

## **CHAPTER 8 EMPLOYEE LEAVE**

**Effective October 6th, 2021**

### **8.01 Official City Holidays**

City holidays are determined by the City Commission. The following days are official holidays for City employees:

<b>A.</b>	New Year's Day	January 1st
<b>B.</b>	Martin Luther King Day	3rd Monday in January
<b>C.</b>	Presidents Day	3rd Monday in February
<b>D.</b>	Good Friday	Friday preceding Easter
<b>E.</b>	Memorial Day	Last Monday in May
<b>F.</b>	Independence Day	July 4 <sup>th</sup>
<b>G.</b>	Labor Day	First Monday in September
<b>H.</b>	Columbus Day	Second Monday in October
<b>I.</b>	Veterans Day	November 11th
<b>J.</b>	Thanksgiving Day	4th Thursday in November
<b>K.</b>	Thanksgiving Friday	4th Friday in November
<b>L.</b>	Christmas Eve	December 24th
<b>M.</b>	Christmas Day	December 25th

### **8.02 Holidays Falling on Weekend Days**

If a holiday falls on a Saturday, it will be observed on the preceding Friday; if a holiday falls on a Sunday, it will be observed on the following Monday.

### **8.03 Holiday Pay**

All Regular Full-Time and probationary employees are eligible for eight (8) hours of holiday pay. Regular Part-Time employees shall receive four (4) hours of holiday pay. Holiday pay shall be based on eight (8) hours regardless of normal length of shift.

### **8.04 Holidays Not Coinciding with City Holidays**

Employees desiring to observe religious holidays not coinciding with official City holidays may be authorized to use other accrued leave such as vacation leave, comp time, flex time or a personal day.

Per Local Government Code, Section 142.013 (c), firefighters shall have one of the holidays designated as September 11th. The City of Breckenridge has designated one Personal Day as September 11th.

#### **8.04 Unexcused Absence Preceding or Following a Holiday**

An employee who has an unexcused absence on the day immediately preceding or following a holiday(s) may be subject to disciplinary action. This does not apply to an employee who has called in sick and has approval from his supervisor.

#### **8.05 Extra Police and Fire Holiday Pay**

**Police and Fire employees who work a full workday on a holiday as directed will receive extra holiday pay and pay for time worked. This extra holiday pay will be paid at regular pay in twelve (12) hour increments for sworn police employees and twenty-four (24) hour increments for shift fire employees.**

#### **8.06 Personal Day**

All Regular Full-Time employees receive two (2) Personal Days on October 1st that must be used within the fiscal year. Unused Personal Day time shall not be rolled over to the next fiscal year. The Personal Day shall not be taken in intervals of less than one (1) day (8, 10 or 12 hours, depending upon shift assigned).

All Regular Part-Time employees receive one (1) Personal Day on October 1st that must be used within the fiscal year. Unused Personal Day time shall not be rolled over to the next fiscal year. The Personal Day shall not be taken in intervals of less than four (4) hours.

New Full-Time Employees hired on or after April 1<sup>st</sup> shall receive one (1) Personal Day in that calendar year.

#### **8.07 Vacation Leave**

Regular Full-Time and Regular Part-Time employees earn vacation leave in accordance with this chapter, but vacation leave may not be taken until the employee has completed six (6) months of employment.

All employees are encouraged to take their earned vacation time. Although the City tries to comply with employees' wishes when it comes to taking time off, the efficiency of the departments and the needs of the public come first. To maintain service levels in the City, the City Manager, Department Heads, and Supervisors have the discretion to regulate the times when vacations may be taken.

#### **8.08 Vacation Leave Accrual**

Vacation time must be earned before it can be taken. Subject to the terms and

conditions set forth below, Regular Full-Time employees are entitled to vacation according to the following schedule:

<b>Anniversary Date</b>	<b>Vacation Accrued</b>	<b>Accrual Rate</b>
1 to 4 years	80 hours/year	6.67 Hours/Mo.
5 to 9 years	120 hours/year	10.00 Hours/Mo.
10 to 19 years	160 hours/year	13.33 Hours/Mo.
20 years or more	200 hours/year	16.67 Hours/Mo.

Subject to the terms and conditions set forth below, twenty-four (24) hour shift employees are entitled to vacation according to the following schedule:

<b>Anniversary Date</b>	<b>Vacation Accrued</b>	<b>Accrual Rate</b>
1 to 4 years	120 hours/year	10.00 Hours/Mo.
5 to 9 years	168 hours/year	14.00 Hours/Mo.
10 to 19 years	216 hours/year	18.00 Hours/Mo.
20 years or more	264 hours/year	22.00 Hours/Mo.

Regular Part-Time employees accrue vacation leave at the rate of four (4) hours for each month of continuous service with the City.

#### **8.09 Maximum Accumulation of Vacation Time**

The maximum number of vacation hours an employee can accrue and maintain at calendar year-end is 240.

#### **8.10 Vacation Rules**

Vacation leave will be administered according to the following rules:

- A.** Vacation time will be charged only for time during which the employee would ordinarily have worked.
- B.** Employees who are transferred, promoted, or demoted shall retain accrued vacation time.
- C.** When taking vacation, an employee must take a minimum of one (1) hour and must have the approval of the employee's immediate supervisor.
- D.** An employee must submit a Leave Request to the immediate supervisor in advance an equal number of days as the employee is

requesting, except in extenuating circumstances as determined by the City Manager.

- E.** Vacation time shall not be advanced to employees.
- F.** Vacation credits are not transferable between employees.
- G.** No employee shall be permitted to take more than two weeks of vacation time in succession without prior approval of the City Manager.
- H.** An employee that is sick during his vacation leave may request sick time be charged for the days he was sick. The request must be approved by the immediate supervisor and supported by a doctor's certification that the employee was sick during that time.
- I.** Vacation in the last two weeks of December must be approved in advance and at the discretion of the Department Head. All requests for vacation leave during this time must be received prior to December 1<sup>st</sup>.
- J.** Department Head vacations require City Manager approval.
- K.** An employee on disciplinary suspension forfeits all claims to use vacation leave for the duration of the disciplinary suspension.
- L.** Vacation time does not count as hours worked and shall not be used in over-time calculations.
- M.** Employees on leave without pay, disability leave, family medical leave, or workers' compensation injury leave (after period of salary continuation) or receiving donated sick leave that have exhausted all leave shall not accrue vacation leave. Vacation leave shall accrue based on a prorated basis of the actual hours worked within that month. The accrual rate is based on length of service and number of hours worked per regular workweek.
- N.** Employees are strongly encouraged to use vacation leave. When it appears that a vacation, or at least time away from the workplace, may be in the best interest of the employee, or those for the department or City, the Department Director may, with the approval of the City Manager, require an employee to take at least one week of accrued vacation leave to be away from the job for an extended period, particularly if the employee has not taken at least one consecutive week of vacation leave in the past twelve months. Similarly, the City Manager may require a Department Director to

take accumulated vacation leave if the City Manager deems it is in the best interest of the employee, the department, and the City.

### **8.11 Selling Vacation Time**

Subject to availability of funds, employees with eighty (80) hours or more of accumulated vacation leave may sell back vacation hours up to a maximum of forty (40) hours on the condition that they have taken at least 40 hours of vacation or exempt leave during the previous twelve (12) months. All employees must fill out the Vacation Sell Back Form during the budget process each year, indicating their intent to convert the leave time to cash and turn it into the Human Resource Department as required by the Finance Department. This form is for budgetary purposes only. Therefore, individuals will need to fill out an additional form when it is time for the payment to be made and turn it into the Human Resource Department no later than October 31<sup>st</sup>. The conversion is made at the individual's pay rates as of September 30<sup>th</sup>. Individuals shall be paid their vacation proceeds in December.

### **8.12 Sick Leave Benefits**

Sick leave benefits are to be used only for medical conditions of the employee or the immediate family or for medical quarantine resulting from exposure to a contagious disease. For these purposes, "immediate family" means the employee's spouse, child, brother, sister, mother, father, grandparents, grandchildren, stepparents and shall include the spouse's immediate family. A legal guardian may be considered as immediate family. Any attempt to obtain sick leave by fraud may subject the employee to disciplinary action, up to and including termination.

Employees are required to communicate with their immediate supervisor or department head that they will be absent as soon as the employee knows of the need for absence.

### **8.13 Sick Leave Accrual**

Regular Full-Time exempt and non-exempt employees accrue sick leave at the rate of ten (10) hours for each full month of continuous service with the City. Regular Part-Time employees accrue sick leave at the rate of four (4) hours for each month of continuous service with the City. Twenty-four (24) hour shift employees will accrue sick leave at 12.5 hours for each full month of continuous service with the City.

### **8.14 Maximum Accumulation of Sick Leave**

The maximum number of days an employee can accumulate from year to year is 720 hours. Twenty-four (24) hour shift employees can accumulate a maximum amount of 1,008 hours from year to year.

### **8.15 Sick Leave Use**

Sick leave with pay may be used when:

- A.** an employee is incapacitated from the performance of the employee's duties due to an illness, surgical procedure, or injury;
- B.** a medical, dental, or optical examination or treatment is necessary; provided, that approval of the supervisor is obtained;
- C.** an employee is incapacitated by or recovering from pregnancy, miscarriage, or childbirth;
- D.** an employee has been exposed to a contagious disease that would warrant quarantine by a health officer, and the employee's presence on the job would jeopardize the health of others; or
- E.** an employee needs to remain with a sick child, spouse, parent or other family member.

### **8.16 Sick Leave Rules**

- A.** Sick leave time will be charged only for time during which the employee would ordinarily have worked.
- B.** Sick leave shall not be taken in advance of it being earned.
- C.** When taking sick leave, an employee must take a minimum of one (1) hour.
- D.** Employees who are transferred, promoted, or demoted shall retain accrued sick time.
- E.** An employee on disciplinary suspension forfeits all claims to use sick leave for the duration of the disciplinary suspension.
- F.** Absences of three (3) or more consecutive days will require specific documentation before an employee can return to work. A Supervisor shall also be responsible for notifying the Human Resources Department when an employee is absent due to illness for three (3) consecutive workdays so the time may be evaluated for family and medical leave status.
- G.** Employees who are separated from employment for any reason shall not be compensated for any accrued sick leave.

- H. An employee cannot take sick leave after notice of resignation or termination.
- I. Employees on leave without pay, disability leave, family medical leave, or workers' compensation injury leave (after period of salary continuation) or receiving donated sick leave that have exhausted all leave shall not accrue sick leave. Sick leave shall accrue based on a prorated basis of the actual hours worked within that month. The accrual rate is based on length of service and number of hours worked per regular workweek.
- J. Employees on sick leave may not work a second job even if they have been authorized for outside employment by their Department Director.
- K. Sick leave does not count as hours worked and shall not be used in overtime calculations.

### **8.17 Physician's Statement**

An employee may be required to furnish a statement from an attending physician when:

- A. there is reasonable cause to question the merits of an employee's claim that an absence is due to a reason described in Section 8.18; or
- B. the employee's safety or ability to work is in question; or
- C. absence from work due to illness for three (3) or more consecutive days; or
- D. when requesting an extension of sick leave for serious illness.

An employee who is released by an examining physician to return to regular or light duty and refuses to report for work or perform their assigned duties is subject to disciplinary action, up to and including termination.

### **8.18 Sick Leave on Holidays**

If an official paid holiday falls during a period of sick leave, the employee will not be charged for sick leave on the holiday.

### **8.19 Use of Other Leave**

The employee shall be required to charge against vacation leave any additional

hours that may be required where an employee has reported illness but does not have sufficient sick leave. The employee shall not have the option to take leave without pay in order to reserve available vacation leave. Leave without pay shall be permitted only in cases where all leave has been exhausted, or the employee is on paid suspension for disciplinary purposes, or on authorized leave of absence.

Sick and vacation leave accrual and all other benefits shall be suspended during any period of leave without pay unless otherwise permitted under the provisions of this policy. The City Manager must approve any exceptions to this policy.

### **8.20 Credit for Unused Sick Time**

Regular Full-Time employees who do not use any sick leave in an anniversary year shall be credited with one (1) additional personal holiday for the following fiscal year.

### **8.21 Sick Leave Donation**

1. Sick leave may be contributed from one employee to another for illness, injury, exposure to contagious disease, or routine medical or dental appointments which cannot reasonably be scheduled outside of working hours.
2. Sick leave may not be transferred from one employee to another within (fourteen) 14 days of notice of termination of employment with the city.
3. Employees must have over 80 hours in their sick-leave bank to be eligible to transfer hours to another employee, and employees must have a balance of 80 hours left in their sick leave after the transfer.
4. The Human Resources Department will notify all employees when a request is made for Sick Leave and will provide the donation form.
5. The donations will not be processed until the eligible employee has used all hours of their accumulated leave. The employee will only be given the hours for each payroll period as needed. Hours donated from other employees must be used when donated and may not be accumulated for future use. Donation hours will be deducted in equal amounts as needed. Only one request for donations is allowed per occurrence.

### **8.22 Exempt Staff Leave**

The City Manager, Department Heads, and other executive, administrative, and professional personnel, as defined by the Fair Labor Standards Act, are excluded from the provisions of the City's overtime policies as exempt personnel and are



expected to work whatever hours are necessary to accomplish required duties, tasks, and responsibilities.

Exempt employees are not required to clock in and out for their work shifts. Instead, exempt employees' time will be reported on an exception basis. This means that they will only be required to submit documentation for work time missed (i.e. sick leave, vacation time, personal day, jury duty, etc.) through the time off request feature in the timekeeping software or in the form of a Leave Request Form.

Exempt personnel shall receive 40 hours of exempt leave each anniversary year, and such leave may be used pursuant to the following terms and conditions:

- A. The taking of such exempt leave must be authorized in advance by the appropriate department or division head.
- B. Unused, exempt leave may not be carried over from one (1) anniversary year to the next.
- C. Balances of exempt leave shall not be paid upon termination of employment with the City, or at any time.
- D. Exempt leave must be taken in a minimum of one (1) hour increments.
- E. For terminating employees, exempt leave may not be used during the final two-week notice period.

A new employee may not take exempt leave until the employee has completed three months of employment.

### **8.23 Bereavement Leave**

Regular Full-Time and Regular Part-Time employees may receive up to three (3) workdays per calendar year in cases of the death of a member of the employee's immediate family. For these purposes, "immediate family" shall mean the employee's spouse, child, brother, sister, mother, father, grandparents, grandchildren, stepparents, great grandparents, uncles, aunts, cousins, nephews, nieces, great-grandchildren and shall include the spouse's immediate family. A legal guardian may be considered as immediate family.

In order to establish eligibility for bereavement leave, the employee shall be required to disclose the relationship of the deceased person to the Department Head. The supervisor may require the employee to provide proof of death, such as an obituary notice.

The employee's supervisor will approve the appropriate amount of time off for

bereavement, but it shall not exceed three (3) workdays. No more than three (3) working days may be used for bereavement leave within a calendar year. In the event of another qualifying death and the employee's bereavement leave days have been utilized, he may use accrued leave, including vacation, sick leave and/or comp time. If there is no balance in an employee's accrued leave, the employee will be required to take leave without pay if no leave is available.

An employee not otherwise meeting the qualifications under this provision may claim the absence against available sick or vacation leave. The employee would otherwise be required to take leave without pay if no leave is available. Bereavement leave with pay does not accrue or carry over to the next calendar year.

If a bereavement request is denied by a Supervisor, the employee may appeal that decision to the City Manager.

## **8.24 Flextime Policy**

The City recognizes employees are most productive when they are able to successfully achieve a balance in their personal and professional lives and that one way to achieve this is to promote a program of flexible or alternate work scheduling. A flexible or alternate work schedule program has been developed to promote such productivity. Dependent upon the needs of the City and the employee, employees may be permitted or required to work an alternate schedule. This policy does not supersede the Department Head and Supervisors' authority to set employee schedules to meet budgetary limitations and/or changes in service levels and operational needs.

### **A. Parameters**

Flextime is allowed as long as departmental staffing levels are sufficient to maintain appropriate customer service levels. All flextime options are at the discretion of the employee's immediate supervisor and must be approved prior to beginning any alternative work schedule.

### **B. Definitions**

- 1. Flextime Work Schedule** - Permits flexibility in arrival and departure times. The time or hours are selected by the supervisor and the employee to complete a full work week of forty (40) hours.
- 2. Occasional Flex** – If the employee works late one evening, he or she may request or be required to come in late one morning or leave early one afternoon in the same workweek. This option also gives the employee the opportunity to take a

short lunch period, or no lunch period, in order to leave early or come in late. This option must be approved by the immediate supervisor and scheduled in advance when possible.

3. **Seasonal Flex** – This option may be used in any department to handle peak summer workloads and/or extreme heat. For example, the Water, Wastewater, and Street Departments could implement an altered work schedule during the summer months of 7:00 a.m. through 3:30 p.m. with a half-hour lunch. Seasonal flex schedules must be approved by the immediate supervisor. They must also be scheduled in advance of implementation and announced to all City personnel.
4. **Special Flex** – Under special circumstances, the City Manager may approve Special Flex for employees based upon out of the ordinary circumstances. Special Flex will be posted to an accrual balance for each employee and must be taken within sixty (60) days of the date it was earned.

#### **C. Exceptions**

Police and fire personnel have written guidelines addressing uniformed and sworn personnel's work schedules. This policy is not intended to supersede any written guidelines pertaining to such schedules within that department.

#### **D. Authority**

The Department Head shall have the authority to approve or deny employee requests to participate in the program on an individual, work unit, division or departmental basis. The Department Head shall also have the authority to require participation in the program on an individual, work unit, division or departmental basis. The Department Head shall have the authority to schedule and determine which employees shall have which days off and to amend, modify, or revoke that schedule as appropriate or necessary.

#### **E. Participation**

Participation in the program is available only to those who are deemed eligible by the Department Head. An employee may not appeal or grieve the denial or revocation of a schedule or participation in the program by a Department Head, and an employee who requested participation in the program or his immediate supervisor may terminate participation in this program at any time.

Management has the right to remove an employee from the program if the employee's performance declines, if the program fails to benefit the City's needs, or for policy violations. An opportunity to request participation in the program is offered only with the understanding that it is the responsibility of the employee to meet and adhere to all components and requirements, to include, but not limited to the following:

1. Employee understands that he is obligated to comply with all City rules, policies, practices, instructions, which apply to his job and any other specified agreements.
2. Employee agrees that all tasks, duties, obligations, responsibilities, and conditions of employment shall not be changed by reason of participation in the Program.
3. Employee who participates shall continue to accrue leave benefits.

#### **F. Participant Selection Criteria**

Any employee requesting to participate in the program with an identified, documented performance problem shall not be selected to participate in the program. Supervisors will assess each request on a case-by-case basis, and will consider the following factors to determine if the employee shall be selected to participate:

1. The ability of the employee to work independently and effectively with little or minimal supervision.
2. Positive or negative effects of the flexible work schedule on the fulfillment of the employee's responsibilities; customer service; the remainder of the department, division, or office; working with contractors or clients; additional costs or savings to be incurred or realized.
3. Employee must have completed six (6) months of employment with the City and be a Regular Full-Time employee.
4. The employee's need for flexibility in work scheduling.
5. Consideration of the employee's performance indicators; within the last year, including, but not limited to, punctuality, attendance and quality and quantity of work performed.
6. Consideration of the impact on the office, counter assistance, telephone coverage, attendance at meetings, workload, City Commission, board and commission deadlines, project deadlines and any other factors that contribute to the City's goal of providing the highest level of customer service.

7. Consideration of other relevant factors that may affect the effective and efficient operation of the City, i.e., knowledge requirements, contact requirements, reference material requirements, travel requirements, and information security requirements.

**G. Request to Participate**

Any employee wishing to participate in either fixed or seasonal flextime must fill out the Request of Alternate Work Schedule Form. For those wishing to participate in the program for two weeks or less, the form must be submitted to the immediate supervisor at least five working days in advance for approval. The supervisor will then grant his approval or denial at least three working days in advance of the requested effective date. For requests longer than two weeks, the request form must be submitted to the supervisor at least ten working days before the effective date of the work schedule change, and the supervisor will grant approval or denial at least five working days in advance of the requested effective date. Occasional flextime does not require the Request of Alternate Work Schedule Form but does need to be verbally approved by the immediate supervisor as early in advance as possible.

**H. Work Tasks**

The employee shall meet with the supervisor to receive assignments and to review completed work as necessary or appropriate. Further, the employee shall also complete all assigned work according to work procedures mutually agreed upon by the employee and the immediate supervisor.

**I. Exempt Employees**

Exempt employees are expected to work whatever hours are necessary to accomplish required duties, tasks, and responsibilities. This often requires in excess of eight hours per day. To provide for employees to be more productive and to successfully achieve a balance in their personal and professional lives, a flexible work schedule will be permitted. The ability to flex one's work schedule is dependent upon the employee's workload and the impact on the City. The flexible work schedule opportunities do not affect the Exempt Leave benefit.

The exempt employee's alternate work schedule provisions are as follows:

1. When an exempt employee physically works in excess of 8 hours a day, he may use those excess hours to flex his work hours within the same pay period. Hours may not carry over from one pay period to the next.
2. No more than eight (8) consecutive hours shall be flexed in any given pay period.
3. If additional leave is needed within a pay period, the employee shall use his accrued leave.
4. Such flextime work schedule changes shall be authorized in advance by the immediate supervisor.

**J. Enforcement**

This policy will be enforced by all supervisory and management personnel. Employees who violate or abuse this policy will be subject to disciplinary action, up to and including termination. If employees have questions regarding flex time (as defined by this policy) they should consult their supervisor. Unresolved issues between employees and management concerning flextime will be addressed by Human Resources.

**8.25 Military Training Leave**

**A. Eligibility**

An employee who is a member of the National Guard or reserves of the United States armed forces shall, upon notification to the Department Head and submission of appropriate documentation, be granted leave for a period required to perform active duty for training.

**B. Definition**

Active duty for training means to be engaged in short periods of authorized military training such as cruises, training schools, weekly or weekend drills, and other similar activities.

**C. Length of Leave**

In accordance with Section 437.202, Texas Government Code, an employee engaged in authorized military training or duties will receive pay and accrue benefits as if the employee were on the job, for up to one (1) month in any one year.

**8.26 Military Active Duty Leave**

**A. Eligibility**

An employee who leaves a position with the City for the purpose of entering any branch of the United States armed forces, including a reserve component, for extended active duty, shall be placed in military active-duty status and granted leave without pay. The employee should give a Supervisor advance notice of the employee's intent and, for reemployment purposes, submit a copy of the orders for inclusion in the employee's personnel record.

**B. Use of Military Leave and Vacation Leave**

While serving on military active duty as a member of a reserve component of the armed forces, an employee may elect to use military training leave and any accrued vacation leave, or similar leave accrued before the commencement of such service.

**C. Length of Active Duty**

In accordance with Section 4312, Title 38, United States Code, an employee may serve a total of five years on active duty in the armed forces as a member of a reserve component and still be eligible for reemployment. An employee's right to reemployment is not protected for periods of military active duty longer than five years.

**D. Reemployment**

A regular employee who returns from active duty as a member of the armed forces of the United States is entitled to reemployment in the position the employee would have been employed if continuous employment with the City had not been interrupted by military service; or in the same position held upon entrance to active duty; or in a position of comparable seniority, status and pay, if the employee:

1. is physically and mentally qualified to perform the duties of the position;
2. was discharged, separated, or released from military active duty under honorable or general conditions;
3. has not been on military active duty leave for more than five years; and
4. makes written application for reemployment within 90 days after discharge, separation, or release from military active duty and presents evidence of the discharge, separation, or release from military active duty.

**E. Leave for Military Physical Exam**

An employee called for a military preinduction physical examination will be allowed a reasonable time with pay, including travel time, to take the examination.

**F. Credit for Military Service**

Upon reemployment with the City following military active duty, an employee will be allowed full credit for time spent in the military service for the purpose of computing eligibility for vacation and sick leave. The employee will be entitled to all seniority, rights and benefits that the employee would have attained had the employee remained continuously employed with the City.

**8.27 FMLA Leave**

**A. Federal Law**

FMLA leave is provided in compliance with the Family and Medical Leave Act of 1993. When questions arise concerning FMLA leave that are not answered in this section, the Department Head or Human Resources Department should refer to federal regulations, 29 C.F.R. Part 825, for additional guidance. These regulations are controlling in any matter on which this policy is silent.

**B. Eligibility and Entitlement**

Any employee who has completed twelve (12) months of employment and at least 1,250 hours of service during the previous twelve (12) month period with the City is entitled to receive Family and Medical Leave during a rolling year for one or more of the reasons listed below:

1. Birth of a child of the employee in order to care for such child (leave must be taken within a twelve (12) month period after birth);
2. Upon the placement of a child with the employee for adoption or foster care (leave must be taken within a twelve (12) month period after placement);
3. To care for the employee's spouse, son, daughter or parent who has a serious health condition;



4. When the employee is unable to perform the essential functions of his position because of a serious health condition.
5. If an immediate family member (spouse, child or parent) is a Reservist or a member of the National Guard and is on active duty or has been notified of a call to active duty in support of a contingency operation and has a qualifying exigency. A qualifying exigency is defined as short-notice deployment, military events and related activities, child care and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities and additional activities where the employer and employee agree to the leave.
6. To care for a family member (spouse, child, parent, or next-of kin) who is a covered service member who is recovering from a serious injury or illness sustained in the line of duty on active duty.

## **8.28 FMLA Leave Provisions**

The provisions for using Family and Medical Leave for 1 through 6 listed above are as follows:

- A. An employee who has no accrued paid leave must receive unpaid family and medical leave up to twelve (12) weeks during a rolling twelve month period; twenty-six (26) weeks if caring for an injured or ill service member recovering from a serious injury or illness sustained in the line of duty on active duty. All of the twenty-six weeks of leave which are available to care for an injured or ill service member must be taken during a single twelve month period.;
- B. An employee who has less than their eligible FMLA weeks, in accrued paid leave must first use the accrued paid leave towards their FMLA weeks; thereafter, the remaining balance of their FMLA weeks shall be unpaid family and medical leave;
- C. An employee, who has more than their eligible FMLA weeks in accrued paid leave, must substitute accrued leave for unpaid FMLA leave. Upon expiration of FMLA leave, the employee may use the accrued paid leave over and beyond, their eligible FMLA weeks, if necessary, for family and medical leave causes, only upon review by the Human Resources Department and approval by the City Manager; and
- D. Family and Medical Leave may be paid or unpaid.

### **8.29 FMLA Leave – Reasonable Accommodations**

After completion of twelve (12) or twenty-six (26) weeks of leave under the Family and Medical Leave Act, the employee shall be restored to the same position or to an equivalent position involving the same or substantially similar duties and responsibilities. An employee will be restored to the same worksite or to a geographically proximate worksite. The employee is also entitled to return to the same shift or an equivalent schedule. If an employee is unable to perform the duties of his assigned position, reasonable accommodations may be made by the City to provide for the employee to perform such duties. If reasonable accommodations cannot be made and the employee is unable to perform the essential duties of his assigned position, he may be terminated.

### **8.30 FMLA – Supervisor Notice to Human Resources**

A Supervisor shall be responsible for notifying the Human Resources Department immediately when an employee is away from work for a Family and Medical Leave qualifying event (if Family and Medical Leave has not been approved), even if the employee is utilizing paid vacation, sick or other types of leave or is out due to a work related injury. A Supervisor shall also be responsible for notifying the Human Resources Department when an employee is absent due to illness for three (3) consecutive work days, so the time may be evaluated for Family and Medical Leave status.

### **8.31 FMLA – Other Provisions**

- A.** When Family and Medical Leave is foreseeable, an employee must provide at least thirty (30) days advance written notice. When the need for Family and Medical Leave is unforeseeable, as much notice as is practicable should be given. A form requesting Family and Medical Leave is available in the Human Resources Department. If it is determined that the need for Family and Medical Leave was foreseeable, the leave can be delayed until at least thirty (30) days after the date that the employee provides notice to the City. In the absence of unusual circumstances, nothing herein excuses an employee from complying with the requirement to notify his/her immediate supervisor of an absence as required by Section 15.05.A.2. of the PARM.
- B. Medical Certification:** The City may require medical certification from a health care provider to support a claim for leave to care for a seriously ill child, spouse or parent, or for the employee's own serious health condition. Medical certifications must be returned to the Human Resources Department within fifteen (15) working days. Recertification may also be required on a monthly basis. For leave

to care for a seriously ill child, spouse, or parent, the certification must include an estimate of the amount of time the employee is needed to provide care. For the employee's own serious health condition, the certification must include a statement that the employee is unable to perform the essential functions of his/her position. Upon returning to work after leave for his/her own illness, an employee is required to provide a fitness for duty certification which addresses the employee's ability to perform the essential functions of the employee's job.

If the City determines that a certification provided is incomplete or insufficient, the City will provide the employee with seven calendar days to cure any deficiency. When leave is requested due to a serious health condition affecting the employee or the employee's spouse, child or parent or for leave requested to care for an injured or ill service member and the deficiency is not cured, the City has the right to either deny FMLA leave or contact the health care provider for purposes of clarification and authentication of the medical certification. Any contact with a health care provider will be made only by a health care provider, the Human Resources Department or the City Manager and, when necessary, upon receipt of a HIPAA authorization provided by the employee. If an employee refuses to provide a HIPAA authorization when necessary and does not otherwise clarify the certification, the City may deny FMLA leave.

If the validity of a certification is questioned, the City may require that a second opinion be obtained. If the first and second opinions differ, the City may require a third opinion be obtained. The employee and the City must agree upon a health care provider for the third opinion and this opinion shall be binding on both parties. The City shall bear the expense of second and third opinions.

- C. Service Member Certification:** An employee requesting leave to care for an injured or ill service member must provide certification of the need for leave from the service member's health care provider. Invitational Travel Orders or Invitational Travel Authorizations issued to the employee to join an injured or ill service member at his or her bedside may be provided in lieu of this certification for the duration of time specified in the orders or authorizations. Employees seeking leave for a qualifying exigency arising out of the fact that the employee's spouse, child, or parent is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation must also provide a certification of the need for leave to the Human Resources Department.
- D.** This policy does not affect the accrual or usage of leave provisions (i.e., vacation, sick, compensatory or exempt leave, or holiday).

- E.** An employee shall continue to receive health insurance benefits during Family and Medical Leave. The City shall continue paying its portion and the employee shall continue to pay his portion of health insurance benefits.
- F.** Family and Medical Leave may be delayed or denied due to the failure of an employee to adhere to these Regulations.
- G.** Within five business days of receipt of notice from an employee requesting paid or unpaid leave, the Human Resource Department shall notify the employee of the employee's eligibility to take FMLA leave and the employee's rights and responsibilities for taking FMLA leave. This written information must be provided to the employee in a language in which the employee is literate.
- H.** Within five business days of receipt of enough information to determine whether the leave is being taken for an FMLA-qualifying reason, the City must notify the employee whether the leave will be designated and counted as FMLA leave.
- I.** When medically necessary, an employee may take Family and Medical Leave on an intermittent basis or work a reduced schedule. Leave taken due to a qualifying exigency may also be taken on an intermittent or reduced leave schedule. Arrangements should be made with the employee's immediate supervisor so that the operations of the department are not unduly disrupted. An employee taking intermittent leave or leave on a reduced schedule may be temporarily assigned to an alternative position with equivalent pay and benefits if it better accommodates the needs of the department.

### **8.32 Leave of Absence without Pay or Inactive Status**

- A.** In addition to the paid leaves of absence discussed above and in the FMLA provision, an unpaid leave of absence for a reason acceptable to the City may be granted for up to seven (7) calendar days to Regular Full-Time and Regular 29 Part-Time employees. A request must be made by the employee in writing at least ten (10) days prior to the beginning date of the leave of absence, except in an emergency situation. The Department Head and the Human Resources Department must approve the leave of absence in advance.
- B.** An employee who does not return to work on the first regular working day following the end of the leave of absence period shall be terminated unless he has received an extension before the expiration of the originally approved leave.

### **8.33 Administrative Suspension**

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

### **8.34 Jury Duty and Other Court Leave**

- A.** An employee shall be granted paid jury leave when he is summoned for jury duty.
- B.** The employee must notify his supervisor upon receiving a summons for which jury leave is requested. A copy of the summons must be submitted to the employee's supervisor and to the Human Resources Department.
- C.** All fees paid and expenses reimbursed by the court may be retained by the employee.
- D.** Employees shall report to work on any business day or partial day when the jury/court is not in session.

### **8.35 Paid Time Off for Voting**

An employee eligible to vote in a national, state, county, or municipal election, shall, when necessary, be allowed sufficient leave with pay to exercise this right. The requested leave must be approved by the Department Head.

### **8.36 Other Leave without Pay**

#### **A. Eligibility**

Leave without pay, other than military leave and FMLA leave, is granted as a matter of administrative discretion. No employee is entitled to leave without pay as a matter of right, but it may be granted to any employee.

#### **B. When Granted**

The City Manager may grant leave without pay to an employee for the following reasons:

1. To participate in training or education that would result in increased job ability;
2. To recover from illness or disability after FMLA leave has been exhausted or if the employee is not eligible for FMLA leave; or
3. In circumstances described in other parts of these policies.

### **C. Benefits**

Except for military training or active duty leave, benefits shall not accrue while an employee is on leave without pay, when leave exceeds time worked for any month.

### **D. Return from Leave**

When an employee who has been granted leave without pay desires to return before expiration of the leave, the Department Head may require that reasonable notice, not in excess of 15 calendar days, be given. Except for military training or active duty leave, an employee who returns to work after leave without pay which exceeds three months, shall be given an adjusted service or seniority date and an adjusted anniversary date for merit review and vacation leave carry over purposes.

### **E. Revocation of Leave**

A Department Head may revoke leave without pay upon finding evidence that the cause for granting leave without pay was misrepresented or has ceased to exist.

### **F. Recordkeeping**

A Department Head is responsible for submitting to the Human Resources Department accurate records of employees who are on leave without pay (LWOP). The biweekly report shall show absentees who are not entitled to pay.

## **8.37 Absence without Leave**

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

## **8.38 Breastfeeding Support**

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