

City of Del Mar  
PERSONNEL RULES &  
REGULATIONS  
MANUAL



AMENDED BY THE CITY COUNCIL ON JULY 7, 2025  
RESOLUTION 2025-26

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## SECTION 1 - INTRODUCTION AND GENERAL PROVISIONS

**1.01 Purpose.** This manual is designed to outline the benefits, rules, and important personnel policies that govern the employment of employees holding probationary or regular appointments to positions with the City of Del Mar. This Manual is applicable to Management and Professional Employees except where noted but these employees (Department Heads and those with a last position appointment date on or after August 26, 2009) will not serve probationary periods, will not be subject to the disciplinary process or any appeal process, and will be exempt from the civil service examination process including the establishment of eligibility lists. This manual is designed as a guide to ensure consistent, fair, and uniform treatment of all City employees.

The policies and procedures contained in this manual supersede any and all previously issued City policies, procedures, rules or instructions related to matters discussed herein.

Circumstances will obviously require that policies, procedures and benefits described in this manual change from time to time. Consequently, the City reserves the right to amend, supplement or rescind any provisions of this manual as it deems appropriate.

The City shall provide notice of amendments, supplements or changes to the recognized employee representatives. Upon request, the City will meet and confer with the recognized employee representatives regarding changes within the scope of representation prior to implementation. The recognized employee representatives shall meet in a timely manner with representatives of the City. If, following meeting and conferring, the parties are unable to reach an agreement, the City reserves the right to implement by management direction.

Employees will be advised of changes in policies, benefits and procedures.

Nothing in this manual shall be deemed to supersede applicable state or federal law or administrative regulations related to personnel matters.

**1.02 Violation of Rules.** Violation of these rules may be cause for disciplinary action.

**1.03 Authority.** The City Council of the City of Del Mar has approved the provisions of this manual. The Council must approve all additions, amendments and revisions to the personnel policies and procedures contained in this manual.

**1.04 Administration.** The City Manager is responsible for implementing, administering, and ensuring compliance with the provisions of this manual. In the event any provision of this manual needs clarification, the City Manager may issue administrative instructions clarifying the intent of said provision as adopted by the Council. The City Manager may develop and issue procedures, consistent with this manual to facilitate the manual's implementation.

If there is any conflict between this manual and any department policies and procedures, the policies and procedures contained in this manual take precedence. If there is any conflict between this manual and any Memorandum of Understanding between the City and a Recognized Employee Organization, the provisions contained in the Memorandum of Understanding shall take precedence, unless the provision in the manual has been negotiated more recently with the recognized employee organization as reflected in a side letter of a Memorandum of Understanding or a Memorandum of Agreement.

- 1.05 Delegation of Responsibility.** The City Manager may, at his or her discretion, delegate the responsibilities assigned in this manual as he or she may deem appropriate and necessary.
- 1.06 Distribution of Manual.** Each current probationary or regular employee and Management or Professional Employee will receive an electronic copy of this manual. New employees will be given a copy of the manual at the time of employment with the City.

## **SECTION 2 - DEFINITION OF TERMS**

The following definitions shall apply throughout this manual unless the context requires another meaning.

- 2.01 Anniversary Date.** The date upon which an employee appears on the payroll as a regular employee due to original appointment, promotion, reinstatement, or reclassification to a higher classification under these rules, and on which the employee establishes eligibility for salary advancement consideration. The date shall be adjusted to the first day of the pay period which is closest to the actual date.
- 2.02 Advancement.** A salary increase within the limits of a pay range established for a class.
- 2.03 Allocation.** The assignment of a single position to its proper class in accordance with the duties performed, and the authority and responsibilities exercised.
- 2.04 Applicant.** A person who has filed an application for employment with the City.
- 2.05 Appointment.** The offer to and acceptance by a person of a position in City service.
- 2.06 Candidate.** An applicant who fulfills the requirements for a given position; who has successfully completed the required examination(s) for such a classification; and whose name has been placed on an eligible list.
- 2.07 City.** The City of Del Mar.
- 2.08 City Council.** The City Council of Del Mar.
- 2.09 City Manager.** The City Manager of Del Mar.

- 2.10 Class or Class of Positions.** A group of positions similar as to duties performed, degree of supervision and responsibility exercised or required, minimum requirements of education, experience, skill and such other qualifications, so that the same title, the same tests of fitness, and the same schedule of compensation may be applied to each position in the group.
- 2.11 Code.** The Municipal Code of the City of Del Mar, California, being the systematic compilation of effective Ordinances of the City.
- 2.12 Compensating Time Off.** Time off with pay granted an employee in lieu of monetary payment for overtime.
- 2.13 Day.** Calendar day unless otherwise noted.
- 2.14 Demotion.** The movement of an employee from one class to another class having a lower maximum rate of pay.
- 2.15 Department Head.** The individual who is designated the Administrative Head of a department and acts as the Appointing Authority.
- 2.16 Dismissal.** The termination of employment for cause by the Appointing Authority.
- 2.17 Eligible List.** A list of names of persons who have been certified as eligible for appointment for a position in City service.
- 2.18 Employee.** Any officer or person holding a position in City service.
- 2.19 Employment Standards.** The general qualifications prescribed for the selection of an appointee to fill a vacancy.
- 2.20 Examination.** The process of measuring and evaluating the relative ability and fitness of applicants by job related testing procedures.
- 2.21 Exempt Employees.** This category includes all employees who are classified by the City as exempt from the overtime provisions of the Federal Fair Labor Standard Act and applicable state laws.
- 2.22 Flexible Staffing.** The non-competitive promotion of an employee from certain designated classifications in a classification series to certain higher-level classifications in the same classification series.
- 2.23 Layoff.** Involuntary separation from employment for non-disciplinary reasons including, but not limited to lack of funds or work, abolition of position, reorganization or the reduction or elimination of service levels.
- 2.24 Merit Pay Increase.** An increase in pay established in the Salary plan which may be granted to an employee for meritorious service and completion of prescribed periods of employment in the class. All step increases are merit increases and must be approved by both the employee's Department Head and the City Manager.

- 2.25 Minimum Qualifications.** Shall mean the lowest acceptable degree of skill, education, abilities, experience, and personal and physical characteristics which are prescribed for the selection of an appointee to fill a position vacancy.
- 2.26 Non-Exempt Employees.** Employees who are covered by the provisions of the Federal Fair Labor Standards Act or any applicable state laws.
- 2.27 Oral Examination.** A competitive examination administered orally.
- 2.28 Oral Interview.** That part of an examination conducted by a competent board to evaluate the candidate's education, experience, and general qualifications pertinent to the position for which examined.
- 2.29 Personnel Officer.** The City Manager, or the person designated or appointed by the City Manager to be responsible for recruiting, examination, and other Personnel, labor relations and related matters.
- 2.30 Position.** A specific office or employment provided by the budget, whether occupied or vacant, temporary term or regular, calling for the performance of certain duties as defined in a class specification.
- 2.31 Position Classification Plan.** A compilation of the title, definition and scope of duties for each class officially adopted and currently active within City service.
- 2.32 Probationary Employees.** Full-time and part-time employees who are within their initial probationary period and as such have not obtained regular status. Such employees are on a trial basis for the purpose of assessing their ability to perform assigned tasks. Such employment may be terminated at any time without cause, without notice and without right of appeal during the initial period if deemed appropriate by the City.
- 2.33 Probationary Period.** A working test period during which an employee is required to demonstrate fitness for the position to which appointed by actual performance of the duties of the position.
- 2.34 Promotion.** The movement of an employee from a position in one classification to a vacant position having a higher maximum rate of pay. General salary adjustments are not considered promotions.
- 2.35 Promotional Probationary Period.** A working test period during which an employee is required to demonstrate fitness for the position to which promoted by actual performance of the duties of the position.
- 2.36 Reassignment.** Movement of an employee from one position to another position, within the same department, within the same classification or comparable classification which has the same salary range and requires substantially the same qualifications. A reassignment shall not affect an employee's anniversary date.

- 2.37 Reclassification.** A change in the allocation of an individual position to its appropriate classification based upon a comparative analysis and evaluation of the job content, difficulty, and responsibility. Reclassification may involve raising the position to a higher classification, reducing it to a lower classification or reallocating the position to another classification at the same pay level. Reclassification is concerned with positions, not incumbents in those positions. Reclassification is concerned with positions, not incumbents in those positions.
- 2.38 Re-employment List.** A list of persons who have been laid off from City service and who, in accordance with these rules and regulations, are entitled to consideration for appointment to vacancies in the class without further examination.
- 2.39 Regular Appointment.** An appointment to a regular position after satisfactory completion of the probationary period as required by these rules.
- 2.40 Regular Position.** A position, the duties of which do not terminate at any stated time. This is a position expected to last for an indefinite period of time and would not be considered temporary.
- 2.41 Regular Full-time Employees.** Employees holding a regular appointment to a regular position who typically work a minimum of forty (40) hours per week (Fire employees who typically work a schedule that averages fifty-six (56) hours per week) on a continuing basis.
- 2.42 Regular Part-time Employees.** Employees holding a regular appointment to a regular position who typically work less than forty (40) but more than ten (10) hours per week on a continuing basis.
- 2.43 Reinstatement.** Means the re-appointment, without examination, at the discretion of the appointing authority, of a probationary or regular employee within 24 months after he/she has resigned in good standing to a vacant position in the same or comparable class. The appointing authority shall first consider any valid promotional list for the position prior to considering a request for reinstatement. No credit shall be received for benefits accrued prior to resignation unless otherwise recommended by the appointing authority and approved by the Personnel Officer. The employee shall begin a new probationary period.
- 2.44 Resignation.** The voluntary separation of an employee from employment with the City. In order to resign in good standing, an employee shall provide a written statement, indicating the last day of employment, providing at least two weeks of work and notice prior to leaving, unless otherwise approved by the City Manager. Once a resignation has been submitted, it may only be withdrawn by approval of the Personnel Officer upon the recommendation of the Department Head.
- 2.45 Suspension.** The temporary removal of an employee from service, with or without pay, for disciplinary reasons and for a specified period of time.

- 2.46 Temporary Appointment.** The appointment to any position in City service for a limited period of time or appointment to a Temporary Position. No probationary period is served with a temporary appointment. Employment is at-will and may end at any time without notice, cause or right of appeal
- 2.47 Temporary Position.** A position designated as temporary.
- 2.48 Temporary Employees.** Temporary employees are hired on a full-time or part-time basis, usually of limited duration, to handle special projects, abnormal workloads, emergencies and to cover for employees on vacation or other leaves of absence. Employees in this category include Seasonal Employees. Such employees may be terminated at any time without cause, notice or right of appeal.
- 2.49 Termination.** Involuntary separation of an employee from employment.
- 2.50 Transfer.** Movement of an employee from one position to another position, within a different department, within the same classification or comparable classification, which has the same salary range and requires substantially the same qualifications. A transfer shall not affect an employee's anniversary date.
- 2.51 "Y-rate."** The salary step of an employee who is paid outside of the salary range for the classification in which the employee is working. If his/her salary is greater than the maximum salary step of the lower salary range, his/her salary shall be "Y" rated until such time as any general increase, inequity adjustment, or other salary increase brings the employee's monthly rate within the limits of the new range. An employee may be eligible for "Y-rate" when being, reclassified to a lower classification with a lower salary range. "Y-rates" are recommended by the Department Head and subject to the approval of the City Manager.

### **SECTION 3 - POLICIES GOVERNING EMPLOYMENT AND WORKING CONDITIONS**

- 3.01 Equal Employment Opportunity.** It is the policy of the City that all persons are entitled to equal employment opportunity and the City does not discriminate against its employees or applicants because of race, color, religion, sex, sexual orientation, pregnancy, national origin, ancestry, age, marital status, physical or mental handicap or medical condition, and veteran status or any other classification prohibited by state or federal law. It is the City's policy to treat all employees on the basis of merit, qualifications, and competence.

#### **3.02 Affirmative Action Program**

(a) Affirmative Action is intended to equalize employment opportunities and fully utilize the greater pool of human resources and skills that exist among minorities, the physically disabled, and women. In adopting such a program, the City recognizes the potential of all individuals who wish to participate in or seek entrance to the work force.

(b) In undertaking affirmative action, the City will not practice reverse discrimination by giving preferential treatment to minorities, the physically disabled, or women by

using quotas or other unequal opportunity devices. Rather, the Affirmative Action Program has been developed to reinforce and enhance merit employment concepts by insuring that all segments of the community have an opportunity to enter employment on the basis of open competition, and to advance according to their relative ability and fitness.

(c) The City has developed, and maintains, a comprehensive Affirmative Action program covering all elements of personnel policy and practice to remove discriminatory employment barriers when and where they are found to exist, and to enable all individuals to compete for employment opportunities on an equal basis, regardless of race, color, national origin, age, sex, sexual preference, marital status, physical or mental handicap, medical condition, veteran status, religion or any other status protected by law, unless there exists a bona fide occupational qualification.

### **3.03 Harassment Prevention Policy and Procedure.**

(a) **Policy.** The City prohibits discriminatory harassment by employees at all levels of the organization against other employees, contractors, and/or job applicants. This policy establishes procedures for employees, job applicants, and persons providing services pursuant to a contract who feel they have been subjected to harassment to pursue the complaints. An employee who is determined to have violated this policy may be subject to disciplinary action. An employee found to be retaliating against a complaining employee, job applicant, or contractor may be subject to disciplinary action.

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

"By definition sexual harassment is not within the course and scope of an individual's employment with the City." The City will not pay defense costs or a judgment if an employee commits sexual harassment.

#### **(c) Harassment Defined.**

(1) **Verbal Harassment.** Includes, but is not limited to, derogatory comments communicated to the employee on the basis of race, religious creed, color, national origin, ancestry, physical or mental handicap, medical condition, marital status, sex, sexual orientation, or age.

(2) **Physical Harassment.** Includes, but is not limited to, assaulting, impeding or blocking movement, or any physical interference with normal work or movement of the employee when directed at the employee on the basis of race, religious creed, color, national origin, ancestry, physical or mental handicap, medical condition, marital status, sex, sexual orientation, or age.

(3) **Visual Forms of Harassment.** Includes, but is not limited to, derogatory posters, notices, bulletins, cartoons, or drawings on the basis of employee's race, religious creed, color, national origin, ancestry, physical or mental handicap, medical condition, marital status, sex, sexual orientation, or age.

(4) **Sexual Harassment.** Includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature directed at an employee, applicant, or contractor which is conditioned upon an employment benefit, or creates a work environment that is hostile.

(d) **Identification Guidelines.** These guidelines shall be applied by reviewing the totality of the incident or situation in question. Guidelines for identifying harassment behavior are:

- (1) The behavior is repetitive or severe;
- (2) The behavior is unwelcome;
- (3) The behavior is one-sided; and
- (4) A complaint did not stop the behavior.

(e) **Responsibilities.**

(1) **Managers and Supervisors.** Managers and supervisors, at all levels, are responsible for:

- (a) Explaining the complaint procedures to a complainant;
- (b) Making employees aware of the City's policy and obtaining additional information on the subject for them;
- (c) Dealing effectively with complaints as they occur;
- (d) Making the employee aware that the City Manager will be notified of the complaint.
- (e) The City Manager shall keep the applicable employees informed of the status of the investigation.

(2) **City Manager.** The City Manager (or his/her designee) shall cause an independent investigation to be conducted of all complaints; maintain a confidential file on all charges of harassment, and draft a report summarizing the investigation and propose recommendations.

(3) **Person Filing Complaint.** The person filing the complaint is encouraged to make attempts, if possible, to inform the person alleged to have violated this policy that the behavior is unwelcome. The person filing the complaint is encouraged to do this, but it is not necessary in order to file a complaint.

(f) **Confidentiality.** All personnel shall maintain confidentiality about complaints in order to protect the parties involved. Information shall not be disclosed other than

to assist in the investigation or discipline or as required by state or federal laws or regulations or by order of a court of competent jurisdiction.

**(g) Complaint Procedure.**

(1) Filing. An employee or job applicant who believes he or she has been harassed may make an oral complaint or file a written complaint with any one of the following as may be appropriate:

- (a) The immediate supervisor;
- (b) Any manager or supervisor within or outside the department; or
- (c) The City Manager.

A complaint should be as specific and as detailed as possible.

(2) Response to a Complaint. All employees, supervisors, and managers are expected to treat any complaint immediately, seriously, and confidentially, and to give the investigation top priority.

**(h) Investigation Procedure.** Any person receiving a complaint of harassment shall immediately notify the City Manager. The City Manager or designee shall expediently investigate all complaints of harassment. Managers and supervisors shall make available any employee for interviews and present any documents required by the investigator.

**(i) Investigator's Report.** The City Manager shall submit a report of the findings of the investigation to the person filing the complaint and the person alleged to have violated the harassment policy. Both parties shall be given the opportunity to submit written comments regarding the investigation report to the City Manager.

**(j) Final Determination.** After both parties review and comment, the City Manager shall prepare the Final Determination.

**(k) Disciplinary Procedure.** After reviewing the facts of the investigation, the Appointing Authority (Department Head) of an employee found in violation of this policy may commence appropriate discipline in accordance with the disciplinary procedure as contained in this Manual (or applicable Memorandum of Agreement).

### **3.04 Outside Employment.**

(a) Employees may engage in employment outside City employment, provided that:

(1) Written notice is provided in advance to the employee's Department Head and the City Manager.

(2) The employment does not conflict with the employee's work schedules, duties and responsibilities.

(3) The employment does not create a conflict of interest or incompatibility with City employment.

(4) The employment does not create a detrimental effect upon the employee's work performance with the City.

(5) The employment does not involve conducting business during hours of employment with the City.

(6) The employee does not use City premises, facilities or supplies in his/her outside employment.

(7) The City is in no way responsible for the employee's outside employment.

(b) Self-employment is considered outside employment and must meet the same conditions as other outside employment, with the addition of the restriction that the employment does not involve ownership of a private business that is incompatible with the employee's position with the City.

### **3.05 Conflicts of Interest.**

(a) Employees of the City are prohibited from:

(1) Engaging in or having any interest in any business or transaction, or incurring any obligation which conflicts with or impairs, or appears to conflict with or impair their independent judgment in the discharge of their official duties.

(2) Accepting money, favors or other considerations for work they would be required or expected to perform in the regular course of their duties.

(3) Accepting gifts, gratuities or favors of any kind from persons or vendors doing business with the City. The only exception is the acceptance of consumable gifts offered to an entire work group during the holiday season where rejection would damage the spirit in which the gifts were offered.

(4) Disclosing confidential information acquired by or made available to them in the course of their employment with the City, or using such information for speculation or personal gain.

(b) It is the employee's responsibility to disclose and report all potential conflict of interest situations to his/her supervisor or the City Manager.

### **3.06 Employment of Family Members and Co-habitants.**

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

(b) For reasons of supervision, safety, security, or morale, the City may prohibit members of the same family or household from working in the same department, division, or City facility. For purposes of this policy, “members of the same family” is defined as spouses, domestic partners, children, sisters, brothers, mothers, fathers, grandparents, stepchildren, in-laws, nieces, nephews, cousins, and any other persons related by blood or marriage or by means of a “foster” relationship.

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

(a) Situations that might result in unfair preferential treatment of other employees and/or the public;

(2) Professional decisions that might be disadvantageous for the operations of the City;

(3) An employee being in a position to supervise, control, or influence a family member or member of the same household; and

(4) An employee having access to the personnel file and other confidential information of a family member or member of the same household.

(d) This policy applies to family members or members of the same household of all employees and elected or appointed officials of the City of Del Mar. Each situation will be handled on a case-by-case basis. Employees and officials have a duty to disclose relationships that are addressed by this policy.

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

### **3.07 Political Activity.**

(a) City employees shall not engage in political activity of any kind during working hours or in a City uniform. Prohibited activity shall include, but is not limited to, soliciting money, influence, service, or any other valuable thing to aid, promote, or defeat any political committee or the nomination or election of any person to public office, while on the job during working hours. No person shall attempt to coerce, command, or require a person holding, or applying for, any position, office, or employment with the City to influence or give money, service, or other valuable thing to aid, promote, or defeat any political committee, or to aid, promote, or defeat the nomination or election of any person to public office.

(b) The rights of City employees to register and vote as they choose shall not be infringed. City employees may express their opinions on all political subjects without recourse against them.

(c) Subject to the foregoing, any City employee may seek appointment or election to any public position, office, or employment for which qualified.

### **3.08 Alcohol and Controlled Substance Abuse.**

(a) The City is committed to providing a work environment that is safe, healthy and free of any adverse effects caused by alcohol or controlled substances. City employees shall not be permitted to possess, distribute, or use alcohol or controlled substances while on duty for the City, on City property, or using City equipment; and are not permitted to perform services while under the influence of those substances.

(b) For the purpose of enforcing this policy and maintaining a drug and controlled substance free work place, the City reserves the right to search, with or without prior notice to the employee, all work areas and property in which the City maintains full or joint control with the employees, including but not limited to City vehicles, desks, lockers, file cabinets, and bookshelves.

(c) If a department head has reasonable suspicion that an employee is under the influence of alcohol or a controlled substance while in the work place or subject to duty, the employee may be required to submit to a drug and alcohol analysis provided at the City's expense.

(d) Exceptions to this policy:

(1) Performance of normal job duties and responsibilities as directed by assignment or detail shall not result in an employee being in violation of this policy.

(2) During special, infrequent occasions, consumption of alcoholic beverages may be allowed on City property, while an employee is on duty for the City, or while using City equipment but only upon specific prior written authorization from the City Manager.

(3) An employee who resides on City-owned property is excepted from provisions of this policy for circumstances that would be considered appropriate or legal if his/her residence were on private property.

(e) Failure to abide by the provisions of this policy shall be grounds for disciplinary action, up to and including termination.

### **3.09 Americans with Disabilities**

(a) It is the policy of the City to comply with all the relevant and applicable provisions of the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA) as it applies to disabilities. The City will not discriminate against any qualified employee or job applicant with respect to any terms, privileges, or conditions of employment because of a person's physical or mental disability. The

City also will make reasonable accommodations wherever necessary for all employees or applicants with disabilities, provided that the individual is otherwise qualified to safely perform the essential job functions and provided that any accommodations made do not require undue hardship.

(b) This policy applies to all areas of employment including recruitment, hiring, training, promotion, compensation, benefits, transfer, and social/recreational programs.

(c) Any employee or job applicant who believes that he or she has been discriminated against on the basis of disability should immediately bring the problem to the attention of their Department Head or the Personnel Manager

## **SECTION 4 - RECRUITMENT AND SELECTION**

**4.01 Filling Vacancies.** All vacancies shall be filled by reinstatement, transfer, demotion, reemployment, or by appointment from an eligibility list established by an open, or closed/promotional recruitment. In the absence of persons eligible for appointment in these ways, temporary or acting appointments may be made in accordance with these rules.

**4.02 Fair Employment Practices.** Any technique or procedure used in recruitment and selection of employees shall be designed to measure only the job related qualifications of applicants. No recruitment or selection technique shall be used which, in the opinion of the Personnel Officer, is not justifiably linked to successful job performance.

**4.03 Types of Recruitment.** The determination of the type of recruitment to be conducted shall be made by the Personnel Officer after consultation with the affected Department Head. Recruitments may be conducted in any of the following manners:

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

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

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

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

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

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

All applications and examination papers are confidential records of the City and under no circumstances will they be returned to the applicants or displayed publicly. A separate and complete application for each recruitment must be filed unless specified otherwise in the job announcement.

- 4.05 Job Announcements.** All examinations shall be announced in a bulletin which shall specify at least the major job responsibilities, minimum and desirable qualifications, and the selection process to be used. Job announcements shall be posted on appropriate bulletin boards in City facilities. Special recruitment methods shall be utilized as necessary to ensure that all segments of the labor market available to the City are utilized.
- 4.06 Examinations.** Examinations for employment shall include any technique which, in the opinion of the Personnel Officer, fairly measures the job-related qualifications of applicants. These may include written tests, interviews, performance tests, medical examinations and background investigations (as pertains to the job classification applied for only).
- 4.07 Conduct of Examinations.** The Personnel Officer shall construct, develop and administer all examinations for City employment except that the City may contract with any qualified agency, organization or individual to develop and administer examinations provided that the procedures utilized meet the specifications as provided in these rules.
- 4.08 Eligibility List.** An eligibility list shall be established following an examination, listing the names of those applicants who have achieved a ranking meeting or exceeding a passing point. Such applicants shall be deemed as qualified for appointment, pending further review by the appointing authority and other qualifying procedures such as reference checks, medical examinations or background investigations. Open eligibility lists shall be valid and in effect for a period of six (6) months. Open eligibility lists may be extended to a maximum duration of eighteen (18) months, at the discretion of the Personnel Officer, prior to expiration.
- 4.09 Veteran's Preference.** If candidates are all identically qualified, preference shall be given to veterans.
- 4.10 Closed/Promotional Eligibility Lists.** Closed/Promotional eligibility lists for positions shall be in effect for twelve (12) months and may be extended to a maximum duration of eighteen (18) months, at the discretion of the Personnel Officer, prior to expiration.

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

**4.11 Removal of Names from Eligibility List.** The name of any person appearing on any eligibility list may be removed by the Personnel Officer:

- (a) If the eligible person requests that his name be removed.
- (b) If the eligible person fails to respond to a written notice by the City that he/she is being considered for appointment. This provision shall not apply to closed/promotional lists.
- (c) Upon notice from an eligible applicant declining appointment or invitation to continue in the selection process. Current City of Del Mar employees whose names are on a list may decline and request that their names remain on the list for future consideration.
- (d) Upon recommendation of the Department Head and approval of the Personnel Officer after the eligible person has been considered for employment and such employment would not be in the best interest of the City.
- (e) If the names of five (5) or less applicants, willing and able to accept appointment, are available on a list, that list may be declared invalid by the Personnel Officer and a new recruitment and examination announced.
- (f) If the eligible person has made any false statement of material fact or willful omission of information in the application process.
- (g) When a person is appointed from an eligibility list to a position in the classification for which the list was developed. Except in the case of a probationary discharge, a person's name may be placed back on an eligibility list prior to completion of the probationary period at the request of the employee with the approval of the Personnel Officer. A subsequent appointment from the list shall require a new probationary period to be served.

**4.12 Notification of Applicants.** All applicants shall be notified in writing of the results of the examination. Probationary and regular employees competing in closed/promotional recruitments shall have the right to review their own written examination answer sheet and to challenge questions within ten (10) working days after the results are mailed. The Personnel Officer, or designee, will review

challenged items with an employee, to the extent that it does not compromise the security or future uses of a test. Any error in computation, if called to the attention of the Personnel Officer within the ten (10) working days shall be corrected. The Personnel Officer's decision with respect to challenges shall be final.

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

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

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

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

- 4.16 Application Filing.** All applications shall be made upon official forms furnished by the City and signed and filed in the Personnel Office on or before the final filing date specified in the job announcement.

- 4.17 Verification of Applications.** The City may require applicants to provide certified copies of affidavits relating to receipt of any diploma, license, or any other accreditation or certification required to meet the requirements.

**4.18 Disqualification of Applicants.** The City may refuse to examine an applicant or may, after examination, disqualify such applicant or remove the applicant's name from an Eligible List, or refuse to certify an eligible name on an Eligible List if any one of the following conditions exists:

(a) The applicant is found to lack any of the preliminary requirements announced for the examination for the class of position;

(b) The applicant has made a false statement of material fact in the application;

(c) The applicant has directly or indirectly obtained information regarding examinations to which, as an applicant, the individual was not entitled;

(d) The applicant has not submitted the application correctly or within the prescribed time limits;

(e) The applicant has been dismissed from City employment for cause.

**4.19 Character of Examinations.** Examinations may be written or oral, in the form of a demonstration of skill, or any combination of these; and any investigation of character, personality, education and experience; and any tests of intelligence, capacity, technical knowledge, manual skill, work samples, physical fitness, or any combination of these or other tests which the Personnel Officer deems are appropriate, may be employed. Promotional examinations may include performance reviews, records of conduct or any other generally accepted qualifications deemed necessary or reliable in determining the merit and fitness of each applicant.

**4.20 Legal Authority to Work.** Each applicant must attest to his or her legal authority to work and identity on an I-9 Form provided by the federal government. This verification must be completed as soon as possible after an offer of employment is made and in no event more than three (3) business days after an individual is hired. All offers of employment and continued employment are conditioned on furnishing satisfactory evidence of identity and legal authority to work in the United States.

**4.21 Pre-employment Medical Examination.** Each prospective employee shall be required to complete a pre-employment health questionnaire and, as determined by the City, take a pre-employment medical examination after receiving an offer of employment and before beginning his or her first day of duty. The medical examination is provided by the City at its sole expense. Every offer of employment is contingent upon successful completion of the health questionnaire and/or medical examination by the prospective employee.

**4.22 Reemployment - Medical Examination.** Employees who are rehired following separation from City service shall be required to complete the medical examination process, as defined above; and shall complete a new initial probationary period in the same manner as other new employees.

## SECTION 5 - APPOINTMENTS

**5.01 Types of Appointments.** Appointments to City service are divided into the following categories:

(a) **Probationary.** Shall be the appointment of a person to a regular position which the employee must serve a probationary period of a certain designated time span to demonstrate fitness for the position.

(b) **Regular.** Shall be the appointment of a person who has satisfactorily completed his/her probationary period to a regular position.

(c) **Acting.** Shall be the temporary assignment of a regular or probationary employee to a higher level classification to fill a vacant position or to provide a replacement for an employee who remains on a leave of absence. Acting appointments may end at any time without advance notice or right of appeal.

(d) **Temporary.** Shall be the appointment in one of the categories listed below of a person to a position intended to be occupied on an intermittent basis to cover increased workloads of limited duration, necessary vacation relief and other situations involving fluctuating staff:

(1) **Extra Help Appointment.** Any appointment not exceeding six (6) months, or, exceeding six (6) months but working less than 995 hours per fiscal year.

(2) **Limited Term Appointment.** Any appointment generally for a period of more than six months, but less than 18 months working more than 995 hours per fiscal year.

(3) **Part-time Appointment.** Any appointment generally for a period of a fiscal year working over 995 hours but no more than 1300 hours.

(4) **Emergency.** To meet immediate needs of an emergency (i.e., civil disaster).

(5) **Provisional.** In the absence of individuals eligible or acceptable for appointment from appropriate eligibility lists, a provisional appointment may be made by the appointing authority of an individual who meets the training and experience requirements for the position. Such an appointment shall be limited to one year duration. Extension beyond one year shall be subject to the approval of the City Manager. The City Manager shall specify the term of the extension. If the position is one that falls under representation by one of the City's recognized employee associations, the appropriate association shall be informed of the extension. Such an appointment may be made during the period of suspension of an employee, or pending final action on proceedings to review suspension, demotion, or discharge of an employee. Provisional appointments may also be made under other circumstances deemed for the good of the service by the Personnel Officer. A provisional employee may be removed at any time without rights to a

hearing. Provisional employees may accrue fringe benefits as specifically authorized by the City Manager.

Employees whose appointments are temporary, except as required by the Public Employees' Retirement System (PERS) contract or as specified in these rules or by City Resolution or Ordinance, shall not be covered by the City's group insurance, disability, retirement, or other benefit programs; nor do they accrue vacation, holiday or sick leave benefits. Temporary employees are at will employees who serve at the pleasure of the appointing authority.

## **SECTION 6 - TRANSFERS AND ASSIGNMENTS**

### **6.01 Administrative Transfers.**

(a) **Authorization to Transfer.** The City Manager may authorize the transfer of an employee from one position in a department to another position of the same or comparable classification in another department. Any employee transferred to a different position shall possess the minimum qualifications for the position.

(b) **Reassignment Within Department.** The Department Head may reassign an employee to another position in the same classification in the same department at any time.

### **6.02 Employee Reassignment/Transfer Requests.**

(a) **Reassignment.** An employee who wishes to be considered for an open position within his or her present department must discuss the request directly with his or her Department Head.

(b) **Transfer.** If the open position is in another department, the employee must complete a transfer request form and file it with the Personnel Officer. Unless otherwise approved by the City Manager, employees will be considered for interdepartmental transfers only if the following conditions are met:

(1) The employee must have completed a minimum of six months' continuous service in his or her current position;

(2) The employee's performance in his or her current position must be satisfactory or better;

(3) The employee must meet the minimum qualifications for the position to which the transfer is requested; and

(4) The employee's request must be approved by the employee's current Department Head, the new Department Head and the City Manager.

(c) The employee's salary anniversary date shall not change upon transfer under this subsection.

### 6.03 **Out-of-Class Assignment.** (See Fire MOA for DMFFA)

(a) An out-of-class assignment is a temporary assignment of a regular employee to an established position at a higher level of pay which requires the employee to perform a majority of the duties of the higher classification. An out-of-class assignment may be made by the Department Head when a position is vacant or when an incumbent employee is absent for more than fourteen (14) days. Such an assignment shall be temporary and shall terminate when the position is filled by probationary or regular appointment, when the incumbent employee returns to work, or when the temporary assignment is discontinued. In no event shall an out-of-class assignment exceed a period of six (6) months, unless an extension is approved by the City Manager.

(b) **Authorization.** An out-of-class assignment shall be recommended by the Department Head and approved in writing by the City Manager prior to being effective.

(c) **Minimum Qualifications.** A regular employee in an out-of-class assignment must be qualified to temporarily perform the work of the higher classification as determined by the appointing authority, but need not be qualified by examination or have standing on an Eligible List.

(d) **Compensation.** An employee in an out-of-class assignment shall receive the salary of the higher classification retroactive to the first work day after the time worked in the higher classification exceeds 14 fourteen consecutive days. The employee shall be placed on the first step of the higher classification or on a step of the salary range of the higher classification which provides for a minimum of approximately a five (5) percent increase. A salary increase of more than five (5) percent may be authorized by the City Manager. Benefits of the higher classification are not available and the employee will continue to receive the benefits of the employee's regular position. If a Department Head determines that an employee will be required to work in an out-of-class assignment for a significant period of time, the employee shall receive out-of-class pay starting on the first day of the assignment.

## SECTION 7 - PROBATIONARY PERIOD

**7.01 Objective.** The probationary period shall be regarded as a part of the selection process and shall be utilized for the purpose of determining the employee's ability to perform satisfactorily the duties prescribed for the position and determining the employee's ability to work with other employees.

**7.02 Length of Probation.** All initial appointments shall be tentative and subject to a probationary period of actual City service. The probationary period shall not include time served under any temporary appointment. The length of probationary periods for initial appointments shall be twelve (12) months for all employees (2080 hours, 2912 for Fire). The probationary period for part-time employees shall be prorated on an hourly basis. The probationary period for promotional appointments shall be six months.

- 7.03 Extension of Probation.** The probationary period of an individual employee may be extended by the City Manager, upon the request of the Department Head, for a period not to exceed an additional six (6) months. Approval of such extension by the City Manager shall be in writing with notification to the employee involved prior to the end of the probationary period.
- 7.04 Rejection During Probation.** During the probationary period, an employee may be rejected at any time by the Department Head without cause and without the right of appeal. The Department Head shall notify the City Manager in writing of the intention to reject an employee during probation. Upon approval, the Department Head shall provide prompt notification to the employee involved.
- 7.05 Rejection Following Promotion.** An employee rejected during the probationary period following a promotional appointment shall be reinstated to a position in the former classification from which the employee was promoted, provided such position is available. Provided however, that if the cause for not passing probation was sufficient grounds for termination, the employee shall be subject to termination without reappointment to the lower position. Such termination shall be subject to the Discipline Procedures as contained in the manual.
- 7.06 Promotion During Probation.** While serving a probationary period, an employee may be promoted to a position in a higher class provided the employee is certified from the appropriate Eligible List in accordance with these rules. If an employee is promoted during a probationary period, the employee shall serve a new complete probationary period for the new class beginning with the date of appointment to the new class.
- 7.07 Leave During Probation.** In the event a probationary employee takes an approved unpaid leave of absence of thirty (30) or more calendar days during his or her probationary period, the City Manager may, upon the recommendation of the employee's Department Head, extend the probationary period for an equivalent period of time.
- 7.08 Completion of Probationary Period.** Prior to the completion of the probationary period, the employee's supervisor shall complete, and the Department Head shall review and approve, a performance evaluation to ascertain whether the probationary employee may become a regular employee of the City.

## **SECTION 8 - CLASSIFICATION PLAN**

- 8.01 Purpose.** The purpose of the classification plan is to provide a complete and continuous inventory of all classifications in the City service and to provide accurate descriptions and specifications for each class. Positions having similar duties and responsibilities shall be classified and compensated on a uniform basis.
- 8.02 Composition.** The classification plan shall consist of groupings of positions by classifications which are approximately equal in difficulty and responsibility, consisting of the same general qualifications and which can be compensated with the same range of pay for similar working conditions. Classes shall be arranged in series whenever possible.

- 8.03 Content of Class Specifications.** Each class specification shall include the title, a description of the duties and responsibilities of the work, and a statement of the minimum qualifications required of the person who is to perform the work.
- 8.04 Use of Class Titles.** The class title shall be the official title of every position allocated to the class for the purpose of personnel actions and shall be used on all payrolls, budget estimates, official records, and reports relating to the position. The Department Head may authorize the use of another working title for the purposes of internal administration or in contacts with the public.
- 8.05 Interpretation and Significance.** The class specifications are not to be considered restrictive nor construed as limiting the duties and responsibilities of any position. They neither limit nor modify the authority of any City official to assign duties to, direct and control the work of employees in the City service. However, no employee shall be required to perform duties of the position outside of the classification to which they have been appointed, except on a temporary basis. The class specifications are descriptive and explanatory of characteristic duties and responsibilities of positions in a class and, as such, they are to be interpreted in their entirety and in relation to other classes in the classification plan.
- 8.06 Maintenance of the Plan.** The Personnel Officer shall be responsible for the maintenance of the classification plan. The Personnel Officer may allocate positions to the appropriate class and may make revisions in the classification plan which shall consist of additions, abolishments, consolidations, or amendments to existing class specifications. The Personnel Officer shall be responsible for conducting classification studies or having studies conducted by qualified persons or companies outside City service of proposed new or existing positions in the City service when:
- (a) Notified by the City Manager that new positions are being authorized.
  - (b) Notified by a Department Head that the duties and responsibilities of a position or group of positions may be improperly classified or have undergone significant change.
  - (c) Periodically as a need arises to review a certain position or group of positions in the City service.

## **SECTION 9 - SALARY ADMINISTRATION AND ANNIVERSARY DATES**

- 9.01 Anniversary Dates.** For the purpose of salary administration and performance evaluations, each employee shall have an Anniversary Date which shall be determined as herein provided.
- (a) For a new employee, the Anniversary Date shall occur the first day of the pay period closest to the date of probationary appointment to a regular position.
  - (b) An employee's anniversary date changes when any of the following occur:

- (1) Merit Increase
- (2) Promotion
- (3) Reclassification to a higher classification
- (4) Reinstatement
- (5) Reemployment
- (6) Disciplinary demotion

(c) An employee's anniversary date does not change when any of the following occur:

- (1) Non-disciplinary Demotion
- (2) Transfer
- (3) Reassignment
- (4) Change in Salary Range Assignment, when remaining at same step in range.
- (5) Reclassification to a lower classification
- (6) Acting appointment

**9.02 Anniversary Date Postponed.** For each employee whose step advancement is postponed by their Department Head, the Anniversary Date shall be changed to the date to which the advancement is postponed.

**9.03 Step Advancements.** Step advancements are merit increases. An employee must perform the duties of the position in a manner satisfactory to the Department Head to receive a step advancement.

Employees designated in the Management, Professional, and Confidential Employee Compensation Plan that are eligible for the Results Based Pay for Performance (PFP) Program shall be subject to compensation adjustments described in the PFP Program. Accordingly, this section shall not apply to such employees.

(a) Step Advancements authorized herein shall be made from each step to the next higher step within the limits of the appropriate salary range. No advancement shall be made without the written recommendation by the Department Head.

(b) Step advancements shall be made according to the following guidelines:

- (1) Normally, an employee on a 12-step salary schedule shall be eligible for advancement from one step to another after serving time in the step in accordance with the following:

Step A - Six (6) Months  
Step B - One (1) Year  
Step C - One (1) Year  
Step D - One (1) Year

- (2) Normally, an employee on a 5-step salary schedule, or an employee who was moved from a 12-step to a 5-step salary schedule in his/her first year

of service, shall be eligible for advancement from one step to another after serving time in the step in accordance with the following:

- Step A - One (1) Year
- Step B - One (1) Year
- Step C - One (1) Year
- Step D - One (1) Year

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

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

**9.05 Salary Upon Initial Appointment.** Upon initial appointment with the City, an employee shall be placed in the first step of the salary range. However, if it is not practical or possible to hire qualified personnel at the first step, appointment at a higher step within the range may be authorized by the City Manager.

**9.06 Salary Upon Reclassification.** Any employee in a position which is reclassified with a different salary range shall be compensated at the step in the new salary range that does not result in a loss of pay. An employee in a position which is reclassified to a higher salary range shall be placed in a step of the new salary range for the new class which provides for a minimum increase of approximately five (5) percent. If a minimum increase of approximately five (5) percent cannot be provided within the new salary range, the employee shall be placed at next higher step of the new range.

The salary of an employee whose position is reclassified to a classification with a lower salary range and whose salary is above the maximum of the new salary range shall be frozen at the salary of the old classification until such time as any general increase, inequity adjustment, or other salary increase brings the employee's monthly rate within the limits of the new range. This shall be referred to as "Y-rate". "Y-rates" are recommended by the Department Head and subject to the approval of the City Manager.

The provisions of this section shall not apply to employees designated in the Management, Professional, and Confidential Employee Compensation Plan that are subject to the PFP Program.

**9.07 Salary Upon Promotion.** Upon promotion, an employee shall be placed in the first salary step of the range for the new classification. If placement in the first salary step provides for a salary increase that is less than five (5) percent, the employee shall be placed in a salary step in the range for the new classification that provides for at least a five (5) percent increase.

Where an employee is promoted into a classification with a salary range that does not have salary steps, the employee will be placed at the salary range minimum or at a salary within the range that provides for a salary increase of five (5) percent, whichever is greater. A higher salary may be established with the approval of the City Manager.

An employee who, on his/her salary anniversary date, is promoted to a class with a higher salary range shall first receive any within range increase to which he/she is entitled, and then the higher step as provided in this section unless the advancement is by flexible staffing provisions. In the case of a flexible staffing advancement to a higher classification, the employee's compensation shall be set at the step in the range of the higher classification that is equal to a one step increase overall.

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

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

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

**9.11 Compensation Upon Demotion.** The salary of an employee who is demoted to a position of a job classification with a lower salary than the job classification from which the employee was demoted shall be reduced to the salary step in the range for the new classification recommended by the Department Head and approved by the City Manager.

If a non-disciplinary demotion occurs, the employee is demoted to that salary in the dollar amount he/she would have received in that lower class if his/her services had been continuous in said lower class. He/she shall retain his/her current anniversary date.

**9.12 Salary Plan.** A Salary Plan shall be authorized by the City Council. This plan shall establish the salary range and salary steps for each position in the City.

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

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

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

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

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

**9.15 Compensation - Probationary/Regular Part-time Employees.**

Probationary/Regular part-time employees shall be paid the hourly equivalent of the monthly salary paid to a full-time employee in the classification to which they are assigned or paid according to the approved salary schedule for Miscellaneous, Part-Time, Temporary and Hourly Employees. They shall move through Steps A-E in their range at the discretion of the Department Head and with City Manager's approval and must have completed a minimum of one year of paid time at each previous Step and demonstrated satisfactory performance.

**9.16 Overtime.**

(a) All non-exempt employees who are eligible for overtime shall receive overtime pay computed at one and one-half their regular rate for all hours authorized by the City and worked by the employee in excess of forty (40) hours worked in a work week. Fire employees who regularly work a schedule that averages fifty-six (56) hours per week shall receive overtime pay computed at one and one-half their regular rate for all hours authorized by the City and worked by the employee in excess of 182 hours worked in a twenty-four (24) consecutive day work period.

Overtime hours shall be paid to the nearest quarter hour of time worked. Official City holidays and scheduled vacation shall be considered as actual hours worked for purposes of computing overtime eligibility. Unscheduled vacation hours shall not count as hours worked for the purposes of calculating overtime under the FLSA.

(b) Overtime shall be authorized in writing by the employee's Department Head. An employee not specifically exempt from the provisions of the Fair Labor Standards Act shall not begin work more than fifteen (15) minutes before their established schedule begins nor work longer than fifteen (15) minutes after it ends, unless specifically authorized by the appropriate supervisor.

(c) Employees eligible for overtime pay may elect to receive compensatory time off (CTO) at time and one-half (1 1/2) in lieu of overtime pay. An employee may accrue and have a maximum current credit of one hundred and sixty (160) hours of CTO. Fire employees who regularly work a schedule that averages fifty-six (56) hours per week may accrue and have a maximum current credit in an amount as set forth in the appropriate Memorandum of Agreement.

(d) Exempt employees are not covered by the overtime provisions and are not eligible for overtime pay.

**9.17 Longevity Pay.** Employees will receive a \$400 one-time bonus after 15-years of service; a \$450 one-time bonus after 20 years of service; a \$500 one-time bonus after 25 years of service; and a \$550 one-time bonus after 30 years of service.

## **SECTION 10 - GENERAL WORKING CONDITIONS**

### **10.01 Work Schedules.**

(a) The following provisions are intended to define the normal hours of work and shall not be construed as a guarantee of work per day or per week, or of days of work per week.

(b) **Workday.** The normal workday shall be eight (8) hours of work in a twenty-four (24) consecutive hour period, except for Fire personnel or in cases of emergencies. For Fire personnel, the normal workday shall be a twenty-four (24) hour period, beginning at 0800 and continuing until the next day, ending at 0800 hours (8 a.m. to the following 8 a.m.). Employees are expected to be at their work station, ready to begin work, at the beginning of their assigned shift, and to notify their supervisor as early as possible, but no later than fifteen (15) minutes after the beginning of their shift if they expect to be absent or tardy on any given day.

(c) **Work shift.** Employees shall be scheduled to work on regular work shifts having regular starting and quitting times. Except for emergencies, employees' work shifts shall not be changed without twenty-four (24) hours prior notice to the employee. Neither call-out nor overtime constitutes a change in the work shift.

(d) **Workweek.** The normal workweek shall be five (5) work days and two (2) consecutive days of rest in a seven (7) consecutive day period, except for Fire personnel or in cases of emergencies, or at the specific request of an employee

and approval of Department Head. For Fire personnel, the workweek shall average approximately fifty-six (56) hours per week over a one (1) year period.

(1) **FLSA Designation of Work Period for 9/80 Schedule.** For all employees who work a 9/80 schedule (four nine-hour days per week and one eight-hour day every two weeks), their FLSA work week begins (for Payroll calculation purposes) exactly four hours after the start of each employee's work day on the day of the week in which the employee has his/her alternating regular day off.

(e) **Irregular/Flexible Work Schedules.** The Department Head may authorize work schedules based on the operating needs of the department outside of the normal work schedule.

(f) **Meal Period.** Each regular full-time employee shall be entitled to an uninterrupted, unpaid meal period of a minimum of thirty (30) minutes and a maximum of sixty (60) minutes at or about the mid-point of their work day. The length of the meal period and the time the meal period is taken shall be determined by mutual agreement. But if agreement cannot be reached, the determination shall be made by the City. Employees are entirely relieved of responsibilities and restrictions during their meal period, unless they have agreed, in writing, to work an on-duty meal period which will be treated as paid time.

(g) **Rest Period.** Employees shall be provided rest periods at the rate of fifteen (15) minutes for each four (4) hours worked. Rest breaks shall be considered paid work time.

(h) **Emergency Assignments.** Nothing herein shall be construed to limit or restrict the authority of the City to make temporary assignments to different or additional locations, shifts, or duties for the purpose of meeting an emergency. For purposes of this manual, emergency shall mean an unanticipated circumstance which requires an immediate response. Such emergency assignments shall not extend beyond the period of said emergency.

(i) All references to accrual or use of vacation, holiday or sick leave in this manual shall be interpreted as one (1) day being equivalent to eight (8) hours.

## 10.02 Call Back.

(a) Call back work is defined as work required by the City of an employee who, following completion of the employee's work day or work week and departure from the employee's work site, is unexpectedly ordered to report back to duty to perform necessary work. Employees who are called back shall receive a minimum of two (2) hours compensation at time and one half between 6 a. m. and midnight, and a minimum of four (4) hours compensation at time and one half between 12 midnight and 6 a. m.

(1) Employees in classifications represented by the Del Mar City Employee Association who are called back on official city holidays shall receive a minimum of two (2) hours compensation at double time between 6 a.m. and

midnight, and a minimum of four (4) hours compensation at double time between 12 midnight and 6 a.m.

(b) Whenever an employee is called back, the employee shall receive the minimum provided above or pay for hours actually worked, whichever is greater. Hours worked shall be calculated beginning at the time the call back is received by the employee and ending when the employee is relieved of duty.

(c) If an employee, who was called back to work and has completed his/her assignment and left work, is again called back to work, he/she will not receive another minimum if the time of return is within the previous call back minimum.

(d) If an employee who is called back to work is required to work after midnight so that the employee's rest has been significantly affected, the employee shall have sufficient sleep time to avoid safety problems at work on the following day. The length of the sleep time shall be eight (8) hours or an alternative time determined mutually between the employee and the employee's supervisor. Such sleep time shall be without loss of pay. If eight (8) hour rest time results in the employee working less than four (4) hours on the next scheduled shift, the employee shall not report to work the next working day, and shall be paid fatigue time for any hours short of 40 regular hours at the employee's regular pay rate.

### **10.03 Standby Duty.**

(a) Standby duty is defined as that circumstance which requires an employee assigned by the City to:

(1) Be ready to respond immediately to a call for service;

(2) Be readily available at all hours by telephone or other agreed upon communication equipment; and

(3) Refrain from activities which might impair his/her assigned duties upon call.

(b) With the approval of the City Manager, a Department Head may assign an employee or employees to standby duty. Such assignments shall be in writing.

(c) An employee assigned by the City to standby duty shall be compensated in accordance with the provisions of a Memorandum of Agreement between the City and a Recognized Employee Organization if such memorandum so provides.

(d) Where an employee is on Standby Duty and the employee is required to perform duties by phone or computer that may have otherwise been performed on a job site or at City facilities, the employee shall receive compensation at time and one-half in increments of not less than fifteen (15) minutes of actual time worked.

#### 10.04 Meal Allowance.

(a) If an employee is officially ordered to work at least two (2) hours immediately preceding or following his/her normal workday and/or is called back to work under Section 10.02 for at least two (2) hours, under conditions that do not allow the employee to go home for a meal, the City shall either provide a meal, or the employee may claim reimbursement for a meal allowance of up to eighteen dollars (\$18.00).

(b) Employees may not leave the work site to eat unless specifically authorized by their supervisor to do so.

#### 10.05 Tuition Reimbursement.

(a) The tuition reimbursement program is intended to:

- (1) Encourage employees to continue their education in order to meet present and future needs of City service.
- (2) Increase effective work performance and employee efficiency.
- (3) Facilitate promotion from within.
- (4) Attract to City service persons of superior ability and potential for advancement.

(b) **Eligible Courses.** Courses must relate to the employee's job assignment or be job oriented, and must be offered by a qualified training institution. In general, qualified training institutions are those colleges or universities which offer accredited course work transferable to other academic institutions. However, professional skills-building workshops, institutes or seminars which are not usually transferable will be covered if they provide continuing education units or are offered by an institution recognized by a specialized accrediting body in a professional field. Any other professional training not offered by an accepted accredited or licensed agency must be offered by or under the direction of a recognized professional organization in the applicant's occupational field.

Training programs, such as workshops, institutes, seminars and symposia which do not meet the above criteria and which are not intended for academic advancement are not covered under the program. These courses may be attended on City time at the discretion of the Department Head, and at City expense, which is budgeted for and administered by the employee's department.

(c) Courses must be taken on the employee's own time unless otherwise authorized by the Department Head and the City Manager.

(d) Each employee shall be eligible for a maximum reimbursement each year from said fund, subject to availability of monies remaining in said fund. The individual employee yearly (fiscal year) maximum shall be \$1000 provided funds are available.

(e) Reimbursement will be made in the following manner:

(1) Prior to enrolling in a course, an employee must secure Department Head approval that the course work is job related and submit to the department a proposed estimated expenditure request. If the Department Head denies an employee request, the employee may appeal the denial to the City Manager.

(2) Upon conclusion of the course work, the employee must submit proof of a "C", "pass" or other appropriate notice of successful course completion to his/her Department Head along with an expenditure claim for tuition, books, or other required course materials.

**10.06 Mileage Allowance.**

(a) Employees shall be reimbursed at the maximum allowable exempt rate of reimbursement provided by the Internal Revenue Service for the authorized use of their private vehicle on City business. Employees shall also be reimbursed for parking fees paid while using their vehicle on City business.

(b) An employee who uses his/her automobile for City business must maintain the minimum automobile insurance coverage required by the State of California. Written verification confirming such insurance shall be provided to the City.

**10.07 Holidays.**

(a) The City shall recognize the following days as official City holidays, and all employees, except temporary employees, normally scheduled to work on these days will be given the day off with pay.

<u>Holiday</u>	<u>Day Observed</u>
New Year's Day	January 1
Martin Luther King Day	3rd Monday in January
Washington's Birthday	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4th Thursday in November
Day After Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25
New Year's Eve	December 31
Two Eight-Hour Floating Holidays	

(b) If one of the holidays listed above falls on a Sunday, then it shall be observed on the following Monday. If one of the holidays listed above falls on a Saturday, then it shall be observed on the previous Friday.

(c) When a day is proclaimed by the Mayor of the City for a public fast, Thanksgiving, day of mourning, or holiday, then each employee shall be granted time off with pay for their regular scheduled hours.

(d) A non-exempt employee who works on the day a holiday is observed, as provided above, shall be paid for the holiday, just as all employees are paid for the holiday and, in addition, the non-exempt employee shall be compensated for the hours he/she actually works on the holiday. Such compensation shall be either cash or compensatory time off, at the employee's option.

(e) To be eligible for holiday pay, the employee must work on the last regularly scheduled work day preceding the holiday and the first regularly scheduled work day following the holiday, unless the absence is approved by the Department Head in advance, or the employee is in a paid time leave status. An employee on vacation shall not be charged vacation time for a holiday that falls during the vacation period.

(f) Employees working a 9/80 Schedule will receive 9 hours for a Recognized Holiday that is observed on a 9-hour work day and shall receive 8 hours for a Recognized Holiday that is observed on an 8-hour work day.

#### **10.08 Resignation and Final Paycheck.**

(a) For an employee to resign City service in good standing he/she shall file with their Department Head, at least two (2) weeks before leaving, a written resignation stating the effective date and reason for leaving. Failure of the employee to comply with this provision may be cause for denying future employment with the City. The resignation is final when accepted by the Department Head.

(b) Employees will receive their final paycheck on the regular payday for the pay period in which they resign. If an employee resigns with at least two (2) weeks advance notice, upon request, the employee may receive their final paycheck on their final day of employment. City property, such as keys, tools, and equipment, must be returned by the employee prior to the final paycheck being released.

#### **10.09 Personnel Records.**

(a) An employment history for each employee in City service will be maintained by the City. The personnel file shall include dates of service, positions held, salary history, and other information as may be deemed appropriate and/or required by law.

(b) The personnel file of an employee will be open for inspection by the employee or his/her representative who is authorized in writing to inspect the file during business hours by appointment. The employee will have access to all contents of the file except those materials which are a part of the employment/selection process

and material designed confidential by law. A copy of the material in the personnel file will be provided to the employee upon request.

#### **10.10 Performance Evaluations.**

(a) Except for employees serving their probationary period, all employees in City service shall have their performance evaluated by the Department Head or by the supervisor designated for this purpose at least annually on a cycle determined by the Department Head and approved by the City Manager. The employee's supervisor shall review the findings of the evaluation with the employee and sign the evaluation report before forwarding the evaluation to the Department Head. A copy of the completed evaluation shall be provided the employee and a copy shall be placed in the employee's personnel file.

(b) Employees serving their probationary period shall have their performance evaluated in the same manner as prescribed for regular employees. Probationary employees shall be evaluated prior to the end of the probationary period, or at different intervals as determined by the City Manager.

**10.11 Personal Telephone Use.** Employees are encouraged to keep all personal phone calls to a minimum. Friends and relatives should be discouraged from calling during working hours unless there is an emergency. Personal calls should be made during break periods or lunch whenever possible. Personal long distance or toll calls are to be charged to the employee's own telephone number or long distance calling card.

#### **10.12 Dress and Grooming Standards.**

(a) Employees are expected to utilize good judgment in determining their dress and appearance. Clothing and appearance should be neat, clean, in good business taste, and not constitute a safety hazard.

(b) Certain positions within City service require that a uniform be worn. The uniform identifies the individual as a City employee. Uniforms should always be neat and clean. Uniforms furnished by the City are to be worn during regular working hours and may be worn to and from work, but they are not a substitute for personal attire.

### **SECTION 11 - LEAVE OF ABSENCE PROVISIONS**

#### **11.01 Vacation Leave (Not Applicable to Management and Professional Employees).**

(a) The City believes that its employees and the City benefit when employees have scheduled time away from work for relaxation and recreation. In order to provide for such absence without concern for continuation of pay, the City has adopted the following paid vacation leave plan.

(b) Paid vacation leave shall be accrued on a hourly basis as follows:

YEARS OF SERVICE

GENERAL

0-3 completion years  
4-10 completion years  
11+ years

10 days/yr or 3.08 hrs/pp  
15 days/yr or 4.62 hrs/pp  
20 days/yr or 6.15 hrs/pp

YEARS OF SERVICE

FIRE

0-3 completion years  
4-10 completion years  
11+ years

114.5 hrs/yr or 4.404 hrs/pp  
171.75 hrs/yr or 6.606 hrs/pp  
229 hrs/yr or 8.808 hrs/pp

(c) The maximum vacation accrual for all non-management/professional employees is 380 hours. Employees who have exceeded the maximum shall again begin to earn vacation when their balance is reduced below the maximum accrual.

(d) Vacation leave shall be taken at the time approved by the Department Head.

(e) Vacation shall not include any official City holidays which occur during the scheduled vacation period.

(f) Vacation usage may not exceed the accrued vacation balance as of the prior pay period.

(g) Upon termination of employment with the City, an employee shall receive pay for his/her current vacation leave balance at his/her current base hourly rate.

(h) Employees may cash out up to 40 hours of vacation leave per year, based on an equal number of vacation hours taken, and provided that a minimum of 80 hours is remaining in the employees vacation leave bank.

**11.02 Sick Leave for Full-Time Employees.**

(a) The City provides a sick leave program for the purpose of minimizing the economic hardships that may result from an unexpected personal or dependent illness or injury. Sick leave should not be viewed as a right, but rather it is a privilege of paid time away from work duties where such absence is necessary.

(b) **Accrual.** Sick leave shall be accrued at the rate of eight (8) hours for each calendar month of service for all non-fire full-time employees. Fire employees who regularly work a schedule that averages fifty-six (56) hours per week shall accrue sick leave at the rate of 11.6 hours for each calendar month of service. There shall be no limit to the amount of sick leave that an employee may accumulate.

(c) **Use.**

(1) Sick leave may be used for personal illness or injury, emergency or routine medical or dental appointments, including pregnancy as provided in the Maternity Leave subsection, and for reasonable travel time to and from health care facilities.

(2) In accordance with the Healthy Workplaces, Healthy Families Act of 2014 (“California Paid Sick Leave Law”), an employee may use accrued paid sick leave for any of the following reasons:

(a) For the employee’s own diagnosis, care, or treatment of an existing health condition or preventative care.

(b) For the diagnosis, care, or treatment of an existing health condition or preventative care for an employee’s family member, including:

- i. Child (means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability including a biological, adopted, foster or step-child, legal ward, or a child of a person standing in loco parentis. In circumstances where an employee’s leave qualifies for CFRA, child means a biological, adopted, or foster child, a step-child, a legal ward, a child of a domestic partner or a person to whom the employee stands loco parentis including any adult child over the age of 18)
- ii. Spouse (means a husband or wife as defined or recognized under California State law for purposes of marriage) or Domestic Partner (Domestic partner has the same meaning as defined in section 297 of the California Family Code)
- iii. Parent (Parent means the biological parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child)
- iv. Grandparent (means a parent of the employee’s parent)
- v. Grandchild (Grandchild means a child of the employee’s child)
- vi. Sibling (means a person related to another person by blood, adoption, or affinity through a common legal or biological parent)
- vii. Designated Person (Any individual related by blood or whose association with the employee is equivalent to that of a family relationship. Must be identified at the time of the requested leave. Employees may identify one designated person per 12-month period).

(c) To obtain any relief or services related to being a victim of domestic violence, sexual assault, or stalking including the following with appropriate certification of the need for such services:

- i. A temporary restraining order or restraining order.

- ii. Other injunctive relief to help ensure the health, safety or welfare of themselves or their children.
- iii. To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking.
- iv. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.
- v. To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.
- vi. To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

(3) An employee shall provide reasonable advance notification of their need to use accrued paid sick leave to their supervisor if the need for paid sick leave use is foreseeable (e.g., doctor's appointment scheduled in advance). If the need for paid sick leave use is unforeseeable, the employee shall provide notice of the need for the leave to their supervisor as soon as is practicable.

(4) An employee who uses paid sick leave must do so in minimum increments of two hours of sick leave.

(5) Paid sick leave will not be considered hours worked for purposes of overtime calculation. An employee will not receive cash-out compensation for unused accrued paid sick leave upon termination, resignation, retirement or other separation from employment from the City. Unused accrued sick leave can be converted to service credit at the time of retirement from the City as allowed by law and the California Public Employees' Retirement system (CalPERS) agreement.

(d) **Personal Leave.** Employees have the option of taking a maximum of up to three (3) days sick leave each year as personal leave days (subset of total accrued sick leave). An employee may take personal leave if the employee has a current sick leave balance that is at least equal to the number of personal leave days the employee opts to take. Employees are required to obtain approval from their Department Head prior to taking personal leave.

(e) **Sick Leave Transfer.** The purpose of this provision is to provide a means of alleviating personal financial hardship for employees who are suffering from a long-term catastrophic illness or injury, or desire to care for immediate family members suffering from such an illness or injury.

Under this provision an employee may transfer the monetary value of existing accrued sick leave hours, in eight hour increments, to another employee who is on an authorized unpaid leave of absence and who has exhausted or will exhaust

available leave balances. An employee may transfer sick leave to another employee provided the donating employee has a remaining sick leave balance of at least one-hundred and twenty (120) hours.

The donated sick leave shall be the property of the City until distribution. The monetary value of the donated sick leave will be placed into an account administered by the Finance Manager. The funds shall be distributed to the receiving employee so as to maintain the receiving employee's regular pay. Said payments shall be subject to payroll taxes and authorized payroll deductions, but shall not be treated as time worked for the accrual of vacation, sick leave or other accruals or credits.

Any donated hours not used by the receiving employee will remain in the transfer account for use by other needy employees.

Sick leave transfers are subject to the approval of the City Manager. An employee in need of a sick leave transfer in accordance with this provision shall make written application to the City Manager via their Department Head. The written request should outline the anticipated period of extended leave and the required sick leave hours.

Every effort will be made to assure that no pressure, either implicit or explicit, is placed on any employee by any other employee to make a donation or participate in a sick leave transfer.

(f) **Sick Leave Conversion** Employees who have a sick leave balance of 120 hours and who use 48 hours or less in a calendar year may convert the difference between 72 hours and the actual hours used from sick leave hours to vacation at a rate of one (1) vacation hour for two (2) sick leave hours. The conversion of sick leave to vacation shall be made during the month of January each year.

Converted vacation hours shall not be counted in an employee's accrued vacation balance when determining the maximum vacation accrual. Converted vacation hours in excess of the maximum vacation accrual must be used during the calendar year.

(g) **Rehire.** If an employee separates from employment with the City and is re-hired by the City within one year of the date of separation, previously accrued and unused paid sick leave hours shall be reinstated not to exceed 48 hours of accrued leave. However, if a rehired employee had not yet worked the requisite 90 days of employment to use paid sick leave at the time of separation, the employee must still satisfy the 90 days of employment requirement collectively over the periods of employment with the City before any paid sick leave can be used.

(h) **Short Term Disability Insurance Benefits.** Covered employees qualifying for Short Term Disability Insurance benefits (for non-industrial injuries/illnesses) may elect to coordinate Short Term Disability Insurance benefits with unused sick leave, such that the employee receives his/her usual gross salary.

(i) In accordance with section 11.14 Family Medical Leave subsection (h) and the California Family Rights Act (CFRA) an employee may use their accrued sick leave balance for the care of a child, spouse or parent for a qualified serious health condition or in connection with the birth, adoption, or foster care of a child if mutually agreed upon by the City and the employee.

### **11.02.1 Sick Leave for Part-Time, Temporary Employees**

(a) The following policy applies only to Regular Part-time Employees, Temporary Employees, and Seasonal Employees.

(b) Effective January 1, 2024, as required by the California Paid Sick Leave Law the City of Del Mar will provide paid sick leave to Regular Part-time, Temporary, and Seasonal Employees as follows:

(1) An employee is credited a bank of forty (40) hours of sick leave at the start of employment with the City. An employee is not eligible to begin using any paid sick leave until after 90 days of employment with the City.

(2) An employee is only allowed to use up to a maximum of forty (40) hours or five days, whichever is greater, of paid sick leave in a 12-month period, calculated based on the employee's anniversary date.

(3) Any unused paid sick leave does not carryover year to year while continuously employed. Any unused paid sick leave shall expire on the employee's anniversary date, and a new bank of forty (40) hours shall be credited to the employee each year in the pay period in which the employee's anniversary falls.

(4) An employee may use up to five (5) days or 40 hours, whichever is greater, of paid sick leave in a 12-month period for any of the following reasons:

(a) For the employee's own diagnosis, care, or treatment of an existing health condition or preventative care.

(b) For the diagnosis, care, or treatment of an existing health condition or preventative care for an employee's family member, including:

i. Child (means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability including a biological, adopted, foster or step-child, legal ward, or a child of a person standing in loco parentis. In circumstances where an employee's leave qualifies for CFRA, child means a biological, adopted, or foster child, a step-child, a legal ward, a child of a domestic partner or a person to whom the employee stands loco parentis including any adult child over the age of 18)

- ii. Spouse (means a husband or wife as defined or recognized under California State law for purposes of marriage) or Domestic Partner (Domestic partner has the same meaning as defined in section 297 of the California Family Code)
- iii. Parent (Parent means the biological parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child)
- iv. Grandparent (Grandparent means a parent of the employee's parent)
- v. Grandchild (Grandchild means a child of the employee's child)
- vi. Sibling (Sibling means a person related to another person by blood, adoption, or affinity through a common legal or biological parent)
- vii. Designated Person (any individual related by blood or whose association with the employee is equivalent to that of a family relationship. Must be identified at the time of the requested leave. Employees may identify one designated person per 12-month period).

(c) To obtain any relief or services related to being a victim of domestic violence, sexual assault, or stalking including the following with appropriate certification of the need for such services:

- i. A temporary restraining order or restraining order.
- ii. Other injunctive relief to help ensure the health, safety or welfare of themselves or their children.
- iii. To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking.
- iv. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.
- v. To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.
- vi. To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

(5) An employee shall provide reasonable advance notification of their need to use accrued paid sick leave to their supervisor if the need for paid sick leave use is foreseeable (e.g., doctor's appointment scheduled in advance).

If the need for paid sick leave use is unforeseeable, the employee shall provide notice of the need for the leave to their supervisor as soon as is practicable.

(6) An employee who uses paid sick leave must do so in minimum increments of two hours of sick leave.

(7) Paid sick leave will not be considered hours worked for purposes of overtime calculation. An employee will not receive compensation for unused accrued paid sick leave upon termination, resignation, retirement or other separation from employment from the City.

(8) If an employee separates from employment with the City and is re-hired by the City within one year of the date of separation, previously accrued and unused paid sick leave hours shall be reinstated to the extent required by law. However, if a rehired employee had not yet worked the requisite 90 days of employment to use paid sick leave at the time of separation, the employee must still satisfy the 90 days of employment requirement collectively over the periods of employment with the City before any paid sick leave can be used.

### **11.03 Bereavement Leave.**

(a) Employees may have three (3) paid work days leave of absence for each death in their immediate family for the purpose of bereavement, and for the arranging of and attendance at the funeral, or for each reproductive loss event as defined in Government Code Section 12945.6. Immediate family for the purpose of bereavement leave includes:

1. Spouse (means a husband or wife as defined or recognized under California State law for purposes of marriage),
2. Domestic partner (Domestic partner has the same meaning as defined in section 297 of the California Family Code),
3. Child (means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability including a biological, adopted, foster or step-child, legal ward, or a child of a person standing in loco parentis. In circumstances where an employee's leave qualifies for CFRA, child means a biological, adopted, or foster child, a step child, a legal ward, a child of a domestic partner or a person to whom the employee stands loco parentis including any adult child over the age of 18),
4. Parent (means the biological parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child),
5. Sibling (means a person related to another person by blood, adoption, or affinity through a common legal or biological parent),
6. Grandparent (means a parent of the employee's parent),
7. Grandchild (means a child of the employee's child),
8. Aunt, uncle;
9. The aforementioned can either be natural, step or in-law, or any person over which the employee acts as legal guardian.

10. Designated Person (Any individual related by blood or whose association with the employee is equivalent to that of a family relationship. Must be identified at the time of the requested leave. Employees may identify one designated person per 12-month period).

(b) Employees have the option to extend bereavement leave beyond the three (3) paid days provided, for a total of up to six (6) days. The employee may take up to three (3) additional unpaid days or use leave from his/her current accrued and available leave balances, such as vacation, personal leave, sick leave, or compensatory time off that is otherwise available to the employee.

(c) The employee may be required to submit proof of relative's death before final approval of leave with pay is granted.

(d) Leave taken under these provisions must be taken within three (3) months of the death of the immediate family member but need not necessarily be taken on consecutive days. If, prior to or immediately following a reproductive loss event, an employee is on or chooses to go on Pregnancy Disability Leave, leave under the California Family Rights Act, or any other leave entitlement under state or federal law, the employee must complete their reproductive loss bereavement leave within three (3) months of the end date of the other leave.

(e) Employees are eligible for this leave, as needed for each qualifying event, after thirty (30) days of employment.

(f) Eligible employees taking bereavement leave for reproductive loss events are entitled up to a total amount of 20 days of leave within a 12-month period.

**11.04 Jury Duty.** An employee ordered by the Court to serve on jury duty shall receive paid time while serving such duty, if the employee deposits any fees for services, other than mileage, with the City. Any employee who is released from jury duty with three (3) hours or more remaining in his/her work day shall report back to work.

**11.05 Witness Duty.**

(a) An employee who serves as a witness within the line of duty, or on a case related to the employee's duties, will receive paid time for such service.

(b) An employee required to be absent from work by a properly issued court subpoena which compels the employee's presence as a witness, unless the employee is a party or an expert witness, shall receive release time to comply with such subpoena.

(c) To receive paid time as provided above, the employee shall deposit with the City any witness fees actually received, except mileage.

(d) An employee who serves as a witness within the line of City duty, or on a case related to the employee's job, on a day that is a regularly scheduled day off, shall be paid at the employee's base hourly rate or at time and one-half, if the employee

otherwise qualifies for overtime compensation, for all hours the employee actually is required to be in Court.

#### **11.06 Maternity Leave.**

(a) An employee disabled by pregnancy, child birth, or related medical condition shall be granted leave for the duration of the disability, as needed for all disabilities related to each pregnancy. An employee may utilize time from her accrued vacation balance or accrued sick leave balance to cover the period of her absence.

(b) An employee who plans to take maternity leave shall give the City reasonable advance notice, and an estimate of the duration of her absence. If the employee returns to work, at the end of disability, the employee shall be placed in her same job.

(c) The employee shall notify the City at least five (5) working days prior to her return from maternity leave of her intention to return to work, and provide the City with satisfactory written verification from a physician or other licensed health care practitioner that her disability has ceased.

#### **11.07 Authorized Unpaid Leave.**

(a) An employee may be granted up to thirty (30) days of unpaid leave of absence at the sole discretion of the City. Unpaid leave shall be granted only for compelling reasons if operational requirements permit such absence. Leave without pay shall not be granted unless the employee has already used all appropriate paid leave.

(b) An unpaid leave may be extended beyond thirty (30) days with the approval of the Department Head and the City Manager.

**11.08 Unauthorized Leave of Absence Without Pay.** Failure on the part of an employee to return to duty from any authorized leave or to report to duty as scheduled or ordered shall be an unauthorized leave of absence without pay. Failure to return or report to duty within twenty-four (24) hours after notice to return shall be cause for discharge. Notice to return to work shall have been made when the employee receives direct verbal notice to return to work from an authorized employee or when a written notice is personally delivered to the employee or when written notice with return receipt requested by Certified Mail, addressed to the employee's last known place of address, has been deposited in the United States Mail.

#### **11.09 Military Leave.**

(a) Military leaves of absence are authorized, except as provided below, without pay. In order to be eligible, employees must submit written verification from the appropriate military authority. The City will reinstate employees returning from military leave to their same position or one of comparable seniority, status and pay if they:

- (1) Have a certificate of satisfactory completion of service;
- (2) Apply within 90 days after release from active duty or within such extended period, if any, as their rights are protected by law; and
- (3) Are qualified to fill their former position.

(b) Exceptions to this policy will occur whenever necessary to comply with applicable laws.

(c) An employee who has more than twelve months service with the city and who is on temporary military duty ordered for the purposes of active military training, encampment, naval cruises, special exercises, or like activity shall be on leave with pay for the first thirty (30) days of such leave provided the temporary military duty does not exceed 180 calendar days. Inactive duty, such as scheduled reserve drill periods, is not considered as active military duty and does not qualify. Leave with pay shall not exceed thirty (30) calendar days in any one fiscal year.

#### **11.10 Medical Leave - Non-occupational.**

(a) Employees, other than temporary employees and probationary employees, who are temporarily disabled and unable to work due to a personal illness or injury, will be granted a medical leave of absence.

(b) Medical leaves will be authorized on the basis of a physician's written statement that the employee is no longer able to work due to a medical disability.

(c) An employee who is granted a medical leave of absence must utilize any accrued sick leave, and vacation benefits, in that order, during the initial period of the leave. (Accrued compensatory time may be used but is not required per the Fair Labor Standards Act.) Family care leave shall run concurrently with any paid leaves of absence, unless excepted as set forth in section 11.14(h)(2). Any portion of a leave that occurs after all sick leave, vacation benefits and compensatory time off have been exhausted shall be without pay. The total period of all absences related to the same medical condition shall be considered part of the same leave and may not exceed six (6) months. Paid and unpaid portions of a leave shall be added together for purposes of the six (6) month limitation.

(d) An employee who plans to take a medical leave must provide the City with reasonable notice of the date the leave will commence, the estimated duration of the leave, and the expected date of return to work. When an unplanned medical condition or emergency occurs that does not allow the employee to provide advance notification of the need for a medical leave, the employee must notify the City of the situation at the earliest possible time. The City may require periodic confirmation of the need for continued leave.

(e) Employees returning to work after any medical leave must have a written release from a physician verifying that they are able to return to work and safely perform their duties.

(f) Unless the leave of absence is family care leave, the City will continue to pay group insurance premiums only for the first thirty (30) days of an approved medical leave of absence. If an employee is on leave for a period in excess of thirty (30) days, it is the employee's responsibility to pay the premiums for the balance of the leave. The employee must arrange for all payments of insurance premiums before going on leave. Failure to do so will result in termination of benefits on the thirty-first (31st) day of the leave and the employee will be treated as a new employee upon return from the leave for reinstatement of benefits. If the employee is on family care leave the City will pay the family care cost of group insurance.

(g) The City Manager may grant an exception to the six (6) month limitation to reasonably accommodate employees unable to perform the essential functions of their job as a result of a physical or psychological disability.

## **11.11 Industrial Disability Leave.**

### **I. Non-Public Safety and Lifeguards:**

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

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

(c) The City will retain employees on an extended leave of absence for work-related disabilities until one of the following situations occurs:

(1) The employee is released by a physician for full or partial duty.

(2) The City receives medical evidence satisfactory to it that the employee will be permanently unable to return to work.

(3) The employee directly or indirectly informs the City (i.e., by accepting other employment, moving out of the state, etc.) that he/she does not intend to return to the City's employ.

(4) The employee has been on industrial disability leave for a period of eight (8) months.

(d) An employee who returns to work at the end of his/her leave of absence will be returned to his/her former position, if possible, or will be offered the first available opening in a comparable position for which he/she is qualified. The employee must provide a physician's statement that indicates that he/she is fit to return to the position designated for the employee.

## **II. Public Safety (Fire) Employees:**

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

(b) The City will pay its share of employee and dependent group insurance premiums during an industrial disability leave.

(c) Sick leave shall not be used for industrial disability leave or upon receipt of an industrial disability retirement from the Public Employees' Retirement System.

**11.12 Termination for Medical Reasons.** If any employee is determined, through review of medical evidence, to be physically or psychologically disabled to perform the duties of his/her position due to industrial injury/illness, the employee may be terminated for inability to perform the duties of his/her position. Such termination may occur after eight (8) months (twelve months for public safety employees) of cumulative industrial disability leave or earlier if the medical evidence indicates that the disabling medical/psychological condition is permanent and stationary. The City will make such efforts to place the disabled employee in such a position where his/her disability will not affect the performance of duties or endanger him/herself or others. Termination for reasons of medical or psychological disability shall be preceded by written notification to the employee of the intent to terminate and citing the medical/psychological reasons for the termination. If, within ten (10) City Hall working days, the employee so requests, the Department Head shall provide an opportunity for the employee to respond to the psychological/medical findings in writing or orally and such response shall be considered before taking any action. A written decision shall be provided to the employee within ten (10) City Hall working days following receipt of the employee's response. The decision of the Department head may be appealed to the City Manager or Hearing Officer pursuant to the procedures applicable for the appeal of a dismissal. The decision of the City Manager shall be final.

**11.13 Time Off to Vote.** Employees who are voters may request time off to vote at an election if the employee does not have sufficient time outside of his/her regular working hours to vote. The employee may, without loss of pay, take up to two (2) hours of time off to vote. The time off for voting shall be only at the beginning or the end of the regular work shift, whichever allows the most free time to vote and the least time off from work. The employee shall give his/her supervisor at least two (2) working days notice of the need for time off to vote.

## 11.14 Family Care Leave

(a) The purpose of this policy is to implement the provisions of the California Family Rights Act (CFRA) of 1991, as amended, and the Family and Medical Leave Act (FMLA) of 1993. Where there are differences between the state and federal acts the more generous requirements of the two have been extended to City employees. If any provisions of this policy are inconsistent with the state and federal acts and their enabling regulations the acts and regulations shall supersede this policy.

(b) Employees with more than one (1) year of continuous service with the City, who have worked at least 1,250 hours during the previous year, may take up to twelve (12) workweeks of leave in a 12-month period because of: 1) the birth of a child or the placement of a child with an employee for adoption or foster care; 2) the employee is needed to care for a family member (child, spouse, or parent and in circumstances when the employee qualifies for CFRA to care for a child, spouse, parent, domestic partner, grandparent, grandchild, sibling, or designated person) with a serious health condition; 3) the employee's own serious health condition makes the employee unable to do his/her job. Entitlement to leave for the birth or placement of a child for adoption or foster care expires twelve (12) months after the birth or placement.

### (c) Definitions.

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

(2) **Child** means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability including a biological, adopted, foster or step-child, legal ward, or a child of a person standing in loco parentis. In circumstances where an employee's leave qualifies for CFRA, child means a biological, adopted, or foster child, a step child, a legal ward, a child of a domestic partner or a person to whom the employee stands loco parentis including any adult child over the age of 18.

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

(4) **Parent.** Parent means the biological parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child.

(5) **Spouse.** Spouse means a husband or wife as defined or recognized under California State law for purposes of marriage.

(6) **Domestic Partner.** Domestic partner has the same meaning as defined in section 297 of the California Family Code.

(7) **Grandparent.** Grandparent means a parent of the employee's parent.

(8) **Grandchild.** Grandchild means a child of the employee's child.

(9) **Sibling.** Sibling means a person related to another person by blood, adoption, or affinity through a common legal or biological parent.

(10) **Designated Person.** Designated person, under this provision, means any individual related by blood or whose association with the employee is equivalent of that of a family relationship. For the purpose of the leave, the designated person must be identified at the time of the requested leave. Employees may identify one designee per 12-month period

(11) **Serious Health Condition.** Serious health condition means an illness, injury impairment, or physical or mental condition that involves:

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

(b) **Continuing Treatment by a Health Care Provider.** A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

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

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

2. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated

without a visit to a health care provider, it does not constitute a regimen of continuing treatment.

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

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

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

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

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

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

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

(d) A leave granted under this provision will normally be leave without pay except that an employee must exhaust accrued sick leave, vacation or other accrued time off prior to leave without pay. At the request of an employee and with prior approval of the City Manager, an employee may retain and not use accrued sick leave in connection with a leave for the care of a new-born, adopted or foster care child or to care for a family member with a serious health condition.

(1) Employees in classifications represented by the Del Mar City Employees Association may retain up to 40 hours of accrued paid leave after a Family Leave.

(e) Family care leave may be used in one or more increments, but shall not exceed a total of twelve (12) workweeks of leave in a 12-month period measured backward from the date leave is used. A leave for the care of a new-born, adopted or foster care child shall be taken on a continuous basis in increments of not less than two (2) weeks, with an exception for shorter increments on at least two occasions, in accordance with the California Code of Regulations, Title 2, Section 11090. An employee may request intermittent leave in one-day increments for the care of a seriously ill family member; or for the treatment of a serious health condition of the employee. A reduced leave schedule (i.e. a work schedule that reduces the number of hours per workweek or workday) may be established where medically necessary for an employee to care for a seriously ill family member; or for the treatment of a serious health condition of the employee.

(f) Unless the need for family care leave arises out of an unforeseen emergency, employees requesting leave will be expected to provide reasonable advance notice of the need for leave and, at a minimum, written notice of five (5) working days. Failure to provide advance notice may be cause for delaying the effective date of the leave. The City may require employees requesting family care leave for the care of a seriously ill family member, or for the treatment of a serious health condition of the employee to provide medical verification of the illness. Such verification should include a statement that the condition warrants the attention of the employee and an estimate of the period of time needed for the care.

(g) Where both parents are employed by the City and both are eligible for family leave, each employee is entitled to twelve (12) workweeks of leave in a 12-month period if leave is for the birth or placement for adoption or foster care of the employees' child, or to care for a seriously ill parent. The City may, but is not required to, grant simultaneous leave to both employees.

(h) **Substitution of paid accrued leaves.** While on leave under this policy, an employee may elect to concurrently use paid accrued leaves. Similarly, the City may require an employee to concurrently use paid accrued leaves after requesting family care and may also require an employee to use family care leave concurrently.

(1) **Employee's Right to Use Paid Accrued Leaves Concurrently With Family Leave.** Where an employee has earned or accrued paid vacation, administrative leave, compensatory time, or personal or family leave, that paid leave may be substituted for all or part of unpaid family care leave under this policy. As for sick leave, an employee is entitled to use sick leave concurrently with leave under this policy if:

(a) The leave is for the employee's own serious health condition; or

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

(c) The leave is needed in connection with the birth, adoption, or foster care of a child and is mutually agreed upon by the City and the employee.

**(2) City's Right to Require an Employee to Use Paid Leave When Using Family Care Leave.** Employees must exhaust their accrued leaves concurrently with family care leave with two exceptions:

(a) Employees are not required to use accrued compensatory time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act; and

(b) Employees will only be required to use sick leave concurrently with family care leave if the leave is for the employee's own serious health condition.

(i) Employees on family care leave will be eligible to continue medical and dental insurance coverage and other group coverages as if the employee were in a regular pay status. The City will pay the premiums necessary to maintain coverage as if the employee remained in a paid status. If an employee elects to maintain insurance coverage while on family care leave and there is normally a payroll deduction, the employee shall pay the premiums in advance in accordance with the requirements necessary to maintain coverage. For the period of family care leave in a paid status, if any, the employee will continue to accrue vacation, sick leave and holidays.

(j) Family care leave shall not constitute a break in service for seniority or any employee benefits. An employee on family care leave without pay for thirty (30) consecutive calendar days, or major fraction thereof, or more, shall have their anniversary date adjusted to reflect the time absent without pay. Employees on probation will have their probationary period extended by the length of time on family care leave.

(k) The employee shall cooperate with the City in scheduling his/her date to return to work, and, whenever possible, shall give the City at least thirty (30) days advanced notice of availability. Upon return from leave, the City shall restore the employee in his/her previous position or a comparable position provided the employee gives the City thirty (30) days advanced notice. Where the leave was for the treatment of a serious health condition of the employee the City may require the employee to provide medical verification of fitness for duty.

(l) The City follows all applicable specified requirements of the CFRA and FMLA in circumstances where an employee requires family care and medical leave and is a qualified military service member, veteran, military caregiver or has a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child or parent in the United States Armed Forces.

## SECTION 12 – LAYOFF AND RE-EMPLOYMENT

**12.01 Authorization.** The City Manager may lay off, without prejudice, any regular employee because of lack of appropriate funds, curtailment or lack of work, or other reasons. Such layoff shall take effect fourteen (14) days after the receipt by the employee of a notice in writing of the proposed layoff action.

**12.02 Order of Layoff.** Layoffs shall be by classification within each department. Within each classification, employees will be selected for layoff based on a combination of factors (which should be documented, when and where possible, with emphasis on documented factors), including but not necessarily limited to, past performance and productivity based on the last three evaluations, qualifications, attitude, attendance and punctuality. In cases where the City determines that performance and other factors are essentially equal between two or more employees, seniority will be the deciding factor.

When it becomes necessary because of lack of work, lack of funds or other reasons to reduce the number of employees within a given employee classification, the City Manager or designee, will prepare a layoff list in the following order:

- (a) Temporary employees.
- (b) Employees whose current performance evaluation rates them less than satisfactory.
- (c) Probationary employees.
- (d) Regular part-time employees.
- (e) Regular full-time employees.

The City reserves the right to deviate from this order whenever circumstances warrant.

**12.03 Return to Former Class.** In the event of a layoff, employees who have been promoted during their service with the City may bump back one classification in their career series to a position they formerly held, if there is an employee in the lower classification with less seniority than the employee who wants to bump. Otherwise, an employee who is laid off has no right to displace another employee.

**12.04 Seniority Defined.** For purposes of this provision, seniority shall be defined as the number of months of paid service since the employee's most recent hire date with the City.

**12.05 Order of Re-employment.** Employees who are laid off shall be placed on a re-employment list that shall remain in effect for a period of twenty-four (24) months. Employees on a layoff re-employment list shall have preference over new hires. Employees on layoff shall be offered re-employment in the inverse order of layoff, provided no intervening factors have occurred which essentially change the ability of the employee to perform the offered employment. The employee must still meet all necessary requirements for the position to which he or she is to be reemployed, with or without a reasonable accommodation.

**12.06 Notice of Re-employment.** The City shall give the employee reasonable advance notice of the opportunity for re-employment. Employees recalled to work shall return to work at the time specified by the City. Any laid off employee who refuses an offer of employment to the classification from which they were laid off or who fails to report to work shall have his or her name removed from the re-employment list.

## **SECTION 13 – DISCIPLINARY PROCEDURE**

**13.01 Policy Statement.** Any employee holding regular status as a City employee may be disciplined for cause by the Appointing Authority provided the rules and provisions prescribed herein are followed. All disciplinary actions shall become a part of the employee's personnel record. The public official who occupies the position with authority to appoint an individual to the position of employment is the "Appointing Authority" for that position. The City manager is the Appointing Authority for the management staff which includes Department Heads.

The City will adhere to the Firefighters Procedural Bill of Rights as applicable to the discipline of Fire Safety employees.

**13.02 Disciplinary Actions.** A counseling or a performance evaluation do not constitute disciplinary action. The following are appropriate disciplinary actions that may be taken:

(a) **Oral Reprimand.** An Appointing Authority may orally reprimand an employee by meeting with the employee and informing the employee of the action being taken and the reasons for the action. The oral warning shall be documented in writing but shall not become part of the employee's official personnel file unless it serves as documentation in support of higher level discipline. Such reprimands shall not be subject to appeal, but the employee shall have the right of rebuttal by providing a written statement which will be included with the oral reprimand in the supervisor's file.

(b) **Written Reprimand.** An Appointing Authority may reprimand an employee by providing a written statement which outlines the problem. A letter of Written Reprimand shall be provided to the employee and made a part of the employee's personnel record. Such reprimands shall not be subject to appeal beyond the department head, but the employee shall have the right of rebuttal by providing a written statement which will be included in the personnel record along with the written reprimand. Such appeal to the department head shall be an informal meeting with the department head. The employee may be represented in the appeal. The department head may include others as deemed appropriate.

(c) **Suspension.** An Appointing Authority may suspend the employment of an employee without pay. Such action is subject to appeal as outlined in the procedures below.

(d) **Salary Reduction/Fine.** An Appointing Authority may fine or reduce the salary of an employee for disciplinary reasons. A reduction in salary shall be to a step within the salary range of the position held by the employee. A new

anniversary date shall be established in accordance with these rules unless otherwise recommended by the Appointing Authority and approved by the City Manager. Such action is subject to appeal as outlined in the procedures below.

(e) **Disciplinary Demotion.** An Appointing Authority may demote an employee, for disciplinary reasons, to any position with a lower salary allocation, provided the employee meets the minimum qualifications for the lower level position. Such demoted employee shall not be eligible for promotion for a period of six (6) months unless otherwise recommended by the Appointing Authority and approved by the City Manager. Such action is subject to appeal as outlined in the procedures below.

(f) **Dismissal or Discharge.** An Appointing Authority may terminate the employment of an employee for cause. The continued tenure of each employee who has regular status shall be subject to satisfactory performance and the rendering of efficient service. Such action is subject to appeal as outlined in the procedures below.

**13.03 Causes for Disciplinary Action.** The following reasons shall be deemed sufficient for disciplinary action, but such action need not be limited to these reasons:

- (a) Fraud in securing appointment;
- (b) Performing the duties of the position in an incompetent manner;
- (c) Performing the duties of the position in an inefficient manner;
- (d) Performing the duties of the position in an untimely manner;
- (e) Performing the duties of the position in a careless manner;
- (f) Failure to possess and/or utilize the minimum qualifications required for the position;
- (g) Dishonesty in the performance of the duties of the position;
- (h) Failure to be present at assigned places and times, unless the absence is approved;
- (i) Insubordination;
- (j) Failure to treat superiors with respect and courtesy;
- (k) Failure to fully obey the lawful orders of superiors;
- (l) Failure to treat other employees with respect and courtesy;
- (m) Insobriety, or use of alcohol while on duty;

- (n) Illegal use or possession of alcohol, controlled substances, or habit forming drugs while on duty;
- (o) While on or off duty, behaving in a manner that tends to cause discredit to the City;
- (p) Conviction of a crime which relates to the qualifications, functions, duties or image required of the employee in the assigned position;
- (q) Discourteous treatment of the public;
- (r) Misuse of City or other publicly owned property;
- (s) Failure to fully comply with the general rules, regulations and policies of the City;
- (t) Failure to fully comply with the general rules, regulations and policies of the employee's department;
- (u) Failure to comply with safety rules, standards or regulations;
- (v) Misusing or abusing sick leave benefits.
- (w) Working overtime without authorization.
- (x) Violation of Department rules.

#### **13.04 Pre-Disciplinary Due Process.**

- (a) Prior to being subject to any discipline that results in the loss of pay, an employee will first be served with a notice of intent to discipline by their supervisor, manager or department head. This document will set forth the grounds for discipline as well as the facts supporting the grounds. The notice of intent to discipline will also advise the employee of any prior discipline which the City representative issuing the notice believes is relevant to the current discipline. In addition, the notice of intent will advise the employee of his/her right to respond to the proposed discipline either in writing or orally at a meeting.
- (b) If the employee chooses to respond in writing, he/she must insure his/her response is received by the representative who issued the notice of intent to discipline within five calendar days of receiving the notice of intent to discipline. If the employee wishes to respond orally, he/she must call or e-mail the City representative who issued the notice of intent to discipline within five calendar days of receiving the notice of intent to discipline informing the representative that he/she wishes to have an oral response. The City representative will advise the employee when the meeting (known as a *Skelly* meeting) will take place.
- (c) At the *Skelly* meeting (assuming the employee wants to respond orally) the employee has the right to be represented. The *Skelly* meeting is not a hearing. It is an opportunity for the employee and/or his/her representative to respond to

the notice of intent to discipline. The employee may have one representative with him/her at the *Skelly* meeting.

(d) The City representative who will hear the response may or may not be the person who issued the notice of intent to discipline. It is preferred that the person be someone other than the person who issued the notice of intent to discipline. In any case, a decision following that meeting will be issued within ten calendar days. The decision will either be to uphold the proposed discipline, overturn the proposed discipline or to modify it by reducing it. The City representative hearing the response does not have authority to impose discipline that is greater than that which was proposed.

(e) If the either the discipline is imposed or if it is reduced but there is still discipline imposed which results in a loss of property, the response to the discipline shall be in the form of a Notice of Discipline. Like the notice of intent, that notice shall set forth the grounds, and facts supporting the discipline as well as any prior discipline relied on by the City representative in issuing the discipline. The Notice of Discipline will also set forth the employee's appeal rights advising the employee that if he/she wishes to appeal the discipline, he/she must do so in writing by serving a Notice of Appeal to the City Manager within seven (7) calendar days.

**13.05 Imposition of Discipline.** The Appointing Authority shall impose the final action by serving the employee with a written Notice of Disciplinary Action specifying the date(s) upon which the disciplinary action shall be effective. The action of the Appointing Authority shall be final unless the employee files an appeal as provided in these rules.

### **13.06 Post-Disciplinary Appeals Procedure**

(a) **Policy.** Any regular employee as defined by these rules shall have the right to appeal any of the following disciplinary actions: suspension without pay, salary reduction or fine for disciplinary purposes, demotion for disciplinary purposes or dismissal.

(b) **Initiation of Appeal & Content of Appeals Document.** An employee wishing to appeal shall file a written statement signed by the appellant with the City Manager within ten (10) working days of receipt of the Department Head's written decision. This shall set forth his/her intention to appeal, the reasons for the appeal, the action desired by the appellant, and whether or not he/she wishes the use of a Hearing Officer.

(1) **City Manager Review (with no Hearing Officer).** An employee who selects this option must submit the request in writing expressly stating that he/she is consciously and voluntarily choosing to waive his/her right to a hearing. Upon receipt of such notice, the City Manager shall review the Appointing Authority's decision and the employee's appeal. If the City Manager deems appropriate, or if requested by the employee, a meeting between the City Manager and the employee and/or the employee's representative may be held to discuss the employee's appeal. The City

Manger may then reaffirm, modify or revoke the decision of the Department Head. The decision of the City Manager is final.

(2) **City Manager Review (with a Hearing Officer).** If a Hearing Officer is requested, the City Manager (or his/her designee) shall set a date for an administrative hearing on the appeal as soon as possible. The City Manager (or his/her designee) shall notify all interested parties of the date, time and place of the hearing. The Hearing shall be conducted in accordance with the procedures set forth in these rules. The Hearing Officer's findings and recommendations are advisory and shall be submitted to the City Manager (or his/her designee) for his/her review. If the City Manager (or his/her designee) deems appropriate, or if requested by the employee, a meeting between the City Manager (or his/her designee) and the employee and/or the employee's representative may be held to discuss the employee's appeal. The City Manager (or his/her designee) may then reaffirm, modify or revoke the decision of the Department Head. The decision of the City Manager (or his/her designee) is final.

### **13.07 Administrative Hearing Procedures**

(a) **Request for Hearing Officer.** The use of a Hearing Officer may be requested by either the employee or the City Manager (or his/her designee).

(b) **Selection of Hearing Officer.**

(1) The Hearing Officer shall be a neutral professional with relevant experience, education and training to conduct the hearing.

(a) The City Manager (or his/her designee) shall first contact the State Mediation and Conciliation Service, or some other reputable source that provides qualified hearing officers, and request the names of available Hearing Officers.

(b) The list shall consist of an odd (as opposed to even) number of names. The City Manager (or his/her designee) will work with the Association to attempt to mutually select a Hearing Officer from this group. If mutual selection is not reached, the Association and the Personnel Officer shall alternatively strike the names of Hearing Officers until one remains, who shall serve as the Hearing Officer. The City shall bear the full cost of the Hearing Officer. The decision of who will strike first shall be determined by a coin toss.

(c) **Subpoenas.** The City Manager is authorized to issue subpoenas at the request of either party prior to the commencement of the hearing. After the commencement of the hearing, the City Manager shall issue subpoenas only for good cause. It will be the responsibility of the employee and the Department to submit the names of current city employees to be subpoenaed at least ten (10) working days before the date of the hearing in which they are requesting the witnesses to appear.

(d) **Exhibits and Witness Lists.** Five (5) working days prior to the date set for the hearing, each party shall serve upon the other party and submit to the City Manager a list of all witnesses and a list and copy of all exhibits. City employees who are named as witnesses may not be compelled to participate in interviews by the appellant (or his/her representative) prior to the hearing.

(e) **Private or Public Hearing.** All hearings shall be closed and private.

### **13.08 Conduct of the Administrative Hearing.**

(a) The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses but hearings shall be conducted in a manner most conducive to determination of the truth. The conduct and decorum of the hearing shall be under the control of the Hearing Officer, with due regard to the rights and privileges of the parties appearing before him/her.

(b) The appellant shall appear at the hearing in person, unless physically unable to do so.

(c) In the conduct of the hearing the appellant shall have the right, at his/her own option and expense, to be represented by another person of his/her own choosing; to the summoning of witnesses in his/her behalf and/or to the employment of counsel.

(d) Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence that shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(e) Irrelevant and unduly repetitious evidence may be excluded.

(f) The Hearing Officer shall determine relevancy, weight and credibility of testimony and evidence. Decisions made by the Hearing Officer shall not be invalidated by any informality in the proceedings.

(g) During examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon motion of either party.

(h) **Burden of Proof.** In a disciplinary appeal the employer has the burden of proof by preponderance of the evidence.

(i) The City shall present its case first. Cross-examination of witnesses shall be permitted.

(j) **Record of Proceedings and Costs - Court Reporter.** All disciplinary appeal hearings may, at the discretion of either party, be recorded by a court reporter. Any hearing which does not utilize a court reporter shall be recorded by audio tapes. If a court reporter is requested by either party, that party shall pay the cost of the court reporter. If both parties request a court reporter the cost will be split equally.

(k) **Findings and Recommendations.** Such findings and recommendations shall be based solely on evidence taken during the hearing.

(l) **Costs.** In the event of an appeal of the City Manager's decision into the court system, the cost of the transcript, if required, shall be shared equally by the City and the appellant. Any costs of this procedure may be mutually agreed upon by the City and the Association, except as outlined above.

**13.09 Immediate Removal.** This procedure shall not preclude the immediate removal of an employee with pay without notice or hearing where the continued presence of the employee would present a hazard or disruption to other employees, the public, or the City. An administrative removal with pay pending an investigation requires the approval of the City Manager and is not subject to appeal. When an administrative removal with pay is imposed and subsequent disciplinary action follows, the employee shall be assured of all due process in accordance with this procedure.

**13.10 Right to Representation.** An employee subject to a meeting, hearing, or an investigation that may result in disciplinary action has the right, upon request, to be represented by a employee representative or an attorney retained by the employee at the employee's expense.

**CITY OF DEL MAR**

**ACKNOWLEDGMENT OF RECEIPT OF PERSONNEL MANUAL**

This is to acknowledge that I have received a copy of the PERSONNEL MANUAL and understand that it contains important information on the City's personnel policies and on my obligations and responsibilities as an employee. I acknowledge that I am expected to read, understand, and adhere to City policies and will familiarize myself with the provisions in the manual. I understand that I am governed by the provisions in the manual.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee's Name (Typed or Printed)

This document page shall be signed by the employee and placed in the employee's personnel file.