A.** for alcohol testing, a second test following a screening test with a result greater than 0.02 that provides quantitative data of alcohol concentration
- B.** for drug testing, a second analytical procedure to identify the presence of a specific drug or drug metabolite which is independent of the screen test and which uses a different technique and chemical principal from that of the screen test in order to ensure liability and accuracy. (Gas Chromatography/Mass Spectrometry (GC/MS) is the authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine).

**DRIVER** means any employee who holds a Commercial Driver's License and is subject to operating a Commercial Motor Vehicle at the direction of, or with the consent of the City including, but not limited to, full-time, part-time, regularly employed drivers, casual, intermittent or occasional drivers, or any person applying to the city for a position, the duties of which include driving a Commercial Motor Vehicle.

**DRUG** includes cocaine, marijuana, opiates, amphetamines, and phencyclidine and any other substance (other than alcohol) determined by the U.S. Department of Transportation to be a controlled substance.

**DRUG TEST** means a method for determining the presence of controlled substances in a urine sample using a scientifically reliable method performed in accordance with procedures specified in 49 C.F.R. 40 or as amended.

**EMPLOYEE** means a person employed by the City of Early.

**EVIDENTIAL BREATH TESTING DEVICE (EBT)** means a device approved by the National Highway Traffic Safety Administration (NHTSA) and placed on the NHTSA's Conforming Products List and is used for the evidential testing of breath.

**MEDICAL REVIEW OFFICER (MRO)** means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the city's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

**ON-DUTY TIME** includes all time from the time an employee begins work until the time he/she is relieved from work and all responsibility for performing work. It also includes all time spent providing a breath sample or primary urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident or follow-up testing as directed by the city. Employee drivers will be paid for this time.

**POST-ACCIDENT TEST** means an alcohol or drug test administered to an employee in a safety-sensitive position who, while on duty, is involved in a vehicular or other type of accident if: (1) the accident involved loss of human life; or (2) the employee received a citation for a moving violation arising from the scene of the accident and either (i) one or more motor vehicles incurred disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle, or (ii) bodily injury is sustained by any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident.

**PRE-EMPLOYMENT TEST** means a drug test administered to a person prior to the first time the individual performs a safety-sensitive function upon appointment to a position requiring the person to hold a Commercial Driver's License.

**RANDOM TEST** means an alcohol or drug test administered to a driver who has been randomly selected by a scientifically valid method from among the pool of city drivers subject to such tests.

**REASONABLE SUSPICION TEST** means an alcohol or drug test administered to a driver as a result of a trained City representative's, supervisor's, or trained Human Resources Manager's reasonable belief that the driver has violated the drug or alcohol prohibitions of this policy. A reasonable suspicion determination must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

**REFUSAL TO SUBMIT TO A DRUG OR ALCOHOL TEST** means a driver:

- A.** fails to provide an adequate amount of breath during testing without a valid medical explanation after he or she has received notice of the requirement for breath testing;
- B.** fails to provide adequate urine for drug testing without a valid medical explanation after he or she has received notice of the requirement for urine testing;

- C.** engages in conduct that obstructs or interferes with the testing process;
- D.** fails to be readily available for post-accident testing; or
- E.** fails to report to, and undergo alcohol and drug testing, at a collection site as required.

**SAFETY-SENSITIVE FUNCTION** means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- A.** All time at an employer facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- B.** All time inspecting equipment or inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- C.** All time spent at the driving controls of a commercial motor vehicle in operation;
- D.** All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
- E.** All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- F.** All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**SCREENING TEST (ALSO KNOWN AS AN INITIAL TEST)** means:

- A.** in alcohol testing, an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system; and
- B.** in drug testing, a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.

**SUBSTANCE ABUSE PROFESSIONAL (SAP)** means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders.

**SUPERVISOR** means a management or supervisory employee of the City of Early.

**TRAINED CITY REPRESENTATIVE SUPERVISOR OR TRAINED HUMAN RESOURCES MANAGER** means any City supervisor or any City management employee who has received the requisite training in identifying the signs and symptoms of alcohol abuse or drug abuse.

**ZERO TOLERANCE** means the City will not tolerate any verified positive confirmation drug and/or alcohol test under this policy. All verified positive results will result in immediate termination.

## **Sec. 11.4 Prohibited Conduct Regarding Alcohol and Drugs & Consequences.**

**A.** Prohibited Conduct. A driver shall not:

1. report for duty or remain on duty when the driver's ability to perform assigned functions is adversely affected by alcohol or when the driver's blood alcohol concentration is 0.04 or greater;
2. possess or use alcohol while on duty, or within four (4) hours before reporting for duty;
3. perform safety-sensitive functions for 24 hours following an alcohol test result indicating an alcohol concentration of greater than 0.02 but less than 0.04;
4. use alcohol for eight hours following an accident or until the employee undergoes a post-accident alcohol test, whichever occurs first; or
5. refuse to submit to a pre-employment, post-accident, random, reasonable suspicion, return-to-duty or follow-up alcohol or drug test. A driver who refuses to submit to an alcohol or drug test shall not be allowed to perform safety-sensitive functions, pending further disciplinary action.
6. report for duty or remain on duty when the driver is using any drug, except when the use is pursuant to the instructions of a physician who has advised the employee that the drug will not adversely affect the driver's ability to safely perform safety-sensitive functions;
7. report for duty, remain on duty, or perform a safety sensitive function if the driver tests positive for drugs; or

**B.** Consequences of Prohibited Conduct: If a driver violates any of the prohibitions regarding alcohol, the driver will be terminated. Additionally, the Federal Regulations mandate that a violator must be referred to a Substance Abuse Professional (SAP). Any costs for treatment, will be incurred by the employee.

## **Sec. 11.5 Testing Requirements in General.**

- A.** Procedural Requirements. All alcohol and drug testing procedures will comply with the procedures of Title 49 C.F.R. Part 40 or as amended.
- B.** Testing Circumstances. There are five (5) instances that a driver may be tested under this policy:
  - 1.** pre-employment/pre-duty testing;
  - 2.** post accident testing;
  - 3.** random testing;
  - 4.** reasonable suspicion testing; and
  - 5.** return-to-duty and/or follow-up testing.
- C.** Notice of Requirements. Before performing an alcohol or drug test under the requirements of the U.S. Department of Transportation regulations, the driver being tested shall be notified that the alcohol or drug test is required by 49 C.F.R. Part 382, or as amended.
- D.** CDR. The Human Resources Department is responsible for providing the required notice and for the administration of the drug and alcohol testing process and records.

## **Sec. 11.6 Pre-employment Testing/Pre-Duty Testing.**

- A.** Safety-sensitive function. Offers of employment are made contingent upon obtaining a negative result on a drug test administered pursuant to this policy. Driver applicants who have received conditional employment offers are to be cautioned against giving notice at their current place of employment, or incurring any costs associated with accepting employment with the City until after their verified negative test results have been received by the City. An applicant driver shall not perform any safety-sensitive function until the driver has tested negative for drugs.
- B.** Release of previous tests results. As a condition of employment, a person applying for a position requiring the performance of a safety-sensitive function shall provide written authorization for previous employers to release to the city through Human Resources any and all test results, including records of the individual's refusal to test, administered in accordance with the Federal regulations concerning drug and alcohol use and testing.



- C.** Transfers. An employee who seeks to move into a driver position shall not perform a safety-sensitive function until the employee has tested negative for drugs. If the test results do not meet these standards, the employee shall be disqualified from further consideration for the position and is subject to immediate termination/indefinite suspension.
- D.** Previous employment. If the City learns that an applicant for a safety-sensitive position tested positive for drugs or alcohol or refused to test while at a previous employer, the City Human Resources Manager shall verify the information, obtain proof that the applicant has completed a rehabilitation program and has tested negative in return-to-duty testing.
- E.** Proof of Return-to-Duty Testing. The City shall not use or hire a driver the City knows has tested positive for drugs or alcohol while employed elsewhere, and has not been re-certified and tested negative in return-to-duty testing.

### **Sec. 11.7 Random Testing.**

- A.** Alcohol. At least 10% of the average number of the city's driver positions subject to this policy shall undergo random alcohol testing in each calendar year, or the number of drivers equal to an annual rate not less than the minimum annual percentage determined by the Federal Highway Administration Administrator Federal Motor Carrier Safety Administration.
- B.** Drug. At least 50% of the average number of the city's driver positions subject to this policy shall undergo random drug testing in each calendar year, or the number of drivers equal to an annual rate not less than the minimum annual percentage determined by the Federal Highway Administration Administrator Federal Motor Carrier Safety Administration.
- C.** Scientifically valid method. The selection of drivers for random testing, the timing and frequency of random tests, and the number of drivers to be tested on any given day shall be determined by the city. The selection of drivers for random testing shall be made by a scientifically valid method. Each driver shall have an equal chance of being selected for testing each time selections are made.
- D.** Unannounced. Random alcohol and drug tests shall be unannounced and shall be spread reasonably throughout the year. Human Resources will arrange the testing and provide the necessary notification required.
- E.** Test site. A driver who is notified of selection for random alcohol or drug testing shall be required to proceed immediately to the test site as instructed.



- F.** Either test may be given. A driver, when randomly selected, may be required to submit to either an alcohol or drug test, or both.
- G.** Not present at work. In the event a driver who is selected for a random test is not at work that day, another driver will be selected.
- H.** When required. A driver shall be subject to random alcohol testing only while the driver is performing a safety-sensitive function, just before the driver is to perform a safety-sensitive function, or just after the driver has ceased performing a safety-sensitive function.
- I.** Positive Test. Pursuant to the City's zero tolerance policy, a verified positive drug or alcohol test shall result in immediate termination.

### **Sec. 11.8 Reasonable Suspicion Testing.**

- A.** Promptly comply. A driver shall promptly submit to an alcohol and/or drug test whenever a trained City representative supervisor or trained Human Resources Manager has a reasonable suspicion to believe that the driver has violated the alcohol or drug prohibitions of this policy.
- B.** Notification to Human Resources. A trained City representative must notify the Human Resources Manager, CDR, or designee, when a reasonable suspicion situation occurs prior to any testing being performed.
- C.** When required. The observations required by the paragraph above must be made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this policy.
- D.** Time limit for alcohol test. After determination of reasonable suspicion, the alcohol test shall be administered within (2) two hours unless the supervisor or Human Resources Manager prepares and maintains on file a record stating the reasons the test was not administered within that time. The test may be conducted up to eight (8) hours after the reasonable suspicion determination is made. If the test is not administered within eight (8) hours after the determination, attempts to administer the test shall stop and the supervisor or Human Resources Manager shall record and maintain on file the reasons why the test was not conducted.
- E.** Time limit for drug test. No driver shall be subject to reasonable suspicion drug testing later than 24 hours following the determination that reasonable suspicion exists to require the driver to undergo such test. If the test is not administered within 24 hours after the reasonable suspicion determination, attempts to administer the test shall

stop and the supervisor or Human Resources Manager shall record and maintain on file the reasons why the test was not conducted.

- F.** Separation of duties. Any trained City representative supervisor or trained Human Resources Manager who makes the determination that reasonable suspicion exists to conduct a test shall not conduct the test of the driver.
- G.** Written record of observations for test. A written record shall be made of the observations leading to an alcohol and/or drug reasonable suspicion test, and signed by the trained City representative who made the observations, within 24 hours of the observed behavior or before the results of the alcohol and/or drug test are released, whichever is earlier.
- H.** Positive Test. Pursuant to the City's zero tolerance policy, a verified positive drug or alcohol test shall result in immediate termination.

### **Sec. 11.9 Notice to Contact MRO.**

The CDR shall make reasonable efforts to contact and request each driver who submits a specimen, regardless of the driver's employment status, to contact and discuss the results of the drug test with a MRO who has been unable to contact the driver.

### **Sec. 11.10 Post Accident Testing.**

- A.** When tested. A driver shall be subject to post-accident alcohol and drug testing as soon as practicable following the accident.
- B.** Time limit for testing. A driver subject to post-accident testing shall be subject to a breath alcohol test not later than eight hours following the accident and to a drug test no later than 32 hours following the accident.
- C.** Report on delayed testing. If an alcohol test is not administered within two hours following the accident, the trained supervisor or trained Human Resources Manager shall prepare and maintain on file a record stating the reasons the test was not administered. If an alcohol test is not administered within eight hours following the accident, the trained supervisor or Human Resources Manager shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. If a drug test is not administered within 32 hours following the accident, the trained supervisor or Human Resources Manager shall cease attempts to administer a drug test, and prepare and maintain on file a record stating the reasons the test was not promptly administered.

- D.** Availability for testing. A driver who is subject to post-accident testing shall remain readily available for such testing or shall be deemed to have refused to submit to testing. Nothing herein shall be construed to require the delay of necessary medical attention or to prohibit the driver from leaving the scene of the accident for the period of time necessary to obtain assistance in responding to the accident, obtain necessary medical treatment for injured people, or to obtain materials necessary to secure the accident site.
- E.** Notification to Human Resources. The supervisor, driver, or other City employee must contact the Human Resources Manager, or designee, regarding the need for post-accident testing.
- F.** Positive Test. A verified positive drug or alcohol test shall result in immediate termination.

### **Sec. 11.11 Return-to-Duty Testing.**

- A.** Any driver who has an alcohol test result indicating an alcohol concentration between 0.02 and .039, may at the City's discretion, be permitted to return to work subject to the following:
  - 1.** the driver has been evaluated by a substance abuse professional who has determined what assistance, if any, the driver needs in resolving problems associated with alcohol or drug use and the driver has successfully completed any prescribed rehabilitation;
  - 2.** the driver has undergone return-to-duty testing with a result indicating an alcohol concentration of less than 0.02.
- B.** Testing schedule. Human Resources will arrange for return-to-duty testing.
- C.** Test result. The alcohol test must be less than 0.04 to qualify for return-to-duty testing. A test result for alcohol greater than 0.04 or a positive drug test will result in immediate termination.

### **Sec. 11.12 Admission of Substance Abuse or Dependency.**

- A.** An employee subject to this policy who voluntarily admits to drug or alcohol abuse or dependency must undergo an evaluation by a substance abuse professional. The employee shall also be subject to such follow-up testing for either or both alcohol and drug use as recommended by the substance abuse professional.
  - 1.** The number and frequency of such tests shall be determined by the substance abuse professional, and shall consist of at least six (6) tests in the first twelve (12)

months following the employee's admission of abuse or dependency, but follow-up testing shall not extend past 60 months after the employee's return to duty.

2. The substance abuse professional may terminate such tests at any time after the first six tests have been administered upon determination that the tests are no longer necessary.

**B.** Testing Schedule. Human Resources will arrange for follow-up testing.

**C.** Positive Test. Pursuant to the City's zero tolerance policy, a verified positive drug or alcohol test during follow-up testing shall result in immediate termination.

### **Sec. 11.13 Disciplinary Action Including Termination for Employee Drivers.**

**A.** Positive alcohol test. If a driver tests positive for an alcohol concentration of greater than 0.04, the driver will be subject to immediate termination. If a driver has an alcohol test result indicating an alcohol concentration of 0.02 or greater, but less than 0.04, the driver shall be prohibited from performing a safety sensitive function:

1. for a minimum of 24 hours; and
2. until the driver has undergone a return-to-duty alcohol test with a test result less than 0.02.

**B.** Positive drug test. If a driver tests positive for one or more drugs, the driver will be subject to immediate termination.

**C.** Failure to cooperate with process. A driver is subject to disciplinary action, including immediate termination, if the driver:

1. refuses to sign an employee acknowledgment form for a copy of the City's Drug and Alcohol Testing Policy upon receipt of a copy of the policy;
2. fails to report an arrest and/or conviction for operating a motor vehicle while under the influence of alcohol or drugs;
3. fails to report an arrest and/or conviction for operating a city motor vehicle or a motor vehicle operated in the performance of city business while under the influence of alcohol or drugs;
4. fails to report that the driver has been convicted of violating a statute related to drugs;
5. obstructs or interferes with the administration of any drug or alcohol testing;

6. has an alcohol test result indicating an alcohol concentration greater than 0.04 or
  7. adulterates or tampers with the sample. Any employee who submits two untestable samples will be subject to disciplinary action for presumed tampering.
- D.** Salary. A driver shall not be paid for the period of time the driver is prohibited from performing safety sensitive functions. The driver will be paid for the time spent testing.

### **Sec. 11.14 Alcohol Test Procedures.**

- A.** Testing device for alcohol. A Breath Alcohol Technician (BAT) shall administer alcohol tests using an Evidential Breath Testing device (EBT) except that if the Federal Motor Carrier Safety Administration Department of Transportation Federal Highway Administration approves administration of tests by persons other than BATs or approves the use of other methods or technologies for detecting the presence of alcohol, then the administration of tests by such other persons or the use of such other methods or technologies shall be permitted under this policy.
- B.** Testing procedures. Alcohol testing shall be conducted in accordance with the following:
1. A driver directed to undergo alcohol testing shall proceed immediately to the designated test site as instructed under the supervision of a supervisor or designee. Drivers to be tested will not be allowed to drive to the testing facility.
  2. A driver shall follow all procedures and instructions given by the BAT including completing, signing, initialing, or dating any required forms or log books. If the driver takes the test but fails to sign the certification in Step 4 of the Breath Alcohol Technician Form, or fails to initial the log book entry, it will not be considered a refusal to test. The donor signs Step 2 as acknowledgement to test to meet Federal Requirements 49 CFR. Step 4 is signed by the donor to acknowledge he has seen the test result ONLY if the test result is .04 or greater.
  3. The testing site shall provide visual and aural privacy to the driver, sufficient to prevent unauthorized persons from seeing or hearing test results.
  4. In order to prevent unauthorized persons from seeing or hearing test results, unauthorized persons shall not be permitted access to the testing location when the Evidential Breath Testing Device remains unsecured, or, at any time when testing is being conducted.

5. In unusual circumstances, a test may be conducted at a location that does not fully meet the requirements of paragraph (3) above. In such cases, the driver shall be provided visual and aural privacy to the greatest extent practicable. The city may conduct testing onsite when feasible.
6. The BAT shall supervise only one driver's use of the EBT at a time and shall not leave the alcohol testing location while the testing procedure for a driver is in progress.
7. Upon entering the test site, the driver shall be required to provide the BAT with positive identification. Positive identification may take the form of a photo ID card or identification by a supervisor or human resources manager. On request of the driver, the BAT shall provide positive identification to the driver.
8. If a screening test of a driver indicates a breath alcohol concentration of less than 0.02, no further alcohol testing of the driver shall be conducted during this testing event, the BAT shall transmit the result to the city in a confidential manner to the human resources department.
9. If the result of a screening test of a driver indicates a breath alcohol concentration of 0.02 or greater, the driver shall be required to undergo a confirmation test.
10. If the confirmation test will be conducted by a different BAT, the BAT who conducts the screening test shall complete and sign the Breath Alcohol Testing Form and log book entry. The BAT shall provide the driver with Copy 2 of this form.
11. If a BAT other than the one who conducted the screening test is conducting the confirmation test, the driver shall be required to provide positive identification in accordance with paragraph (7) above, to the new BAT and the driver may request positive identification of the new BAT.
12. The driver shall not eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This waiting period begins with the completion of the screening test.
13. The confirmation test shall be conducted within 20 minutes of the completion of the screening test. The confirmation test shall be conducted within no less than 15 minutes and no more than 30 minutes of the completion of the screening test.
14. If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall initiate a new Breath Alcohol Testing form. The driver shall then complete Step 2 on the form, signing the certification. Refusal of the driver to sign the certification shall be deemed a refusal to test.

- 15.** The driver's refusal to complete and sign the Breath Alcohol Testing form (Step 2) to provide breath, to provide an adequate amount of breath, or otherwise to fail to cooperate with the testing process in a way that prevents the completion of the test shall be deemed a refusal to test and noted by the BAT in the "Remarks" section of the form. The testing process shall be terminated and the BAT shall immediately notify the CDR. A driver who refuses to submit to a required alcohol test shall be deemed to have tested at a level of 0.04 or greater for alcohol. These actions are prohibited and will result in immediate termination.
- 16.** If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new Breath Alcohol Testing form with a new sequential test number.
- 17.** If the driver is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition, the BAT shall again instruct the driver to attempt to provide an adequate amount of breath.

  - a.** If the driver refuses to make the attempt, the BAT shall immediately inform the CDR.
  - b.** If the driver attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the breath alcohol form and immediately inform the CDR.
  - c.** If the driver attempts and fails to provide an adequate amount of breath, the CDR shall direct the driver to obtain, as soon as practicable after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the city concerning the driver's medical ability to provide an adequate amount of breath.
  - d.** If the licensed physician determines, in his or her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the driver from providing an adequate amount of breath, the driver's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The physician shall provide to the city a written statement of the basis for his or her conclusion.
  - e.** If the licensed physician, in his or her reasonable medical judgment, is unable to determine that a medical condition has, or with a high degree of probability, could have, precluded the driver from providing an adequate amount of breath, the driver's failure to provide an adequate amount of

breath shall be deemed a refusal to take a test. The physician shall provide to the City a written statement of the basis for his or her conclusion. The driver will be subject to immediate termination/indefinite suspension.

### **Sec. 11.15 Drug Test Procedures.**

- A.** Testing for drugs shall be conducted by a laboratory certified by the U.S. Department of Health and Human Services (DHHS) and in accordance with the following procedures:
- 1.** A driver directed to undergo a drug test shall proceed immediately to the designated collection site as instructed by the supervisor, under the supervision of a designee. Drivers to be tested will not be allowed to drive to the testing facility.
  - 2.** A driver shall follow all procedures and instructions given by the collection site person. Failure to do so shall be considered a refusal to test.
  - 3.** The collection site person shall collect a urine sample from the driver in accordance with Federal Motor Carrier Safety Administration Federal Highway Administration procedures.
  - 4.** A driver shall provide at least 45 ml of urine for testing. A driver who fails to provide at least this amount shall be subject to the provisions of paragraph A 18 below.
  - 5.** The collection site person shall divide the specimen into two containers. One container shall contain at least 30 ml of urine and shall be the primary specimen. The other container shall contain at least 15 ml of urine and shall be the split specimen.
  - 6.** Both containers shall be shipped to the laboratory in a single shipping container, together with copies 1 and 2 and the split specimen copy of the chain of custody form.
  - 7.** The laboratory shall log in the split specimen with the split specimen seal remaining intact. The laboratory shall store the split specimen securely in accordance with approved procedures.
  - 8.** The primary specimen shall undergo a screening test for the presence of drugs. If the screening test detects the presence of a drug, the primary specimen shall undergo a confirmation test to verify the positive test result.
  - 9.** If the result of the test of the primary specimen is negative, the laboratory may discard the split specimen.



- 10.** The MRO shall review all primary specimen results. If the result of the test of the primary specimen is confirmed positive for the presence of drugs, the MRO shall notify the driver that the driver has 72 hours in which to request a test of the split specimen. The driver does this by contacting the CDR in Human Resources. If the result of the test of the primary specimen is negative, the MRO is authorized to direct a driver to undergo a retest for the presence of drugs if, upon review of the original test results, the MRO has reason to believe the primary specimen has been adulterated.
- 11.** If the primary specimen tests confirmed positive for the presence of a drug, the driver may request, in writing, that the MRO direct that the split specimen be tested in a different DHHS-certified laboratory for presence of the drug or drug metabolites for which a positive test result was obtained in the test of the primary specimen. The MRO shall honor such request if it is made within 72 hours of the driver having been notified of a verified positive test result. The driver shall be responsible for reimbursing the city for any and all costs associated with having the split specimen tested.
- 12.** If the driver has not contacted the MRO within 72 hours, the driver may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the driver from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation for the driver's failure to contact the MRO within 72 hours, the MRO shall direct that the reanalysis of the primary specimen or analysis of the split specimen, as applicable, be performed. The driver may not ask reanalysis of the primary specimen.
- 13.** If the result of the test of the primary specimen is positive, the laboratory shall retain the split specimen in frozen storage for twelve (12) months for initial testing and test request at a second laboratory if the results are positive. Following the end of a 60-day period, if not informed by the MRO that the driver has requested a secondary test of the split specimen, the laboratory may discard the split specimen.
- 14.** If the MRO directs the first laboratory in writing to forward the split specimen to a second DHHS-certified laboratory, the second laboratory shall analyze the split specimen by GC/MS to reconfirm the presence of the drugs or drug metabolites found in the primary specimen. Such GC/MS confirmation shall be conducted without regard to the cutoff levels established by DHHS. The laboratory conducting the analysis of the split specimen shall retain the sample in long-term storage for one (1) year, or longer if litigation concerning the test is pending.
- 15.** The result of the test of the split specimen shall be transmitted by the second laboratory to the MRO.

16. If the analysis of the split specimen fails to reconfirm the presence of the drug or drug metabolites found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report the cancellation and the reasons for such to the CDR, the driver, and to the U.S. Department of Transportation.
17. A driver whose primary specimen tests confirmed positive for the presence of a drug(s) and who requests, in accordance with paragraph (k) 11 above, that the split specimen be tested, shall not be permitted to return to work pending the outcome of such test but shall be suspended without pay and subject to further disciplinary action. If the test of the split specimen does not reconfirm the presence of the drug or drug metabolites found in the primary specimen, the driver shall be paid his wages for all regularly-scheduled shifts the driver would have worked had the suspension not occurred, and the City shall be responsible for the costs associated with having the split specimen tested.
18. If the driver is unable to provide the required 45 ml of urine, the driver shall be instructed to drink not more than 24 ounces of fluids, and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container. The original insufficient specimen shall be discarded.
19. If the driver is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the laboratory shall notify the city CDR of the driver's inability to provide an adequate sample.
20. The MRO will then refer the driver for a medical evaluation to develop pertinent information concerning whether the driver's inability to provide an adequate specimen is genuine or constitutes a refusal to test. Upon completion of the examination, the MRO shall report his or her conclusions to the City's CDR in writing.
21. If the MRO determines that the driver's inability to provide an adequate sample is not genuine, the driver shall be deemed to have refused to test and shall be subject to immediate termination.

### **Sec. 11.16 Referral to Substance Abuse Professional.**

- A. Each driver who has a positive drug test or a blood alcohol concentration test level of 0.04 or greater, shall be referred to a substance abuse professional, regardless of employment status with the City.
- B. The substance abuse professional shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol or drug use. A substance abuse professional is ordinarily available through the driver's health care provider.

## **Sec. 11.17 Confidentiality and Recordkeeping of Records of Drug and Alcohol Testing.**

- A.** Notice of test results. Applicants and employees will be notified by the CDR of the test results in a confidential manner.
  - 1.** Pre-Employment. Human Resources shall notify an applicant of the results of a pre-employment drug test conducted under this policy, if the applicant or employee requests such results. If the test result was a verified positive, the applicant will be considered ineligible for the position and will not be able to reapply for twelve (12) months.
  - 2.** Reasonable Suspicion, Post-Accident, and Random Tests. The City CDR in Human Resources shall promptly notify a driver of the results of reasonable suspicion, post-accident, and random tests conducted under this policy if the test results are verified positive. Human Resources shall also inform the driver which drugs were verified as positive. A verified positive test will result in immediate termination.
- B.** Confidentiality and access to records. Records of drug and alcohol testing of drivers are subject to the following:
  - 1.** All records required to be maintained by 49 C.F.R. §382.401, et seq. shall be maintained in a secure location with controlled access in the Human Resources department.
  - 2.** Except as required or permitted by law or expressly authorized or required by 49 C.F.R. §382.405, the City shall not release information that is contained in drug and alcohol testing records.
  - 3.** Upon receipt of a written request from a driver, the City shall make records available to a subsequent employer.
  - 4.** Upon written request, a driver is entitled to copies of any records pertaining to the driver's use of drugs or alcohol, including any records pertaining to the testing conducted pursuant to this policy.
  - 5.** All results of alcohol and drug testing conducted pursuant to this policy shall be made available, upon request, to the Secretary of Transportation.
  - 6.** City may disclose information pertaining to the drug or alcohol testing of a driver to the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the driver, and including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver and arising from the results of an alcohol or drug test.

**C.** Record keeping. Record retention requirements are as follows:

- 1.** The following records must be maintained for five years:
  - a.** Records of alcohol test results indicating an alcohol concentration of 0.02 or greater;
  - b.** Records of verified positive drug test results;
  - c.** Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results);
  - d.** SAP reports; and
  - e.** All follow-up tests and schedules for follow-up tests.
- 2.** The City will maintain information obtained from previous concerning drug and alcohol test results of employees for three years.
- 3.** The City will maintain records of the inspection, maintenance, and calibration of EBTs, for two (2) years.
- 4.** The City will maintain records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 for one year.

## ARTICLE 12 SAFETY REGULATIONS

### Sec. 12.1 Purpose.

The purpose of this article is to establish the safest possible working conditions for City employees and to assure that employees exercise due care for the safety of the public.

### Sec. 12.2 Responsibilities.

The responsibility for a successful safety program in the work place rests with every employee. All levels of City management and supervision shall demonstrate commitment in and support of City safety regulations.

### Sec. 12.3 Duties of Employees.

Every employee has the duty to be knowledgeable of safety rules applicable to the employee's work. An employee shall:

- A.** follow all safety rules, posted safety signs, job safety training, and operating procedures applicable to the employee's work;
- B.** immediately report accidents and injuries to the employee's supervisor, regardless of how minor;
- C.** immediately report unsafe conditions, equipment, or acts, or fire or suspicion of fire to the employee's supervisor;
- D.** maintain the employee's work area and work facility in a clean, healthful, and sanitary condition;
- E.** maintain City equipment under the care of the employee in accordance with accepted safety practices applicable to the specific equipment and perform required safety checks of the equipment both before and following operation of the equipment;
- F.** smoke only in areas designated as "Smoking" areas;
- G.** consume food and beverages in designated areas only.

## Sec. 12.4 Duties of Supervisors.

Supervisors shall:

- A. when an employee enters a new position with the City, train and instruct the employee in the safety regulations affecting that position;
- B. provide ongoing training of all employees and provide training for any new equipment or processes introduced into the work place;
- C. oversee the purchase, maintenance, and administration of required protective equipment.

## Sec. 12.5 Protective Equipment.

- A. **Required; signs posted.** Employees shall use or wear protective equipment in areas of the City work place and in the performance of tasks for which it is required. Designated areas will be posted with a conspicuous sign that describes when and what type of protective equipment is required.
- B. **Types.** Protective equipment includes, but is not limited to: head
- C. protection, ear protection, face and eye protection, respiratory equipment, safety belts, protective footwear, gloves and special work clothing.

## Sec. 12.6 Special Physical Evaluation.

- A. **Conditions that constitute safety hazard.** When in the opinion of a Department Head, an employee's condition constitutes a safety hazard to anyone, or if one or more of the following circumstances exists, the Department Head shall arrange through the Human Resources Manager for the employee to undergo physical or psychological evaluation or drug testing:
  - 1. inability to perform the essential functions of a job because of an apparent physical or psychological problem;
  - 2. unusual number of occupational injuries or repeated recurrences of disability from a previous injury;
  - 3. excessive unexcused use of sick leave.

- B. Confidentiality.** The results of a physical or psychological examination performed by the City physician shall be confidential. Information shall only be released in accordance with state and federal laws regarding medical privacy.

## **Sec. 12.7 Departmental Rules.**

Departments may establish departmental safety rules necessary to ensure that the work areas are safe. The Department Head shall notify employees of all departmental safety rules and keep an updated copy of the departmental safety regulations readily available to each employee within the department. In addition, a copy of the regulation shall be filed with Human Resources and the City Secretary.

## **Sec. 12.8 City Driver Regulations.**

- A. Information required.** Before hiring an applicant into a position that requires the driving of a City vehicle, Human Resources may require the applicant to secure a copy of his own driving record from the Texas Department of Public Safety to determine if the applicant qualifies for employment under this section.
- B. Permissive Use of Prescribed and Over-The-Counter Drugs.** The legal use of prescribed and over-the-counter drugs is permitted while on City premises, while on duty, while conducting City-related business or other activities off premises, while driving a City-owned or leased vehicle, or while operating or using other City-owned or leased property or equipment only if it does not impair an employee's ability to perform the essential functions of the job (or operate the vehicle, property or other equipment) effectively and in a safe manner that does not endanger the employee, citizens or other individuals in the workplace. Examples of impairment include, but are not limited to, drowsiness, dizziness, confusion, or feeling shaky.
- C. Disqualification.** A person shall not be hired for or allowed to retain a position that requires the driving of a City vehicle if within the immediately preceding thirty six (36) months, the person has:
- 1.** a conviction for driving while intoxicated;
  - 2.** a conviction for driving under the influence of drugs; or
  - 3.** more than three accidents or convictions for more than three moving violations, or more than three such accidents or violations in combination.
- D. Notification of the revocation or suspension of driver's license.** An employee who operates City vehicles will immediately notify their supervisor if for any reason their

driver's license is revoked or suspended prohibiting them from performing their duties as a driver of city vehicles.

- E. Additional record checks.** A Department Head may at any time request from the Texas Department of Public Safety the driving record of an employee responsible for driving a City vehicle in order to assure that the employee maintains qualifications as a City driver.

## **Sec. 12.9 Vehicle Collision Reports.**

- A. Required.** When a City employee is involved in a vehicle collision while in the course of City employment or while driving a City vehicle, the employee shall report the collision to the police department and as soon as practical to the employee's department according to departmental procedures. When a City employee is involved in a vehicle collision outside of the City, the collision will be reported to the Police agency having jurisdiction where the collision took place.
- B. Other notifications.** A Department Head shall submit a vehicle damage report to the City Administrator the next workday following the day of the collision. The City Administrator shall obtain a copy of the police report of the accident and shall forward necessary information to the City's insurance carrier as appropriate.
- C. Other damage.** When damage to a vehicle (such as a dent) is discovered during a pre-operation check, the supervisor shall be notified immediately and a report filed with the Department Head. The Department Head will determine if the report should be filed with the City Administrator.
- D. Estimates.** Damaged vehicles shall be taken to the Department Head for a damage estimate as soon as possible. The Department Head shall be responsible for notifying the City Administrator of the damage to a City vehicle as soon as possible. The Department Head may take the vehicle to get damage estimates.

## **Sec. 12.10 Employee Accident Review Board.**

- A. Created.** The City Administrator has created the Employee Accident Review Board ("board"). The board is comprised of three (3) members. The City Administrator, Assistant City Administrator or the City Administrator's designee will chair the board and shall appoint the other two (2) members as representatives of other City departments. Meetings will be held when called by the City Administrator or the City Administrator's designee.
- B. Responsibilities.** The Employee Accident Review Board shall:



1. investigate all accidents involving a City employee which result in personal injury, damage to City equipment or property, or damage to other property;
  2. determine responsibility for each accident; and
  3. report its written findings to the City Administrator and the affected Department Head. (The Department Head is responsible for notifying the affected employee of the decision.)
- C. Investigations.** The board shall review all written reports and may at its discretion, conduct interviews with the employees involved and other witnesses, visit the accident scene, and view the vehicle or property involved.
- D. Recommendations.** The board may, based upon its findings, make recommendations to the Department Head, including, but not limited to:
1. employee training, education, testing, physical examination, or counseling;
  2. employee restitution for damaged City property;
  3. disciplinary action for disregard of safety rules;
  4. dismissal for repeated violations of the safety rules.
- E. Appeal.** All recommendations and findings of the board are final. Any disciplinary action taken by the Department Head can be appealed to the City Administrator. See appeal procedures under Article VIII.

### **Sec. 12.11 Smoke-Free and Tobacco-Free Workplace Policy.**

The City prohibits smoking or chewing of any tobacco or other plant products in all municipal buildings or facilities, garages or City vehicles including e-cigarettes and vapor products. An employee who violates the smoke-free workplace policy is subject to disciplinary action.

## **ARTICLE 13     SALARY ADMINISTRATION**

### **Sec. 13.1     Compensation Plan.**

The City Administrator shall annually prepare a Compensation Plan for the City and submit it to the City Council as part of the annual budget. In order to keep City salary rates current, uniform, and equitable, the City Administrator may prepare an analysis of prevailing salaries for similar positions in the City and the City's competitive labor market. The City Administrator may recommend adjustments that in the City Administrator's opinion are necessary to maintain the internal and external equity of the City's salary structure.

### **Sec. 13.2     Original Appointment.**

The minimum rate of salary for a classification shall ordinarily be paid upon original appointment. With the approval of the City Administrator, or his designee, a new employee may be started above the minimum rate of salary for a classification, based upon circumstances such as experience, unique skills, or other factors determined to be important by the appointing authority.

### **Sec. 13.3     Interim or Temporary Assignments.**

The City Administrator or a Director/Department Head may designate a person from the next lower classification to fill a position in a higher classification temporarily. A person temporarily filling a position in a higher classification shall be paid the base salary of the higher position during the time the employee performs the duties of the higher position. Upon returning to his/her regular assignment, the employee's salary shall revert to the level conforming with the salary range of the position held by the employee immediately prior to the temporary assignment.

### **Sec. 13.4     Temporary and Part-time Employees.**

An employee, who regularly works less than the established hours of employment for each month, may be paid by the hour or pursuant to a wage scale proportional to the amount of time worked. The salary rate or the hourly pay must be determined by the City Administrator.

### **Sec. 13.5     Salary Increases.**

Salaries will be considered and reviewed annually.

### Sec. 13.6 Certification Pay.

- A. Purpose.** The purpose of Certification Pay is to encourage continuing education of all employees of the City of Early and to insure uniform treatment of employees.
- B. Eligible Certifications for Pay.** As a part of the annual Compensation Plan a list of certifications for pay will be incorporated into it. This list will be reviewed annually for additions or deletions.
- C. Eligibility and Requirements.** The following criteria will be used in determining eligibility for certification pay:
1. Employees must be classified as full time.
  2. The certification supporting the requested certification pay must be within the scope of the employee's normal job functions or within the range of advancement.
  3. Upon notification by the employee of an eligible certification, the certification pay must be requested by the Department Head and approved by the City Administrator and will take effect on the next pay period.
  4. A copy of the certification qualifying the employee for the certification pay must be attached to the request for certification pay.
  5. The Department Head will be responsible for ensuring that employees within their department receiving certification pay obtain required continuing education to maintain the certification.
  6. Proof of continuing education must be submitted to Human Resources within two business days of the date the continuing education is earned.
  7. The City Administrator will have final approval on all certification pay and classifications.
- D. Classifications.** Certification pay will be classified as General and Departmental. General classifications will be open to all employees. Department classifications will be specific to those departments. The City Administrator will prepare a list, available to all employees, of the approved classifications. Bilingual certification pay will require documented verification of language proficiency and any employee receiving bilingual certification pay must understand and agree that as a condition of receipt of this certification pay, he/she is subject to call-back as needed.

- E. Certification Pay Calculation.** For hourly employees, the annual certification pay amount will be converted to an hourly amount and will be included as apportion of the employees total hourly rate. This hourly amount will also be used to determine the employees overtime pay rate. For salary employees the annual certification pay amount will be pay in equal payments over a 12 month period.
- F. Limitations.** Certification pay will be paid on each qualified certification not to exceed \$2,700 annually. An employee can hold certifications and receive Certification pay for different category functions performed however, Certification pay is not cumulative and will only be paid for the highest level obtained. For example, a person with a Class D water license and Class C water license will only receive pay for the higher level Class C water license. For example, a person with a Basic Peace Officer Certification and an Intermediate Peace Officer Certification will only receive pay for the higher level Intermediate Peace Officer Certification.
- G. Effective Date of Certification Pay.** Certification pay becomes effective the beginning of the first pay period after the proof of certification is submitted to Human Resources. Employees are responsible for notifying their supervisors/Department Heads when they receive certification which qualifies for certification pay and a Payroll Change Authorization Form must be completed and signed by Department Head and City Administrator prior to certification pay being implemented. Employees who lose the certification for which they are receiving certificate pay will immediately lose that pay. Employees who do not maintain full time employment status or who transfer to a position where the certification no longer applies will lose certification pay.

### **Sec. 13.7 Salary upon Promotion.**

An employee who is promoted to a position in a classification with a higher salary range, including those who have been appointed to Interim positions as outlined in Sec. 13.03, shall receive the base pay for the higher classification or a salary that would provide at least a five percent (5%) increase whichever is greater.

### **Sec. 13.8 Salary upon Demotion.**

- A. Disciplinary demotion.** If a regular employee is demoted for disciplinary reasons, the employee's salary shall be reduced to a level that conforms to the salary range of the position to which the employee has been demoted.
- B. Non-disciplinary demotion.** With the approval of the Department Head, and if qualified to perform the duties of an existing, vacant lower-level position, an employee may be administratively demoted at his own request or as an alternative to reduction in force. Such demotion shall not be considered disciplinary action nor

shall disqualify the employee from consideration for later advancement. Demotion, when used as an alternative to layoff, may be fully or partially rescinded at any time.

If a regular employee is placed in a lower classification for non-disciplinary reasons, the employee shall receive the highest salary in the new range that does not exceed the rate of pay immediately prior to demotion and shall retain his former increase eligibility date.

- C.** Interim Assignments. An employee returning to his/her regular position from an interim assignment is not considered a demotion.

### **Sec. 13.9 Salary upon Transfer.**

A transfer not involving promotion or demotion into a vacant position may be effected at any time for administrative purposes, or upon request of the employee to his/her immediate supervisor with approval of the Department Head(s), provided the employee is qualified to perform the duties of the position to which transfer is contemplated, and meets the current minimum requirements for employment with the City. Transfers may be made administratively or in conjunction with an announced vacancy.

### **Sec. 13.10 Maximum Base Salary.**

An employee shall not be paid a base salary that is more than the maximum for the employee's position classification.

### **Sec. 13.11 Pay Periods.**

Salaries shall be paid in 26 or 52 pay periods a year. Paychecks will be released to employees weekly or biweekly on Friday. If a scheduled payday falls on a holiday, paychecks will be issued the regularly designated work day immediately preceding the holiday.

### **Sec. 13.12 Separation Pay.**

An employee who leaves the service of the City shall receive all pay which may be due with the following qualifications:

- A.** Only regular employees who have completed (12) twelve months of employment with the City shall be paid for unused vacation time; and

- B.** Any indebtedness to the City, exceeding minimum wage, which the employee may have incurred shall be deducted from the final paycheck.

### **Sec. 13.13 Advance Pay.**

No advance payment of salary shall be made to an employee.

### **Sec. 13.14 Employees Re-employed Within 90 Days.**

If a former employee returns to employment within 90 days of the date of his/her voluntary separation, the employee will retain his/her time of service and seniority less any days he/she was separated from employment with the City. Former employees who return after 90 days will be considered new employees and will lose their previous seniority and time of employment.

## ARTICLE 14 CAR ALLOWANCE AND VEHICLE USE POLICY

### Sec. 14.1 Car Allowances.

- A. Purpose.** A car allowance is a paid reimbursement provided to employees required to use personal vehicles for City-related business. The car allowance substitutes for providing employees a City-owned vehicle. A car allowance is not equivalent to full vehicle cost reimbursement.
- B. Eligibility.** The City Administrator will establish a list of employees who are eligible for a car allowance and the amount of the car allowance, based on need and funding availability.
- C. Requirements.** Car allowances are granted subject to the following requirements:
1. Car allowances are disbursed at the first of each month. A car allowance shall be paid to a new eligible employee on the first of the month following a full 30 days of employment.
  2. Employees are not eligible for both a car allowance and use of a City vehicle. In the case of emergency or special uses, an exception may be granted on a temporary basis by the City Administrator.
  3. To remain eligible to retain a car allowance an employee must maintain:
    - a. a current driver's license;
    - b. the minimum liability insurance required by state law;
    - c. current vehicle registration tags; and
    - d. a current state inspection sticker.
  4. Car allowances are granted only when they are approved as part of the City's annual budget.

### Sec. 14.2 Take-Home Vehicles.

- A. Purpose.** Take-home vehicles are owned, rented, or leased by the City and driven to and from an employee's place of residence and the job site so that the vehicle will be available to the employee at all times for the purpose of responding to duties or emergencies. Call-backs and responses to emergencies normally require the use of tools or special equipment contained in or made a part of the vehicle. In many cases

a threat to life or property could result if the employee is required to obtain the vehicle from the normal work station before responding to an emergency.

- B. Eligibility.** An employee must be subject to emergency call-back during off-duty hours to locations other than the employee's normal work station in order to be eligible for a take-home vehicle.
- C. Requirements.** Take-home vehicles are authorized subject to the following requirements:
  - 1.** Employees driving take-home vehicles must live within 25 miles of the city limits of Early. Special exceptions may be recommended by a Department Head on a temporary basis, normally for a period not to exceed three days, for a special project or meeting which is held after normal working hours. Special exceptions must be approved by the City Administrator. Documentation of special exceptions will be kept by the Department Head and be available for review by the City Administrator upon request.
  - 2.** A person who is not directly involved in official City business shall not be transported in a take-home vehicle without prior approval of the Department Head and the City Administrator.
  - 3.** City vehicles are to be used for official City business only.

### **Sec. 14.3 Administrative Take-Home Vehicles.**

- A. Purpose.** Take-home vehicles may be provided to administrative employees for City-related business.
- B. Eligibility.** The City Administrator will establish a list of administrative employees who are eligible for a take-home vehicle based on need and funding availability.
- C. Requirements.** Employees with administrative take-home vehicles are subject to the requirements listed in Section 14.02(c).

### **Sec. 14.4 Mileage Reimbursement.**

- A. Purpose.** Mileage reimbursement is the payment to employees, at a rate equal to that established by the Internal Revenue Service for business mileage reimbursement, for travel expenses incurred by using their personal vehicles while conducting City business.



- B. Eligibility.** An employee who does not receive a car allowance adequate enough to cover the cost of travel and does not have a take-home vehicle but who uses the employee's personal vehicle to conduct City business, is eligible for mileage reimbursement.
- C. Requirements.** Mileage reimbursement is authorized subject to the following requirements:
  - 1.** Reimbursement for call-backs will be from the employee's home to the emergency or other site and back.
  - 2.** Persons receiving a car allowance may not receive mileage reimbursement for travel within a 50-mile radius of City Hall.
  - 3.** A City-owned vehicle must be used for City business in lieu of a private vehicle whenever available and appropriate.

### **Sec. 14.5 Budgeting for Take-Home Vehicles.**

Each department which authorizes take-home vehicles must submit a take-home vehicle proposal to the City Administrator during the annual budget process. The department must use prudent management practices and citizen response priorities as the basis for the department's proposal. The proposal shall include the following information:

- A.** Employee name, title, and position;
- B.** Vehicle number, make, and model;
- C.** Reason for authorization (in specific detail);
- D.** Equipment and materials to be carried in vehicle;
- E.** Estimated number of after-hours call-backs per month;
- F.** Overnight storage location and distance from work site.

If conditions or operational needs change during the budget year, proposed changes may be submitted to the City Administrator by the Department Head for review. The submission must state the specific changes and the justification for the changes. The City Administrator shall determine whether to incorporate the proposed changes into the final authorization schedule.

## **Sec. 14.6 Care and Condition of Vehicles.**

- A. Maintenance.** An employee who is assigned equipment or a vehicle is responsible for the condition and operation of that vehicle. Maintenance Log must be kept and updated each time an item is checked. The employees immediate supervisor is responsible to ensure that this policy is followed. The following items must be checked each time fuel is added to the vehicle:
1. Engine oil level;
  2. Automatic transmission oil level;
  3. Engine coolant;
  4. Fuel level;
  5. Windshield washer fluid;
  6. Belt and hose condition;
  7. Tire air pressure;
  8. Overall interior and exterior appearance;
  9. Other items as applicable to specific vehicles.
- B. Department(s) Maintenance Policy.** The Department head may establish policies that require more detailed and frequent maintenance checks and records.
- C. Overnight parking.** An employee responsible for a take-home vehicle or other vehicle used for overnight transportation should ensure the vehicle is in a covered parking area whenever possible or in a parking location out of the path of passing vehicles. Overnight parking rates are a consideration in determining parking locations.

## **Sec. 14.7 General Provisions Concerning Use of City Vehicles.**

- A. Alcohol, drugs and tobacco.** An employee shall not operate a City vehicle while under the influence of alcohol or drugs which impair the employee's ability to operate the vehicle. An employee shall not permit an alcoholic beverage or illegal drug inside a City vehicle; except when a police officer is transporting alcoholic beverages or illegal drugs in the course of his official duties. Use of all tobacco products and E-Cigarettes is prohibited in City vehicles.

- B. Permissive Use of Prescribed and Over-The-Counter Drugs.** The legal use of prescribed and over-the-counter drugs is permitted while on City premises, while on duty, while conducting City-related business or other activities off premises, while driving a City-owned or leased vehicle, or while operating or using other City-owned or leased property or equipment only if it does not impair an employee's ability to perform the essential functions of the job (or operate the vehicle, property or other equipment) effectively and in a safe manner that does not endanger the employee, citizens or other individuals in the workplace. Examples of impairment include, but are not limited to, drowsiness, dizziness, confusion, or feeling shaky.
- C. Mobile telephones and other wireless communication devices can be a distraction to workers in many areas.** Communication devices should never create a safety issue for any employee; therefore the City discourages the use of cell phones while driving moving City vehicles, except for emergency communication. If at all possible, drivers are encouraged to pull over, preferably off the roadway, and park the vehicle prior to placing or answering a call. When responding to an emergency, drivers of emergency vehicles should refrain from use of cell phones for personal calls.
- D.** Non-employees on non-city business, are prohibited from riding in any City vehicle.
- E. The City strictly prohibits the use of reading or responding to emails, instant messages and text messages while operating a City vehicle** – whether the vehicle is in motion or stopped at a traffic light or stop sign. If any employee is found in violation of this policy, the violation may result in disciplinary action up to and including termination.
- F.** The City is not responsible for any fines incurred while driving a City vehicle. Payment of traffic fines shall be the employees' personal responsibility. Employees may be subject to disciplinary action depending on specifics of the circumstances.
- G. Revocation of authorization.** The authorization for an employee to drive a City vehicle or receive a car allowance will be revoked if:
1. the employee becomes disqualified to be a City driver under Section 12.08(b);
  2. the employee fails to comply with Article XI, Safety Regulations, or the provisions of this Article XIV; or
  3. there is a change in the employee's job assignment and the new assignment does not require the use of a City vehicle.
- H. Enforcement.** Department Heads are responsible for enforcement of this article and Article XI as they relate to their departments. Employees shall report violations to the appropriate Department Head.

- I. **Tax matters.** Employees receiving a car allowance or take-home vehicle benefits are subject to income taxation as required by the regulations of the Internal Revenue Service. The City shall provide income statements to employees in accordance with the applicable regulations.

## **ARTICLE 15    TECHNOLOGY POLICY**

### **Sec. 15.1    Purpose and General Provisions.**

To provide communication, improve effectiveness and enhance the operations of the City of Early, the City may provide access to the Internet, World Wide Web (WWW), e-mail, telephones and voicemail to employees, elected officials, volunteers and other affiliates of the City. Access to the Internet, World Wide Web (WWW), and e-mail (hereafter referred to as "electronic communications system"), as well as access to telephones and voicemail (hereafter referred to as "telephonic communications systems") is considered to be a privilege and shall not be abused, used for financial gain, or used for commercial, illegal, or illicit activity.

The City realizes that employees spend a significant portion of their day at work and there will be occasions when it will be reasonable or even necessary to use the City's electronic and telephonic communications systems for personal and non-work related activities. To that end, the City does not prohibit usage for purposes that are unrelated to work, provided that such usage (i) is limited, (ii) does not interfere with work performance or business needs, and (iii) is in full compliance with this policy. At the request of a Department Head, an e-mail address and/or voicemail (hereafter referred to as "accounts") will be assigned.

### **Sec. 15.2    Electronic Signatures.**

Federal and state laws authorize the use and acceptance of electronic signatures as legally enforceable for most transactions. Electronic signatures, an automated function that replaces a handwritten signature with a system generated signature statement, and electronic records can be utilized as a means for authentication of City documents, computer generated City documents, and electronic City entries. Pursuant to this policy, electronic signatures are considered legally binding as a means to identify the author of record and confirm the contents intended by the author. City departments and staff are permitted to utilize electronic signatures in accordance with this policy, as well as State and Federal regulations, for employment purposes coordinated or managed by the Human Resources Department. Individuals seeking employment by the City are permitted to utilize electronic signatures during the process of applying for employment with the City.

### **Sec. 15.3 Responsibility of User.**

City owned, authorized and maintained digital or computerized accounts are to be used to facilitate communication when conducting City business and personal use should be limited.

Electronic mail (e-mail) is considered a public record and may be subject to public disclosure in accordance with applicable law. Use of e-mail and deletion of messages should be done with caution.

All users of the City's electronic and telephonic communications systems will be responsible for the following:

- A.** Employees must not open or forward e-mail received from unknown sources, or those that contain undefined or unexpected attachments, as they may contain viruses or other harmful or inappropriate content or information. Employees must delete such e-mails as they are received since opening them may constitute a threat to the integrity of the City's computer systems.
- B.** Employees are prohibited from disclosing confidential or non-public information relating in any way to the City or its citizens. Employees are prohibited from using e-mail to transmit confidential or non-public information to any person or party outside of their physical site of employment. Employees who have a business need to use e-mail to transmit confidential or non-public information to any party must first obtain the approval of their Department Head, who will determine whether security measures are necessary to ensure that the confidentiality of the transmission is not compromised.
- C.** Employees shall discourage senders from sending cartoons, jokes or offensive e-mails and shall not forward e-mails of this nature.
- D.** Employees shall not download .exe files, or any other file that has not been authorized by the Department Head.
- E.** Employees shall limit personal e-mails. Excessive use of personal e-mails will result in termination of the user account.
- F.** Employees shall not create, send, post, transmit or forward any other electronic or telephonic communication containing statements that are derogatory toward any person or group.
- G.** Employees shall not view, download, display, or transmit sexually explicit images, messages, cartoons, or any communication that can be construed as discrimination,

harassment, or disparagement of others based on their gender, race, national origin, age, disability, religion, or any other protected classification.

#### **Sec. 15.4 Licensed Software.**

- A.** It is the City's policy that only fully licensed software purchased and installed by the City shall be used by City employees. Licensed means the City has purchased the number of software licenses required for the number of users, as specified by the manufacturer.
- B.** An employee cannot purchase or install any software (including screen savers) on his or her City computer. Approved software will be installed on computers and or the Network by the City's authorized network administrator. Employees may present their request for any additional software other than what is provided to the I.T. Advisory Committee.
- C.** The Finance Department will keep on file copies of all licenses, purchase documentation, and any forms that prove the City's software was purchased legally.
- D.** Licensed software is protected by federal copyright law. Under the provisions of the copyright law, it is illegal to make a copy of software for any reason, other than as a backup, without permission of the copyright holder. Civil penalties and criminal penalties can be imposed for organizations and individuals that break copyright law.

#### **Sec. 15.5 Computer Hardware and Accessories.**

- A.** It is the City's policy to protect its employees and computers, monitors, printers, accessories, cabling, and power supplies from harm, damage and loss.
- B.** Employees are prohibited from tampering with, connecting, adding, installing, disconnecting or removing any hardware or accessories to his or her computer. Employees may present their request for any additional hardware to Administration.
- C.** The purchase of any computer hardware or accessories without prior authorization by management is prohibited.
- D.** The employee shall be liable for the cost of any damage to or loss of City property brought about by the employee's failure to adhere to this policy.

## **Sec. 15.6 Personal Use of Social Media.**

- A.** "Social Media" includes various forms of discussion and information sharing tools including social networking, blogs, video sharing, podcasts, wikis, message boards and online forums. Technologies include picture and video sharing, wall postings, e-mail, instant messaging, and music sharing, to name a few. Examples of Social Media applications include, but are not limited to, Google and Yahoo Groups, Wikipedia, My Space and Facebook, YouTube, Instagram, Snapchat, Flickr, Twitter, LinkedIn, and blogging.
- B.** City time and equipment should not be used for updating social media sites, including updating personal pages or profiles. Time spent on social media sites should be limited in the same manner as time spent on the telephone or internet when conducting personal business.
- C.** Employees may not use the City's logo, letterhead or other identifying material including pictures of themselves or co-workers wearing or displaying the City's logo.
- D.** Employees may not post discriminatory, defamatory, libelous or slanderous comments when discussing the City, its governing body, supervisors and employees.
- E.** Employees must keep City related social media accounts separate from personal accounts.
- F.** If employees publish content after hours that involved work or subjects associated with the City, a disclaimer should be used, such as this: "The postings on this site are my own and may not represent The City of Early positions, strategies or opinions."
- G.** Employees must comply with City policies and personal sites may be monitored to determine compliance with City policies.
- H.** Employees who fail to follow the policy regarding social media may be subject to disciplinary action, up to and including termination.

## **Sec. 15.7 City Related Use of Social Media.**

- A.** Official social media sites/pages representing the city will be the property of the City of Early. Accounts must be registered through the City of Early City Hall. Approval from the City Administrator or designee is required before establishing the account.
- B.** The City Administrator or designee will be responsible for the oversight of the city's social media formats to include:
  - 1.** Authorizing social media accounts;



2. Maintaining a list of social media domains as well as usernames and passwords;
  3. Monitoring social media activity to verify that content is compliant with the city's goals, objectives and ethical conduct policy;
  4. Access to all administrative rights and privileges of all social media domains and accounts.
- C.** In order to be acceptable, the content of the social media must contain:
1. Information about city events, activities or issues tied to something funded, operated, managed, etc. by the city;
  2. Positive aspects of the City of Early; or
  3. Reflect the goals and purpose of the account (e.g., Visit Early posting about upcoming events in our area).
- D.** Postings to city social media sites must be respectful and shall NOT contain any of the following:
1. Comments that are not typically related to the particular posting being commented upon;
  2. Comments in support of, or opposition to, political campaigns, candidates or ballot measures;
  3. Profane language or content;
  4. Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, national origin, physical or mental disability, as well as any other category protected by federal, state, or local laws;
  5. Sexual content or links to sexual content;
  6. Solicitations of commerce;
  7. Conduct or encouragement of illegal activity;
  8. Information that may tend to compromise the safety or security of the public or public systems;
  9. Content that violates a legal ownership interest of any other party including the disclosure of private or confidential information;

- 10.** Information about actual or potential claims and litigation involving the city;
  - 11.** The intellectual property of others, without written permission; or
  - 12.** Photographs of employees or members of the public, without written permission or publicly posted notice given.
- E.** The city website will remain the official location for content regarding city business, services and events. When possible, links from social media sites will be used to direct users back to the city's website for more information.
- F.** Any request for a social media site from a department or employee must be approved by the City Administrator or designee before establishing the account. Requests should include:
- 1.** Purpose of the site, goals desired to be accomplished, and benchmarks to track progress
  - 2.** How often the site will need to be updated; and
  - 3.** Individuals that have authority to update the site.
- G.** Only designated employees will have authority to change content of the social media site.
- H.** Individual departments that the posted information is related to are responsible for providing a site administrator with an official response to any inquiries related to the posted information.
- I.** Communications through social media is public record. Posts by city departments, employees and any outside feedback will be part of the public records for the city. The policy manual has established guidelines for maintaining and storing copies of the content posted in order to comply with the Texas Public Information Act.
- J.** Content posted by outside contributors and not officially posted by the city do not constitute an endorsement or representation on the part of the city. Any comments or content posted that are deemed inappropriate will be removed, but retain according to local and state guidelines. The city also reserves the right to block any users that violate these guidelines from accessing the city's social media sites.
- K.** If a question arises regarding the use or posting of confidential information on a social media site, the matter shall be referred to the City Attorney for review. The information shall not be posted, or if already posted will be removed immediately until an opinion is rendered by the City Attorney. City Administrator or designee reserves the right to

restrict or remove any information on the social media site that he/she does not believe serves in the best interest of the city.

- L. Each official city social media page will include a disclaimer that contains wording similar to :

*"The City of Early maintains this social media site/page to provide information and promote City of Early programs, services, policies and objectives. It is the city's goal to keep the most current and accurate information available to the public on this site, however, varying events can occur that could affect the timeliness of the information and the accuracy of the content. Comments posted on this site by "friends," "fans," or "followers" will be monitored and any postings or comments that are disrespectful, offensive, dishonest, or do not accurately reflect the views, values or objectives of the City of Early will be deleted without notice. This site/page may contain links to other Internet sites and resources as a convenience to the viewer. Linked sites/pages are not under the control of, nor maintained by, the City of Early and the city is not responsible for the content of these sites. In addition, the inclusion of a linked site/page does not constitute an endorsement or promotion by the City of Early."*

## **Sec. 15.8 Cell Phone Use.**

- A. **The purpose** of this policy is to ensure that privacy, security, and legal issues concerning use of the cell phones are addressed and that a policy is formally established to define appropriate procurement procedure and use of these services and equipment. This policy covers cell phones that are issued by the City of Early for city business purposes, and personally-owned cell phones which may be used by employees for city business purposes. City-issued cell phones and all information created and stored therein, are the property of the city. For the protection of the organization and its employees, city employees with access to these technologies from city provided resources are required to review and abide by this policy.
- B. **This policy** applies to all employees within the city. This policy applies to all city departments and all employees, including full-time, part-time, contract, temporary or seasonal hires. Departments have the ability to implement more restrictive (but not less restrictive) conditions on the use of cell phones than those defined within this policy.
  - 1. *City-owned cell phone* means cell phones that are purchased by the city and the city is responsible for paying the billed cost of that cellular usage.
  - 2. *City employee* means any employee (including permanent, full-time, part-time, and seasonal employees) of any city department.

3. *IT* means Information Technology and/or Information Technology Department.
4. *Personal Use* means usage for purposes other than city business purposes.
5. *Smart Phone*, which pertains to cell phone devices that integrate the functionality of a mobile phone, email, web access, data plan and other functions.

- C. Appropriate Use of City-Owned Cell Phones** Employees are expected and have the obligation to use good judgment at all times when using city-owned cell phones. Access to these technologies is made available to city employees for the purpose of providing an effective method to communicate and increase productivity.

Employees are permitted limited use for personal needs if the use does not interfere with official business or result in the loss of employee productivity. Personal use of city technology must be kept to the minimum amount of time needed to address a situation. Excessive use will be determined on a case-by-case basis

- D. Prohibited Uses of City-Owned Cell Phones** This policy prohibits employees from using city-owned cell phones for the following activities:

1. Transmitting or downloading any material or messages in violation of Federal, state, local law, ordinance, regulation or city policy, including but not limited to, sexually, racially, or ethnically offensive comments, threats, jokes or slurs.
2. Distributing sensitive or confidential information.
3. Using city-provided resources to accomplish personal gain or to manage a private business.
4. Downloading or distributing copyrighted materials not owned by the city, including software, photographs, or any other media.
5. Developing or distributing programs that are designed to infiltrate computer systems internally or externally, and development of any PC virus.
6. Accessing or downloading any resource for which there is a fee without prior supervisory approval.
7. Representing yourself as another user or employee.

- E. Privacy** Employees should have no expectation of privacy while using city-owned cell phones. They are not a secure means of communication and personal or privileged information sent or received via these technologies could potentially be read or overheard by individuals other than the desired recipients. Call records of city-owned cell phones are public record.

- F. Violations** of this policy may result in termination of access to and use of city cell phones and may also result in disciplinary or legal action up to and including termination of employment, criminal or civil penalties or other legal action against the employee.
- G. Vendor Selection for City-Owned Cell Phones** IT will meet periodically with area vendors to obtain price plans, equipment and service information. A limited number of vendors will be chosen based on service offerings, price, equipment offerings, and the ability to provide electronic billing. In such instances where it is determined best for the city to purchase its own cell phones, city-owned cell phone devices and services will be obtained through a single vendor. IT will facilitate any required contract negotiations for city-owned cell phone service contracts when available from providers.
- H. City-Owned Cell Phone Equipment Purchase** City-owned cell phone equipment should be reserved for times when an allowance is not conducive (such as when used on a shared vehicle or when shared as an on-call device). Requests for a city-owned cell phone must be approved by the City Administrator. City-owned equipment requires approval via the budget process or will need to be approved by the City Administrator.
- I. Personal use of City-Owned Cell Phones** Employees whose duties require the use of a cell phone, including on-call personnel, may be provided with one by the city upon approval of their department head in written form. All written approvals are maintained at the department level. There will be no reimbursement by the city for business use of a personally owned cell phone other than through the allowance process outlined herein.
- J. Personally-Owned Cell Phone Allowance** It is the expectation of this Policy that most city cell phone business will be conducted through personally owned cell phones of city employees. At the discretion of a City Administrator, and through the budget approval process, employees may receive an allowance through payroll to cover business use of personally-owned cell phones. The allowance will be on the first of each month.

Employees will obtain their own service agreements for cell phones and receive an allowance from the city for the use of those services. Allowances are intended to cover cell phone hardware purchases, replacement and any maintenance of devices as required. The allowance rates will be reviewed and established annually, in line with the city's budget process.

It is not intended that all city employees using personal cell phones for business purposes will receive an allowance. Allowances will be authorized only for regular and necessary city business. Incidental and occasional use of personal cell phone is

expected for city business and is not to be compensated with an allowance. Those employees identified by their department heads to enroll in this program will receive the monthly allowance as per current city policy.

1. Cellular contracts for personally-owned cell phones are between the employee and the cellular provider, and are not obligations of the city. Invoices for personally-owned cell phone equipment or usage are not to be addressed to the city, and are the employee's sole responsibility to pay.
2. Employees who receive the allowance for personally-owned cell phones are required to maintain current service in good standing with the cellular provider so long as the allowance is in effect.
3. Employees who receive the allowance for personally-owned cell phones are required to make their phone numbers available for appropriate business use and to be available to answer calls on their cell phones during business hours when regular business phones are not available or at other hours as may be appropriate or required for the position.
4. Reimbursement for business calls on a privately-owned cell phone is not provided by the city, and should be covered by the allowance. Reimbursement beyond the allowance is not provided for any reason.

### **Sec. 15.9 Monitoring Use of Electronic And Telephone Communications Systems.**

- A. The City reserves the right to access and review all communications originating from or delivered to any user of the City's electronic or telephonic communications systems, regardless of whether or not the communication is business related. For this reason, employees and users should not expect that their messages would be awarded any privacy protection.
- B. Employees and users should understand that virtually all aspects of Internet usage are not private, and the City reserves the right to monitor all Internet network traffic for any reason. Network management tools may be utilized to analyze both inbound and outbound Internet traffic on the City's network. Any unusual activity or behavior that may establish a violation of this policy will be reported immediately to the City Administrator. The City reserves the right at all times to eliminate Internet access on a per-employee basis or to disconnect Internet service completely without warning.
- C. The City will not monitor, tap or otherwise intercept employee telephone calls except where such conduct is permitted by and carried out in compliance with applicable state and/or federal laws.

- D.** All employees and users are personally accountable for communications that they originate or forward using the City's electronic and/or telephonic communications systems. Misrepresenting, obscuring, suppressing, or replacing a user's identity on any equipment requiring log-in or which is assigned to a specific user is prohibited. The user name, electronic mail address, organizational affiliation, time and date of transmission, and related information included with electronic messages or postings, must always reflect the true originator, time, date and place of origination of the messages or postings, as well as the true content of the original message.

### **Sec. 15.10 Cybersecurity Training.**

- A.** (Reserved for future Policy)

### **Sec. 15.11 Miscellaneous.**

- A.** Any charges not authorized by the Department Head and approved by the Director of Finance and incurred while using the City's electronic or telephone communications systems will be the responsibility of the user to reimburse the City.
- B.** Employees are prohibited from distributing City copyrighted software or documentation via the Internet without prior approval of the City Administrator. Just as you would be legally responsible for quoting references of printed information, such are the rules with internet-derived information. Unlike printed material, much of the information on the Internet is completely free of copyright, but it is still the employee's responsibility to determine the copyright or ownership of any information retrieved.
- C.** Upon termination of an employee, the Department Head shall immediately notify the Director of Finance in order for the user to be removed from the electronic and telephonic communications systems.

### **Sec. 15.12 Electronic Record Retention.**

- A.** The same rules that apply to record retention for other City documents also apply to e-mail, text messages, instant messages, City social media, and other electronic records. Many documents created on the City's computer systems are public documents and are subject to routine disclosure under the Texas Public Information Act.
- B.** City employees have an obligation to apply the appropriate retention rules to email, text messages, instant messages, City social media, and other electronic records sent

and received. The City Secretary should be contacted for assistance in determining the retention requirements for particular records.

- C.** The employee who is the sender or originator of an electronic records, bears the primary initial responsibility for determining whether or not a particular message is a record which should be saved, and ensuring the message is properly indexed and forwarded for retention as a public record. Electronic records that must be saved should be indexed so that it is linked to related records in other media (paper) so that a complete record can be accessed when needed.
- D.** If an employee receives a request for release of electronic information, the employee shall immediately refer the requestor to the City Secretary.
- E.** All City governmental related communication that occurs by a cellular device should be conducted on City owned and issued cellular devices. If an employee communicates city governmental communication in any form of digital messaging on a personal cellular devices that employee becomes a "temporary custodian" as defined by law. The employee is required by law to retain that electronic record, and back it up to protect it for the length of the records retention period as defined by state law. Alternatively, the employee must provide the city secretary with the electronic record where it can be retained by the City for this same period.

### **Sec. 15.13 Disciplinary Action.**

All accounts will be monitored and any questionable or inappropriate use or content will result in the immediate termination of the account and appropriate disciplinary action up to and including termination.

### **Sec. 15.14 Applicability.**

**This policy applies to all City of Early employees, elected and appointed officials, volunteers and other affiliates who use the City's electronic and telephonic communications systems.**

Nothing in this policy should be understood to prohibit "surfing" the Internet or WWW for conducting business-related research.



## **ARTICLE 16 MEAL AND TRAVEL EXPENSE POLICY**

### **Sec. 16.1 Expense Reimbursement.**

Each employee of the City of Early shall be reimbursed for expenses incurred while performing duties related to his/her job, when such expenditure is approved by the employee's supervisor and evidenced by a detailed receipt. Prior approval for all expenditures must be obtained before any expenses are incurred. Pre-payment is an option of the City.

Any request to attend a meeting or other City related activity which requires the absence of the employee from regularly assigned duties must be submitted to the employee's supervisor in writing using the approved Training/Travel Expense Report form, for approval prior to the absence. Request to attend any meeting beyond a 20 mile radius of Early, attend any all-day meeting out of the City or any meeting which requires reimbursement must be approved by the appropriate supervisor, or the City Administrator. An advance/expense report must be approved and received at least ten (10) working days in advance of the meeting date or pre-payment deadline. The form must include all information requested.

### **Sec. 16.2 Attendance Guidelines.**

Authorization to travel may be granted to employees for the following purposes:

- A.** City Business: Any meeting at which attendance of the employee is required by the City.
- B.** Professional Development: Any meeting at which attendance of the employee is optional, i.e., attendance is at the request of the employee but is not required.

### **Sec. 16.3 Funding.**

Funding for City related travel is furnished through the annual budget process. It is the responsibility of the City Administrator with input from the City employees, to provide an equitable procedure to follow in the allocation of funds for travel to professional meetings.

## **Sec. 16.4 Schedule for Reimbursement.**

Reimbursement for expenses incurred while attending City-related meetings shall be limited to the amount shown in the appropriate section below. Items of a personal nature such as snacks, newspapers, alcoholic beverages, etc. are not reimbursable.

A long distance call limited to three (3) minutes may be made to your spouse or other appropriate person' to acknowledge safe arrival at your destination, also a call may be made prior to your departure for the return trip home. It is the employee's responsibility to maintain all records for reimbursement.

- A. Employee Pay or Compensation.** The employee will be paid for their time for travel and/or training as established in Article IV of the Compensation Policy.
- B. Transportation.** City-owned vehicles shall be utilized whenever available. Any request for reimbursement of personal automobile transportation must be approved by the Department Head prior to transportation. Mileage for personal automobile use will be paid per mile at the prevailing IRS rate. Mileage is calculated from the employee's regular work site. If a City vehicle is used and the city's gas card is used, no reimbursement will be made for the travel using the City vehicle. Air travel will be authorized only if it is the most economical method of travel and reservations should be made in such a manner as to secure the best available fare. The City will prepay or reimburse the actual cost of a round-trip coach airline ticket, plus other stated costs (i.e., parking at airport and ground transportation at destination) only if air travel is the most economical method of travel. With the exception of mileage for personal automobile use, a receipt(s) is required for all reimbursements.
- C. Lodging.** Employees will be reimbursed for the actual cost of lodging in a hotel/motel that is appropriate for the particular meeting or purpose of the trip. A detailed receipt(s) is required for reimbursement. The room rate must be pre-approved by the employee's Department Head, or in the case of a Department Head, approved by the City Administrator. Overnight stays will only be authorized for travel to destinations in excess of 100 miles from the City, unless otherwise approved by the City Administrator or City Administrator's designee. Room service and mini-bar charges will not be reimbursed.
- D. Meals.** The City will pay for the cost of meals for pre-approved City related overnight travel. Meals may be paid on a per diem basis by submitting a properly completed Travel Request/Expense Report and authorization form. The per diem amount is \$50. Partial days shall be based on a per meal amount as follows: \$13 breakfast, \$14 lunch, and \$23 dinner. Per diem meals require a copy of the training conference registrations form and conference itinerary schedule but do not require actual meal receipts.

The City will not pay for alcoholic beverages.

- E. Registration.** Actual expense (receipt required unless pre-paid) will be reimbursed, and may include any additional expenses directly related to the meeting which may be a part of the registration fee.
- F. Local Mileage Reimbursement.** Employees must recover their travel expenses on a direct reimbursement basis. Official travel mileage must be shown on the proper form and submitted each month.
- G. City Credit Card.** With prior approval by appropriate supervisor a City credit card will be issued to the requesting employee. Employees must provide itemized receipts for all charges made to a City-issued credit card in a timely manner. Failure to provide receipts as required may result in disciplinary action and/or the employee being held personally liable for the charge(s).
- H. Non-reimbursable Expenses.** The following items are examples of non-reimbursable expenses:
  - 1.** Spouse expenses are not covered by the City, but may be prepaid by the City for official City business and reimbursed to the City in a timely manner by the employee or official.
  - 2.** Upgrades to air travel, car rentals, or hotel rooms.
  - 3.** Purchase of clothing, luggage, toiletries and other miscellaneous personal items.
  - 4.** Supplemental travel or car rental insurance.
  - 5.** Fines, penalties, or legal fees.
  - 6.** Personal entertainment or recreational expenses.
- I. Timely Submission of Receipts.** The suggested time frame for submission of receipts for expense reimbursement is within two weeks of travel. Receipts filed more than 30 days after expenses are incurred will not be reimbursed without the approval of the City Administrator.

## **ARTICLE 17     REDUCTION IN FORCE**

### **Sec. 17.1     Vacated or Abolished Positions.**

If the City Council vacates or abolishes a position by ordinance, the employee holding the position shall be separated from employment with the City. If more than one employee holds a position in the same classification and department as the position that is vacated or abolished, the Department Head will determine which employee is to be separated based on the qualitative value of the employee's work history, evaluations, job performance, and seniority.

### **Sec. 17.2     Reinstatement List.**

Employees who are separated pursuant to Section 17.01 and against whom no charges have been filed for violation of the personnel policy, shall be placed on a reinstatement list for a period of one year.

### **Sec. 17.3     Reinstatement.**

If a position which has been vacated or abolished is filled or re-created within one year, the position reinstatement list shall be exhausted before an applicant or employee not on the list is placed in the position. If more than one person is eligible for the position, then the reinstatement shall be in order of seniority.

## ARTICLE 18 PUBLIC RELATIONS

### Sec. 18.1 Media Policy.

**A. Internal Communications.** Departments are in charge of communications within their departments. However, please utilize the City's logo on all documents and please ensure that the document is written in a professional manner. The City Clerk's Office will review any document upon request. Please note that proofreading takes 1-2 business days, but may take longer depending on the length of the document.

**B. External Communications**

- 1. Official Spokesperson.** The City Administrator will designate an official spokesperson for each department or for the City, in the case of an emergency. The Mayor, or their designee, is the official spokesperson for the City Council.
- 2. Cultural Identity** All departments will identify themselves as the City of Early. Exceptions will be made for specific purposes, such as to meet grant funding requirements. This includes advertisements, fliers, press releases, newsletters, etc. If your department has a specific need for utilizing the department's name for branding, please consult with the City Administrator.

Example: "This meeting is sponsored by the Development Services Department..." should be "The meeting is sponsored by the City of Early..."

**C. Press Releases and Press Statements.** The City of Early will utilize press releases to announce City programs, services, events, etc. The City will also utilize releases as a way to inform the public of a certain topic. The City Administrator or their designee will prepare, review, and distribution, all press releases to local, regional and national media. All press releases must be reviewed by the City Administrator, or designee, prior to distribution or release. The City of Early will utilize press statements to add clarity to a particular issue, topic or media story. Press statements will be issued by designated Public Information Officers under the guidance of the City Administrator, City Council and/or the City Attorney. When requesting a press release, please email the City Administrator, and submit the information to be released in detail. Please allow for an adequate amount of time prior to the need for the release; at least one week prior to the distribution date. Emergency releases will be addressed under Emergency Notifications.

**D. Media Inquiries/Interviews.** All media requests for interviews for departments and staff will be handled through the City Administrator's Office. Department Heads are encouraged to give interviews regarding their departments or areas of expertise in a timely and courteous manner. If your department is contacted by a member of the

press on a routine topic for your department, please contact your supervisor or department director for a protocol to respond and afterwards, follow up with the City Administrator. On non-routine topics, please refer the reporter to the City Administrator's Office who will work with your department on a response. Departments should consult with the City Administrator if they have questions regarding the release of sensitive or controversial information. In instances regarding the legality of releasing information, the department and the City Administrator will consult with the City Attorney. When possible, the City Council will receive notification of press release distribution at least one hour prior to the distribution. The exception will be emergency notifications when time is of the essence regarding the release of vital information to the community. After emergency notification is made, the City Council shall be informed as soon as possible, but within one hour of the emergency notification, either by the department PIO or the City Administrator. The City Secretary will ensure that the media has current contact information and is aware of the City's media policy. In addition, the City Administrator will facilitate media training sessions and provide tips on interviewing when requested.

- E. Editorial Board Meetings and Op-Ed Columns.** At any time, City of Early employee or officials may meet with an editorial board of a publication to provide additional insight into a topic directly involving the City. The City Administrator's Office will assist with the logistics of setting up such a meeting. City staff that are approached or who desire to write an editorial or opinion piece as a representative of City Hall shall receive approval from the City Administrator and work with the City Administrator's Office. This ensures that the message stays consistent with the City's views and mission.
- F. Emergency Notification** Fire and Police responses to emergencies in the community will be reported directly to the media by a designated department spokesperson (PIO) with the approval of the Fire or Police Chief. Police Department releases concerning traffic advisories, investigations and other routine community relations activities may also be reported directly to the media. Any releases deemed to be of concern to the community should also be sent to the City Administrator.
- G. Presentations/Publications.** The City creates and distributes a variety of communication documents including, but not limited to, press releases, media advisories, brochures, PowerPoint presentations, annual reports, staff reports, newsletters, advertisements, posters, postcards, flyers, etc. All presentations, publications and items purchased with City funds should bear the City of Early logo and web site address. Externally distributed publications must be reviewed by the City Manager or designee to guarantee that all publications representing the City reflect a consistent message and image and to ensure that branding guidelines have been met. Internally distributed publications must also bear the City of Early logo and should be reviewed by the department director, or their designee, prior to distribution.

- H. Media Distribution List.** News releases shall be sent automatically in electronic, fax or PDF format to a list maintained by the City Secretary comprised of all interested, press-credentialed media. To be included in the City of Early's media distribution list, a request must be made to the City Secretary.
- I. Calendar Announcements.** All City meetings and City-sponsored or partnered events should be reported to the City Secretary, Web Administrator or department designee, if applicable, for inclusion in the City's calendar, which is shared with local media and citizen groups and is made available on the City's web site. Additionally, meetings and events should be shared on social media in accordance with the social media policy.
- J. Use of City Logo** The City of Early logo shall be used on all City publications, external communications, fliers, invitations, programs, posters, paraphernalia and any item requiring a symbol of identity. When designing a publication or an item with the logo, please consult with City Hall Office. Internal requests for camera-ready copies of the logo or the symbol should be made through the City Hall Office. Scanned or modified copies of the logo or the symbol are prohibited. External organizations requesting the City logo should be referred to the City Hall Office. The City does not output the logo to external organizations but will work with those who have an established partnership with the City or are hosting an event in which the City serves as a sponsor. Use of the City logo from non-partner organizations and copying images from the City's web site for personal or commercial use is strictly prohibited. If you see the City's logo displayed in such a manner, please notify City Hall.
- K. Use of the City Letterhead.** The City of Early letterhead shall be used on all City publications and external communications. When designing a publication or an item with the letterhead, please consult with City Administrator. Final approval on all communication on the City of Early letterhead must be given by the City Administrator. Scanned or modified copies of the letterhead are prohibited.

## **Sec. 18.2 Public Communication Plan.**

### **A.**

## **Sec. 18.3**

If ???.

If employees have any questions about policies contained within this manual, they should contact their department head or Human Resources.